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STATE SCHOOL SYSTEMS:

III

LEGISLATION AND JUDICIAL DECISIONS RELATING
TO PUBLIC EDUCATION, OCTOBER 1,
1908, TO OCTOBER 1, 1909

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SPECIAL NOTE.

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LETTER OF TRANSMITTAL.

DEPARTMENT OF THE INTERIOR,
BUREAU OF EDUCATION,
Washington, April 7, 1910.

SIR: In the fall of 1906 and again in the fall of 1908 there was published in the Bulletin of this Office a carefully classified and annotated index of the legislation of the several States in matters pertaining to public education for the preceding two-year period, together with notices of some of the more important judicial decisions. These digests have been much in demand and have proved their usefulness. It is clear that that usefulness would be greatly increased if this could be made an annual publication. Such an arrangement now seems possible, and the first of the proposed series of annual publications of this kind has now been prepared by Prof. Edward C. Elliott, who edited the two biennial issues. I have the honor to transmit this compilation herewith, and to recommend that it be published in the Bulletin of the Bureau of Education.

The value of Professor Elliott's work in this field is universally recognized, though it has of necessity been done at a distance from the office of publication. With the appointment in the Bureau of Education of a specialist in school administration, it is expected that similar compilations will hereafter be prepared at Washington by members of the staff of this Office; and it is hoped that special publications may from time to time be put forth in this field as the need for them may arise.

Very respectfully,

ELMER ELLSWORTH BROWN,
Commissioner.

The SECRETARY OF THE INTERIOR.

PREFATORY NOTE.

The following work, relating to current educational legislation and judicial decisions in the United States as generally affecting the organization and administration of the state school systems, was undertaken at the instance of the Commissioner of Education of the United States, Dr. Elmer Ellsworth Brown. It is in continuation of the plan inaugurated three years ago, which has resulted in two similar publications covering the periods 1904-1906 and 1906-1908 (Bulletin, 1906, No. 3, and Bulletin, 1908, No. 7). The very evident wide usefulness of these publications, together with the cordial reception by those for whom they were intended, seems to justify the present effort.

The work of preparation of the present number has been carried forward principally in the Wisconsin state library, the Wisconsin legislative reference library, and the law library of the University of Wisconsin, at Madison. To the members of the staff of each of these libraries I am indebted in the largest measure for their continued and courteous assistance in placing the necessary facilities at my disposal. In this connection I desire especially to mention Mr. Gilson G. Glazier, librarian, and Mr. William H. Orvis, assistant librarian, of the state library. Dr. Charles McCarthy, librarian of the Wisconsin legislative reference library, has by his advice and continued helpfulness furthered in numerous ways the progress of my task. Miss Leone H. Spoor and Miss Jessie E. Wilcox, my assistants, have rendered much timely and valuable aid in the preparation of the manuscript and the correction of the proof.

The conditions under which this work was undertaken would have made impossible the incorporation of those portions dealing with judicial decisions relating to education had not Mr. H. E. Randall, editor in chief of the West Publishing Company, generously granted permission to make use of invaluable copyrighted material.

With but one or two exceptions the superintendents of public instruction, or the corresponding state educational officers, and the chief officers of normal schools and higher educational institutions, have responded to a request for information regarding the character and importance of the legislation enacted in their several States.

during the period under consideration. The assistance of these officers has added much to the value and quality of the results I have attempted to set forth, and I take this opportunity of expressing my appreciation of such assistance.

Throughout, the spirit of hearty cooperation, characteristic of the attitude of all those upon whom I have had to depend, and especially so of the various members of the staff of the Bureau of Education, has contributed to make my work far less arduous than it otherwise would have been.

In spite of the care in preparation, a piece of work of this kind contains possibly some minor errors. For these, and perhaps larger ones, I alone am responsible.

EDWARD C. ELLIOTT.

The UNIVERSITY OF WISCONSIN,

February 1, 1910.

STATE SCHOOL SYSTEMS: LEGISLATION AND JUDICIAL DECISIONS RELATING TO PUBLIC EDUCATION, OCTOBER 1, 1908, TO OCTOBER 1, 1909.

GENERAL EXPLANATIONS.

Scope and plan.—In the following pages an attempt has been made to classify and to analyze the changes wrought in the public school systems of the various States and Territories by the legislative measures enacted during the year, October 1, 1908, to October 1, 1909. Supplementary to this legislative material, there are also included digests of, or citations to, those decisions of the state supreme courts containing important interpretations of statutes relating to public education, or defining in a significant way the functions and status of the public schools.

Legislative sessions are biennial in all the States and Territories except in Georgia, Massachusetts, New Jersey, New York, Rhode Island, and South Carolina, where they are annual, and in Alabama, where they are quadrennial. The period selected includes the enactments of the regular session of the legislature in 41 States and Territories.^a In addition, the acts of extra and special legislative sessions held in several of the States have been examined for measures relative to the public school system.

The following table displays the time of meeting of those legislatures the enactments of which have been presented:

Table of legislative sessions, October 1, 1908, to October 1, 1909.

State or Territory.	Time of session.		State or Territory.	Time of session.	
	From—	To—		From—	To—
Alabama (special)...	July 27, 1909	Aug. 24, 1909	Florida.....	Jan. 6, 1909	June 4, 1909
Arizona.....	Jan. 18, 1909	Mar. 18, 1909	Georgia.....	June 24, 1908	Aug. 13, 1908
Arkansas.....	Jan. 4, 1909	May 12, 1909	Do.....	June 23, 1909	Aug. 13, 1909
California.....	Jan. 4, 1909	Mar. 24, 1909	Hawaii.....	Feb. 19, 1909	Apr. 28, 1909
Colorado.....	Jan. 6, 1909	Apr. 5, 1909	Idaho.....	Jan. 4, 1909	Mar. 6, 1909
Connecticut.....	Jan. 4, 1909	Aug. 24, 1909	Illinois.....	Jan. 6, 1909	June 4, 1909
Delaware.....	Jan. 5, 1909	Mar. 31, 1909	Indiana (special).....	Sept. 18, 1908	Sept. 30, 1908

^a The acts of the 1908 session of the legislature of Georgia, excluded, owing to the delay in printing, from the bulletin issued in 1908, have also been included here.

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Table of legislative sessions, October 1, 1908, to October 1, 1909—Continued.

State or Territory.	Time of session.		State or Territory.	Time of session.	
	From—	To—		From—	To—
Indiana.....	Jan. 7, 1909	Mar. 8, 1909	Oregon.....	Jan. 11, 1909	Feb. 20, 1909
Iowa.....	Jan. 11, 1909	Apr. 9, 1909	Oregon (special).....	Mar. 15, 1909	Mar. 16, 1909
Kansas.....	Jan. 12, 1909	Mar. 13, 1909	Pennsylvania.....	Jan. 5, 1909	Apr. 25, 1909
Maine.....	Jan. 6, 1909	Apr. 3, 1909	Porto Rico.....	Jan. 11, 1909	Mar. 11, 1909
Massachusetts.....	Jan. 6, 1909	June 19, 1909	Porto Rico (special).....	Mar. 12, 1909	Mar. 16, 1909
Michigan.....	Jan. 6, 1909	June 2, 1909	Rhode Island.....	Jan. 5, 1909	May 7, 1909
Minnesota.....	Jan. 7, 1909	Apr. 22, 1909	South Carolina.....	Jan. 12, 1909	Feb. 20, 1909
Missouri.....	Jan. 6, 1909	May 17, 1909	South Dakota.....	Jan. 5, 1909	Mar. 5, 1909
Montana.....	Jan. 4, 1909	Mar. 2, 1909	Tennessee.....	Jan. 4, 1909	May 1, 1909
Nebraska.....	Jan. 2, 1909	Apr. 1, 1909	Texas.....	Jan. 12, 1909	Mar. 13, 1909
Nevada.....	Jan. 18, 1909	Mar. 18, 1909	Texas (special).....	Mar. 13, 1909	Apr. 11, 1909
New Hampshire.....	Jan. 6, 1909	Apr. 9, 1909	Do.....	Apr. 12, 1909	May 12, 1909
New Jersey.....	Jan. 12, 1909	Apr. 15, 1909	Utah.....	Jan. 11, 1909	Mar. 11, 1909
New Mexico.....	Jan. 18, 1909	Mar. 18, 1909	Vermont.....	Oct. 7, 1908	Jan. 29, 1909
New York.....	Jan. 6, 1909	Apr. 30, 1909	Washington.....	Jan. 11, 1909	Mar. 11, 1909
North Carolina.....	Jan. 6, 1909	Mar. 9, 1909	West Virginia.....	Jan. 13, 1909	Feb. 26, 1909
North Dakota.....	Jan. 8, 1909	Mar. 5, 1909	Wisconsin.....	Jan. 13, 1909	June 18, 1909
Ohio.....	Jan. 4, 1909	Mar. 12, 1909	Wyoming.....	Jan. 12, 1909	Feb. 20, 1909
Oklahoma.....	Jan. 7, 1909	Mar. 12, 1909			

To accomplish the purposes for which the bulletin is immediately intended, in as direct and brief a manner as possible, legislative enactments of the following specific character pertaining to state school systems have been included:

- (1) All general permanent laws, whether new enactments or amendments to general permanent laws already in force.^a
- (2) Constitutional amendments, adopted or proposed, whether general or local in their effect.
- (3) Laws resulting in significant changes in the organization and administration of public education in the larger and more important cities of each State, even when general in form and special in application; provisions of new municipal charters; and amendments to existing charters.
- (4) Laws authorizing special appropriation for the establishment of a new educational institution or class of institutions, and extraordinary appropriations of wide general interest.
- (5) Laws relating to the general administration, control, and management of particular state educational institutions.^b

The following classes of legislation have been excluded from consideration:

- (1) Laws providing for general ordinary appropriations.

^a In a number of instances minor and obviously unimportant measures have been omitted.
^b Legislative measures relative to certain classes of reformatory, charitable, and quasi educational institutions have generally been omitted; for complete explanation see footnote under section T, "Education of Special Classes."

(2) Special acts relating to particular individuals or minor localities.

(3) Special and temporary acts, unless of more than local or transitory concern.

(4) Federal and local legislation relating to education in the District of Columbia, Alaska, Philippine Islands, and other insular possessions, excepting Hawaii and Porto Rico.

In addition to the legislation above noted, digests of and citations to recent decisions of the highest state courts of the following general character have been likewise included:

(1) Those relative to the constitutionality of important statutes concerning public education.

(2) Those presenting special interpretations of measures enacted during the period 1906-1909.

(3) Those touching upon interests and principles of direct and vital importance to our social policy in public education.

Method of presentation.—With respect to the legislative material, the aim has been to present in a concise and serviceable manner the meaning and contents of each particular enactment, classified in accordance with the writer's best judgment. As a general thing but one entry has been made for each of those laws treating of but one particular topic or title. Frequently, where an enactment possesses a relation to two subjects, according to the scheme of classification, a method of cross reference has been resorted to. Thus, for example, enactment No. 308 (Tennessee) contains several important items. In order to classify properly, several cross references are given. (See enactments Nos. 357 and 860.)

In a number of cases wherein a single law treats of a number of diverse subjects or titles, or wherein the amendments to the educational code are grouped together in a single act or chapter, an effort has been made to distribute the particular portions of such measures so that the alterations produced in different directions would be evident. Such distribution has been designated in an appropriate manner, either by indicating a particular section of an individual chapter or act, or otherwise.

Each law or separate title has been treated in one of three ways:

(1) Unimportant new laws and amendments have been indicated as briefly as possible by title or otherwise. Where the title of the law presents its import in a clear and concise manner it has been used, sometimes by quotation and sometimes by such modifications of the wording as would convey its significance in the best possible manner.

(2) Frequently, and especially in the case of amendments to existing statutes, besides reference to the particular subject, more or less explanatory matter has been added to bring out the exact change produced.

(3) With important and far-reaching measures, in addition to the title and digest of the subject-matter of the enactment, either the whole or the most significant portion has been printed.

With respect to the judicial decisions, the method of simple citation has been employed in the case of those of minor importance. Generally, however, a brief digest of pertinent points has been included. In a few instances a complete syllabus of the decision has been presented. Appended to the main body of classified legislative and judicial material, there has been included the complete text of a number of recent court decisions, which are thought to be of more than passing interest to those engaged in the work of administration of public education.

Still further, by way of evaluation of the importance of laws and decisions in the respective States, use has been made of the information furnished by the various state superintendents and educational officers. Laws and decisions which they have regarded as of the first importance in the development and progress of the State's educational activities and system have been indicated by an asterisk (*).

Method of classification and arrangement.—In order to facilitate presentation and to render this bulletin of ready service for reference, the whole mass of the special class of educational legislation, together with the digests of and citations to related judicial decisions, have been carefully classified according to what seems to be a logical and consistent scheme. At the same time, throughout, the effort has been to avoid such complexity of classification as would tend to defeat its purpose. Under each of the headings indicated has been placed all of the matter properly belonging thereto, arranged alphabetically by States. In addition, the enactments and decisions have been numbered consecutively, thereby contributing to ease and readiness in discovering matter of a particular type. Citations to and digests of judicial decisions have been distinguished from legislative enactments by prefixing a capital "D" before the reference number. The index at the close of the bulletin further insures the ready discovery of legislation bearing upon any single topic.

Typography.—In the case of each legislative item, the title of the measure, whether given verbatim or in modified form, is printed in the smaller type (8-point), leaded. Comments following the title of the measure, or a brief summary of its provisions, are printed in the same type without leads. Direct quotations from the text of the measure are printed in 8-point type without leads, and are inclosed within quotation points.

The material taken from judicial decisions has been treated in the same general way.

The reviews found in connection with each classified group of legislation and decisions have been printed in the larger (10-point) type, leaded.

PLAN OF CLASSIFICATION.*

- A. GENERAL ADMINISTRATIVE CONTROL AND SUPERVISION OF ELEMENTARY AND SECONDARY EDUCATION.
 - a. General.
 - b. State boards and officers.
 - c. County boards and officers.
 - d. District, township, and municipal boards and officers.
 - e. School meetings; elections; qualifications for voters.
 - f. Administrative units: Districts, townships, municipalities, etc.; formation; division; consolidation.
- B. STATE FINANCE AND SUPPORT.
 - a. General.
 - b. State school lands.
 - c. Permanent state school funds: Composition and investment.
 - d. State taxation for school purposes.
 - e. General apportionment of state school funds; special state aid for elementary education.
 - f. Special state aid for secondary education.
- C. LOCAL (COUNTY, DISTRICT, MUNICIPAL) FINANCE AND SUPPORT.
 - a. General.
 - b. Local (county, district, municipal) bonds and indebtedness.
 - c. Local (county, district, municipal) taxation for school purposes.
- D. BUILDINGS AND SITES.
 - a. General.
 - b. Buildings and sites: State aid; approval of plans.
 - c. Buildings and sites: Decoration; care; sanitation; inspection.
 - d. Buildings and sites: Prohibition districts.
 - e. U. S. flag in schools.
- E. TEACHERS IN ELEMENTARY AND SECONDARY SCHOOLS.
 - a. Teachers: Qualifications; general.
 - b. Teachers' examinations and certificates: General.
 - c. Teachers' examinations and certificates: Special.
 - d. Teachers' certificates; validity; indorsement; registration; revocation.
 - e. Teachers' certificates; recognition of normal school and college or university diplomas.
 - f. Teachers' associations.
- F. TEACHERS: EMPLOYMENT; CONTRACT; APPOINTMENT; DISMISSAL:
 - a. General.
 - b. Teachers' salaries.
 - c. Teachers' pensions.
- G. TEACHERS: PROFESSIONAL TRAINING AND EDUCATION.
 - a. University departments and schools of education.
 - b. State normal schools.
 - c. County and local normal and training schools.
 - d. Teachers' institutes and summer schools.

* This plan of classification is, with the addition of one or two minor subdivisions, identical with that followed in the previous legislative bulletins (Bulletin 1906, No. 3, and Bulletin 1907, No. 7). The advantages for comparative purposes are obvious.

H. SCHOOL POPULATION AND ATTENDANCE.

- a. General.
- b. School census.
- c. School year; month; day.
- d. School holidays.
- e. Place of attendance; transportation of pupils; consolidation of schools.
- f. Compulsory attendance; child labor; truancy.

I. SCHOOL DISCIPLINE.

- a. General.
- b. Corporal punishment.
- c. Suspension and expulsion.
- d. Fire drills.
- e. School fraternities.

J. HEALTH REGULATIONS.

- a. General.
- b. Physical examination and medical inspection.

K. TEXT-BOOKS AND SUPPLIES.

- a. General.
- b. Free text-books.
- c. Uniformity of text-books.

L. SUBJECT-MATTER OF INSTRUCTION.

- a. General.
- b. History, civics, and patriotism.
- c. Physical education.
- d. Physiology; hygiene; alcohol; narcotics.
- e. Moral and ethical education.
- f. Humane treatment of animals.
- g. Music.
- h. Drawing.
- i. Technical, manual, and industrial education.
- j. Days of special observances.
- k. Other special subjects.

M. SPECIAL TYPES OF SCHOOL.

- a. General.
- b. Kindergartens.
- c. Evening schools.
- d. Vacation schools and playgrounds.
- e. University extension; public lectures.
- f. Farmers' institutes, etc.
- g. Private and endowed schools.

N. SECONDARY EDUCATION: HIGH SCHOOLS AND ACADEMIES.**O. TECHNICAL AND INDUSTRIAL: ELEMENTARY AND SECONDARY.****P. HIGHER EDUCATIONAL INSTITUTIONS.**

- a. General.
- b. Finance; lands; support.
- c. State universities and colleges.
- d. Carnegie fund.

Q. PROFESSIONAL AND HIGHER TECHNICAL EDUCATION.

- a. Teachers' colleges and normal schools.
- b. Agricultural colleges.
- c. United States grant.
- d. Mining schools.
- e. Military schools.
- f. Miscellaneous technical.

R. PRIVATE AND ENDOWED HIGHER INSTITUTIONS: STATE CONTROL.

S. LIBRARIES.

- a. General.
- b. Public-school libraries.

T. EDUCATION OF SPECIAL CLASSES.

- a. General.
- b. Deaf and dumb.
- c. Blind.
- d. Crippled and deformed.
- e. Feeble-minded.

U. EDUCATION OF DEPENDENTS AND DELINQUENTS.

- a. General.
- b. Truant and detention schools.

Method of citation.—At the end of each legislative entry will be found the proper citation to the section, chapter, number of act, or page (in the case of those States whose session laws are not numbered consecutively); year, day, and month of approval or passage. In a number of instances where the enactments became operative at some special time after passage or approval, the date of operation follows, in parentheses, the date of passage or approval.

In the case of digests of and citations to judicial decisions the usual method of reference to reports has been employed.^a

An especial effort has been made to avoid arbitrary and technical abbreviations in making citations. Consequently, but few have been used and these only the most common and easily recognized ones. It is thought that the resulting absence of ambiguity and confusion for the lay and nontechnical reader more than compensates for the slight increase in the volume of matter presented.

Reviews of legislation.—An effort has been made to characterize briefly and to indicate the significant features of the legislation included under each of the principal and important subjects as indicated by the plan of classification. These reviews and decisions (printed in large type) will be found immediately preceding the classified list of enactments of each section.

General summaries.—The scope of the present publication has been enlarged somewhat over that of its predecessors by the incorporation of a new section containing a general survey by States of the legislative activity of 1909 as regards public education. The summaries making up this survey immediately precede the principal contents of the bulletin.

^a See p. 2 for note concerning use of copyrighted material.

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GENERAL SUMMARIES OF THE MORE IMPORTANT EDUCATIONAL LEGISLATION ENACTED AND PROPOSED, 1909.

Within this section is presented a brief survey, by States, of the more important legislation pertaining to public education enacted during 1909. Supplementary and complementary thereto, the more important measures failing of enactment or approval are indicated.

Excepting in a few instances, these summaries have been prepared from the special reports made by the state superintendents of public instruction and the presidents of state institutions of higher and professional education. In the case of those States from which no special reports were submitted the summaries were prepared on the combined basis of a general comparative study of the trend of legislation during recent years and of a personal estimate of the significance of the several items of which mention is made.

ALABAMA—Enacted.

Amendment concerning state board of examiners, and the examination and certification of teachers (act 73); providing for education on the evils of intemperance (act 40); regulating employment of children (act 107); authorizing appropriation of county funds for county high schools (act 217).

ARIZONA—Enacted.

Providing for uniform courses of study in the territorial normal schools (chap. 58); regarding the relation between normal school training schools and the public schools of the district in which normal schools are located, and providing for the distribution of public funds in such cases (chap. 87); abolishing saloons, gambling houses, etc., within a radius of 800 yards of a normal school campus (chap. 74).

ARIZONA—Failed.

Establishing four scholarships at the university for each county in the Territory (vetoed by the governor).

ARKANSAS—Enacted.

Appropriating \$160,000 to establish four agricultural schools (act 100); regulating and enforcing attendance at school (act 234 and act 347); authorizing school districts to exercise the right of eminent domain in acquiring school property (act 331); creating special school districts with same powers as granted to incorporated cities and towns (act 321); appropriating \$96,000 for maintenance of school and erection of girls' dormitory at state normal, Conway (act 351).

ARKANSAS—Failed.

Providing state uniformity of text-books; making county superintendency mandatory instead of optional; establishing state board of education; providing state educational commission, to investigate and report in two years; equalizing school taxes received from railroads.

CALIFORNIA—Enacted.

Providing for health and development supervisors in public schools (chap. 598); sectionizing and amending the laws relative to high schools (chap. 311); authorizing superintendent of public instruction to hold annual convention of county and city superintendents (chap. 166); creating a state normal school of manual arts and home economics (chap. 471); establishing state trades and training school (chap. 572); prohibiting school fraternities (chap. 218); designating the birthday of Luther Burbank for observance as bird and arbor day (chap. 82); providing for county library systems (chap. 479); establishing and maintaining cosmopolitan schools (chap. 268); relating to the support and maintenance of the university (chap. 329).

COLORADO—Enacted.

Establishing a state board of examiners and providing for the certification of teachers (chap. 165); establishing a public-school teachers' retirement fund (chap. 214); providing for the physical examination of children in the public schools (chap. 203); regarding the consolidation of rural schools and providing for transportation of children—for high-school purposes (chap. 204); enabling school districts to contract a bonded indebtedness for school purposes, 5 per cent of assessed valuation in districts of first and second classes and 3 per cent in districts of third class (chap. 205).

COLORADO—Failed.

Providing minimum salary for teachers; requiring school directors to provide libraries.

CONNECTICUT—Enacted.

Establishing two free public trade schools (chap. 85); providing for the town management of schools (chap. 146); modifying scheme for the supervision of schools (chap. 225); creating normal-school scholarships (chap. 198); regulating the construction and fireproofing of schoolhouses (chap. 81).

CONNECTICUT—Failed.

Providing for the general certification of teachers.

DELAWARE—Enacted.

Creating state school code commission (chap. 75); creating commission on Delaware College (chap. 109); establishing commission for the blind (chap. 73); amendments concerning employment of children (chap. 121) and school attendance (chap. 88).

FLORIDA—Enacted.

Providing for the maintenance of teachers' summer training schools (chap. 5881); changing the names of the several state educational institutions (chaps. 5924, 5925, 5926, and 5927); making appropriation for the support and maintenance of the state institutions for higher education created and required to be maintained by chapter 5384, Laws, 1905 (chap. 5961); providing for the teaching of agriculture and civil government in common schools (chap. 5938).

FLORIDA—Failed.

Providing for a separate normal school, to be coeducational; regarding coeducational training in the university and the College for Women.

GEORGIA—Enacted.

Providing for the election of county school commissioners by the electors of each county (p. 154).

HAWAII—Enacted.

Relative to the constitution of the department of public instruction (act 42); relative to the maintenance and repair of schoolhouses (acts 100 and 101); relative to the taking of private property for the use of schools and school recreation grounds (act 10); relative to the manner of vaccinating children (act 63).

HAWAII—Failed.

Providing for medical inspection in schools; savings banks for schools.

IDAHO—Enacted.

Making normal training compulsory for primary teachers (p. 24); providing for the establishment of rural high schools (p. 73); relating to issuance of special certificates (p. 192); creating a school law commission for the purpose of revising school laws, report 1911 (p. 219); approving action of university regents in establishing an agricultural college in connection with the university, under the terms of the charter (p. 38); providing for a board of examiners (p. 273); authorizing boards of trustees to pay expenses of one of their members incurred in attendance upon meetings of school officers called by county superintendent (p. 19).

ILLINOIS—Enacted.

General revision and rearrangement of the laws relating to the management and control of the public schools (p. 342-415); relating to the adoption, use, and price of text-books in the public schools (p. 416); providing for moral and humane education in the public schools (p. 415); joint resolution relating to salaries at the university (p. 496).

ILLINOIS—Failed.

Creating a state board of education; relative to the certification of teachers; providing for county institutes.

INDIANA—Enacted.

Concerning the medical inspection of schools in cities (chap. 114); relative to the transfer of pupils (chap. 72); regarding tuition in case of transfer of pupils (chap. 127); relating to compulsory education of blind and deaf (chap. 146); authorizing the establishment of public playgrounds in cities (chap. 84); authorizing establishment of medical school by university (chap. 40).

INDIANA—Failed.

Establishing a new normal school; increasing the income of the state educational institutions; amending compulsory education law; providing for medical inspection of school children, the erection of healthful school buildings, and requiring instruction in hygiene; concerning county superintendents, their qualifications, compensation, and assistants; regarding fire drills in schools; concerning the employment and education of children; authorizing the state board of education to constitute a board of accountancy; providing for the establishment of county agricultural, manual training, and domestic science schools; providing aid for the higher education of the blind.

IOWA—Enacted.

Creating a state board of education for the government of the state university, college of agriculture, and the state normal school (chap. 170); prohibiting secret societies and fraternities in public schools (chap. 185); amendment, compulsory education (chap. 187).

IOWA—Failed.

The report of the commission for the codification and revision of the school laws.

KANSAS—Enacted.

Providing for normal training in certain high schools and academies and providing annual state aid—\$50,000—to schools giving such training (chap. 212); relating to the protection of schoolhouses and school children from danger of fire (chap. 209); relating to the issuance of permits to business colleges to canvass for students (chap. 204); validating the so-called Barnes high-school law in the counties in which it was carried by a majority vote (chap. 210); revising school land law (chap. 218).

KANSAS—Failed.

Fixing a minimum school term of seven months; revision of law relating to consolidation of schools; providing that applicants for first grade teachers' certificates must have at least two years of high-school education.

MAINE—Enacted.

Increasing state common school appropriation from 1½ to 3 mills (chap. 177); classifying public high schools, providing state inspection and giving increased state aid (chap. 71); authorizing appointment of school physicians (chap. 73); creating school equalization fund (chap. 198); increasing minimum school year from twenty to twenty-six weeks (chap. 29); requiring state approval of schoolhouse plans (chap. 88); providing for new normal school (chap. 44); increasing annual appropriation for support of normal schools from \$40,000 to \$65,000 (chap. 106); providing for a commission to investigate industrial education (p. 1287).

MAINE—Failed.

Providing for compulsory state certification of teachers.

MASSACHUSETTS—Enacted.

Reorganizing the state board of education; abolishing commission on industrial education and investing its powers in state board of education (chap. 457).

MASSACHUSETTS—Failed.

Incorporating the trustees of Massachusetts College; providing state aid for cities maintaining satisfactory courses in practical arts.

MICHIGAN—Enacted.

Changing the administrative unit from the district to the township (permissive) (chap. 117); requiring county school districts to pay high-school tuition of pupils who have completed the eighth grade (chap. 65); encouraging the teaching of agriculture and manual training in rural schools through state aid (chap. 219); authorizing the state board of agriculture to grant certificates to teach agriculture (chap. 165); increasing the compensation of and amending certain sections regarding the duties of the superintendent of public instruction (chap. 9); authorizing annual meetings of school officers (chap. 112).

MICHIGAN—Failed.

Providing state aid where courses in agriculture, manual training, and domestic science are introduced into high schools.

MINNESOTA—Enacted.

Providing for agricultural and industrial education in high, graded, and consolidated schools, with state aid of \$2,500 per year for each such school (chap. 247); authorizing establishment of extension division in the university for instruction by correspondence in agriculture and home economics, free of charge, to any inhabitant of the State (chap. 247).

440); providing for compulsory education, with penalties for nonenforcement (chap. 400); increasing special aid to high, graded, semigraded, and first and second class rural schools (chap. 334); providing continuous sessions in normal schools (chap. 112); reducing the value of the elementary diploma of the normal school (chap. 455).

MINNESOTA—Failed.

Providing building for college of education of the university; establishing additional state normal school; authorizing the organization of county school boards with power to elect county superintendents of schools, and raising eligibility requirements for county superintendents.

MISSOURI—Enacted.

Providing for the election of a county superintendent of schools for every county (p. 822); complete revision of school code, 136 sections (p. 770); strengthening of compulsory attendance law (p. 847); fixing a minimum annual local tax levy equal to \$350 (p. 806); submitting constitutional amendment permitting cities to pension teachers (p. 908).

MISSOURI—Failed.

Providing for the transportation of rural school pupils; providing for meetings of school officers; establishing county high schools; fixing a minimum age for teachers; providing for physical inspection of school children; designating state normal schools as state teachers' colleges.

MONTANA—Enacted.

Empowering state board of education with the general control and management of state higher and special educational institutions, and creating an executive board for each institution (chap. 73); providing for the teaching of the modes by which dangerous communicable diseases are spread, etc. (chap. 27).

NEBRASKA—Enacted.

Providing a nonpartisan normal board of education (chap. 125); establishing two additional state normal schools (chaps. 126 and 127); providing that the university shall include the graduate college and teachers' college (chap. 141); amending provisions for state aid to weak school districts and appropriating \$75,000 (chap. 119); amending the compulsory education law (chap. 130); authorizing school districts at their annual meeting to vote a special tax for school buildings (chap. 118); providing for a teachers' retirement fund in metropolitan cities (chap. 132).

NEBRASKA—Failed.

Authorizing the regents of the university to accept the privileges of the Carnegie Foundation; providing for an increase of the salaries of county superintendents and allowing necessary traveling expenses; establishing agricultural high schools; providing for better methods of consolidation.

NEVADA—Enacted.

Authorizing free text-books, equipment, and material for pupils in public schools (chap. 133); providing for county normal training schools (chap. 146); establishing annual emergency fund for weak school districts (chap. 20); relating to compulsory education (chap. 130).

NEW HAMPSHIRE—Enacted.

* Establishing a new normal school at Keene (chap. 157); appropriating \$80,000 for benefit of poor towns, including payment of \$2 per week for every normal graduate or certified teacher employed (chap. 158).

NEW JERSEY—Enacted.

Making the appointment of medical inspectors obligatory (chap. 92); increasing state aid for schools for industrial education (chap. 78); providing for the permanent tenure for teachers (chap. 243).

NEW MEXICO—Enacted.

Requiring attendance for the entire school term of all pupils from 8 to 14 years of age (chap. 121, sec. 1); providing for institute attendance by all holders of third-grade certificates, and a compensation of \$15 for satisfactory attendance (chap. 121, sec. 5); providing for bond issue of \$500,000 for building rural schools (chap. 7).

NEW MEXICO—Failed.

Providing for abolition of the small districts and the organization of the territory in each county outside of incorporated towns and cities into one district to be known as the "county unit."

NEW YORK—Enacted.

Consolidation and revision of educational law (chap. 21).

NORTH CAROLINA—Enacted.

Amending compulsory attendance law (chap. 525); providing for the levying of a special tax and for a special state appropriation for the maintenance of one or more public schools in every school district for a term of four months in each year, and for a more equitable apportionment thereof (chap. 508); regarding term of office of members of county boards of education (chap. 525); resolution concerning higher education of the blind (p. 1366).

NORTH DAKOTA—Enacted.

Creating an educational code commission of five members (chap. 105); allowing additional supervising deputies in counties of 150 schools or more, one for each 100 schools or major fraction thereof (chap. 104); providing a comprehensive child-labor law (chap. 153); authorizing the normal schools to formulate special courses for rural school teachers (chap. 100); establishing a third normal school at Minot (p. 339); relative to physical education (chap. 102); appropriation for teachers' college (chap. 32).

NORTH DAKOTA—Failed.

Providing for the granting of certificates to teach to certain students of the agricultural college; creating a commission for the control and management of all state educational institutions; granting state aid to rural schools maintaining a high standard and meeting certain reasonable conditions; increasing state aid to high schools.

OHIO—Enacted.

Authorizing boards of education to levy a tax for the maintenance of agricultural, industrial, vocational, and trades schools (p. 17); providing for agricultural extension (p. 11); providing for medical inspection in schools (p. 12); providing for the appointment of two high-school inspectors (p. 92); providing a four-year high-school course for all pupils at public expense (p. 74); relating to tuition of pupils holding diplomas (p. 74).

OHIO—Failed.

Authorizing the establishment of two state normal schools; creating a commission on industrial education; granting normal college graduates of a two-year course above a four-year high school, provisional certificates valid for three years; graduates of a four-year course, provisional certificates for five years.

OKLAHOMA—Enacted.

Establishing three additional normal schools and one preparatory school (pp. 559, 560, 561, 562); creating a state board of public affairs (p. 563); providing for the sale of public lands (p. 448).

OKLAHOMA—Failed.

Creating a state board of education (withdrawn).

OREGON—Enacted.

Providing for the raising and distribution of a county school fund (chap. 128); creating a county high-school fund and prescribing standards for high schools (chap. 115); prohibiting secret fraternities in public schools (chap. 215); abolishing Central Oregon State Normal School (chap. 85); providing for a board of higher curricula (chap. 4).

OREGON—Failed.

Appropriations for the three state normal schools.

PENNSYLVANIA—Failed.

Complete school code prepared by educational commission.

PORTO RICO—Enacted.

Providing for the posting in all the schools of the island of placards tending to prevent the spread of consumption and uncinariasis (tropical anemia) (p. 78); authorizing normal instruction in high schools (p. 148).

RHODE ISLAND—Enacted.

Providing a minimum salary of \$400 per year for public-school teachers (chap. 458); increasing state aid to high schools and providing conditions to secure a more uniformly high standard in the public schools (chap. 446); extending benefits of state pension system to those who had retired before the law was passed (chap. 401); changing name of college of agriculture and mechanic arts to Rhode Island State College, and enlarging the board of managers to include the state commissioner of public schools and a member of the state board of agriculture (chap. 383).

RHODE ISLAND—Failed.

Providing state aid to schools introducing industrial courses; appointing deputy state commissioner to direct industrial education; empowering school boards to give tenure of position to superintendents.

SOUTH CAROLINA—Enacted.

Increasing the average length of the school term and improving the efficiency of the public schools (act 105); amending the high-school law, elections, state board of education to possess authority of the state high-school board, state aid (act 55); requiring all school warrants to be approved by the county superintendent of education (act 79).

SOUTH CAROLINA—Failed.

Providing for beneficiary scholarships in the university.

SOUTH DAKOTA—Enacted.

Requiring the teaching of vocal music in all the public schools and normals (chap. 19); authorizing the patrons of a township school to compel the appointment of a certain teacher by petition (chap. 36); permitting use of schoolhouses for certain public gatherings (chap. 114).

TENNESSEE—Enacted.

Establishing a general education fund by appropriating thereto annually 25 per cent of the gross revenue of the State; providing for the apportionment of this fund and specifying what part shall be apportioned to the several counties of the State on the basis of scholastic population; what part shall be used to equalize more nearly the school facilities of the several counties, and the conditions on which this part shall be apportioned; what sum shall be used to assist in the establishment and maintenance of public county high schools, and on what conditions; and providing for the grading and inspection of high schools; what part shall be used for the establishment and maintenance of school libraries and on what conditions; what part shall be used for the establishment and maintenance of three normal schools for white teachers, one in each grand division of the State and one Agricultural and Industrial Normal School for negroes, and providing for the location, establishment, and control of said schools; and what part shall be apportioned to the university and its various stations (chap. 264); amending the charter of the university and providing for a reorganization of the board of trustees (chap. 48).

TEXAS—Enacted.

Putting into effect constitutional amendments adopted November, 1908, relative to school districts and school revenues, abolishing community system (chap. 12); providing for the teaching of agriculture, manual training, and domestic science, and state aid (chap. 113); establishing additional state normal school (chap. 119); establishing a state library commission (chap. 70).

TEXAS—Failed.

Providing for a tax for higher educational institutions.

UTAH—Enacted.

Providing state aid for public schools (chap. 8); authorizing school district boards to use a certain per cent of the school funds for the establishment of school libraries (chap. 44); relating to issuance of county certificates (chap. 34); amendment relative to school sites and buildings (chap. 32); authorizing establishment of high schools (chap. 71); creating state text-book commission (chap. 54); relating to the continuation of the state normal school as a department of the university, and setting forth its field of work (chap. 45); proposing amendment to constitution relative to the state school fund (res. 14).

UTAH—Failed.

Authorizing state aid for high schools; increasing the educational qualifications of county superintendents of schools.

VERMONT—Enacted.

Providing for a state board of education (act 34); creating commission to investigate and consider ways of improving the public schools (act 35); relating to employment, salary, and duties of superintendent of schools in towns or union of towns (act 36); providing state aid for manual training departments in grammar or high schools (act 40); amendment, compulsory education (act 43).

VERMONT—Failed.

Providing for a normal industrial school.

WASHINGTON—Enacted.

Reconstruction of school code (chap. 97).

WASHINGTON—Failed.

Providing for higher standard for certification of teachers.

WEST VIRGINIA—Enacted.

Abolishing county text-book system and creating a state text-book commission (chap. 23); adding agriculture to the list of subjects in which teachers are to be examined (chap. 25); providing for the granting of certificates without examination to certain graduates of the state university and the state normal schools, and to graduates of certain other schools (chap. 26); providing for a board of control for administration of financial affairs, and for a board of regents, consisting of 5 members, for direction of educational matters of all state educational institutions (chap. 58).

WISCONSIN—Enacted.

Relating to the certification of teachers and requiring professional training (chap. 378); providing for the inspection of public school buildings (chap. 550); providing for union free high schools (chap. 493); providing for an annual state convention of city superintendents (chap. 253); authorizing election of city superintendents for a period of three years (chap. 86); providing for state aid and inspection of day schools for the blind (chap. 199); investigation of supervision and inspection of schools (p. 844); commission to investigate night schools (p. 842).

WISCONSIN—Failed.

Providing for the admission to the university of graduates of free high schools; providing for county boards of education and the appointment of county superintendent; providing for state inspection of elementary schools in cities and villages; providing for teachers' pensions (vetoed).

WYOMING—Enacted.

Relating to the state board of examiners, their powers, duties, and compensation: examination of teachers and issuance of certificates (chap. 23); revising compulsory education law (chap. 31); doubling the appropriation granted county superintendents for conducting institutes (chap. 40).

LEGISLATION AND JUDICIAL DECISIONS RELATING TO PUBLIC EDUCATION.

[Citations to and digests of judicial decisions have been distinguished from legislative enactments by a capital "D" before the reference number. Enactments which have been reported by the chief officers of the several state educational systems as of the first importance in the development of those systems are indicated by an asterisk (*).]

A. GENERAL ADMINISTRATIVE CONTROL AND SUPERVISION OF ELEMENTARY AND SECONDARY EDUCATION.

(a) General.^a

The most significant legislative event relating to the general administration, control, and supervision of public education during the biennium 1906-1908 was the creation of special educational commissions in a number of States;^b among others, Connecticut, Illinois, Iowa, Kentucky, Pennsylvania, Tennessee, Virginia, and Washington. The results of the investigations and recommendations of certain of these commissions promised to be most important factors in the legislative activity of 1909. Apparently, in the States concerned, the haphazard method of legislation for education was to give way to a plan whereby new legislation would be formulated on the basis of careful and competent study of conditions. Nevertheless, the experience of the year has demonstrated without question the inexpediency of endeavoring to bring about immediate radical reconstruction or wholesale amendments to existing laws governing education. Excepting the State of Washington (37), where a general reconstruction of the school code, based upon the report of the school code commission, was secured, the reports and proposed plans for educational reorganization presented by the more important educational commissions, notably those of Illinois, Iowa, and Pennsylvania, failed of any immediate and large constructive results. However, the arousing of public sentiment and the stimulation of public interest,

^a In the case of several States, the code of general laws has been revised and adopted during the year. These new codes, which frequently contain numerous minor changes in the laws concerning public education, have not been included in this analysis of legislation. New York, however, is an exception to the general practice (see enactment No. 28).

^b See Bulletin, 1908, No. 7, State School Systems, II, p. 21.

now the by-products of these educational commissions, may be accomplishments of large value. The systematic and comprehensive studies and reports made by the Illinois educational commission point the way for the whole country to a sounder legislative policy toward the public school. All in all, it may be said that the evolutionary character of great social institutions like education is amply demonstrated by the failure of the educational commissions to bring about sudden changes. The creation of the special educational commissions in Delaware (5), Idaho (7), and North Dakota (32) during 1909 will afford an opportunity to these States to profit by the experience of others.

Illinois (10), Missouri (21), and New York (28) effected a general revision and consolidation of the educational code. The general educational bill in Tennessee (308) must be regarded as something more than a financial measure.

The following enactments are selected for special mention: Kansas (12), extending certain authority of the state superintendent of public instruction over business colleges; New York (29), defining the terms used in the consolidated school law; Wisconsin (40), providing for an annual convention of city superintendents of schools under the direction of the state superintendent; Wisconsin (41), defining the term "school;" and Wisconsin (44), creating a commission relative to supplementary education.

- 1 **Alabama:** Repealing sec. 1720, Code, 1907, relative to meetings of the state board of examiners.
Sec. 1, act 73, p. 104, Aug. 21, 1909 (sp. sees.). (Dec. 1, 1909.)
- 2 **Alabama:** Amending secs. 1726 and 1727, Code, 1907, relative to compensation of members of the state board of examiners and other examiners.
Secs. 5 and 6, act. 73, p. 105, Aug. 21, 1909 (sp. sees.). (Dec. 1, 1909.)
- D. 3 **Arkansas (1909):** A complaint in an action by a parent for the unlawful suspension of his child from the public school, which alleges that he will become liable for a specified sum for a term of school in another district for his child, which term commenced nine days before the institution of the action, and did not end for several months, states no cause of action, for it fails to allege that he has expended any sum.—*Douglas v. Campbell*, 116 S. W., 211.
- 4 * **California:** Amending sec. 1533, Political Code, 1906, relative to conventions of county and city superintendents of schools, called by the state superintendent of public instruction.
Authorizing annual (formerly biennial) conventions.
Chap. 166, Mar. 10, 1909.
- 5 * **Delaware:** Providing for the creation of a state school commission.
Providing for a commission of three to consider and report upon the school laws. Appropriating \$500.
Chap. 75, Apr. 7, 1909.
- D. 6 **Georgia (1908):** The act approved August 21, 1906 (Acts, 1906, p. 61), in amendment of the act approved August 23, 1905 (Acts, 1905, p. 425), is not violative of Const. art. 7, sec. 1, par. 1, and article 7, sec. 6, par. 2, and article 8, sec. 1, par. 1 (Civ. Code, 1895, secs. 5882, 5892, 5906), because it fails to specify that the

local tax assessed for educational purposes shall be used for the instruction of children in the elementary branches of an English education, and because it fails to provide that the schools shall be free to all children alike, and because it fails to specify that the schools for the white and colored races shall be separate, as with reference to those matters, and details in the conduct of the schools and application of the money raised by taxation, the act will be construed in connection with existing laws.—*Coleman v. Board of Education of Emanuel County*, 83 S. E., 41; 131 Ga., 643.

- 7 *Idaho: Creating a state school law commission; defining its powers, duties, and
 4 the qualifications of its members; providing for its organization and meetings; making provision for the expenses of such commission.

"SECTION 1. That a State School Law Commission for the State of Idaho be and the same is hereby created, to consist of three members one of whom shall be the State Superintendent of Public Instruction, who shall be Chairman of said Commission, the remaining two members to be appointed by the Governor of the State. Said Commission shall continue in office until April 1, 1911. It shall be the duty of the Governor of the State of Idaho to appoint the said two members of the said Commission within sixty (60) days after the passage and approval of this Act.

"Sec. 2. It shall be the duty of said State School Law Commission to hold its first meeting at the State Capitol on June 21, 1909, at two P. M. and to hold such other meetings at such times and places as shall by majority vote at any regular meetings, be appointed. At its first meeting as above provided said State School Law Commission shall organize by appointing a President, and a Secretary; these officers of the commission to remain in office for a period designated by the commission at the time of appointment. This commission shall further adopt rules for the government of its own meetings and shall keep an accurate account of all proceedings of each meeting. A majority of the members of the commission shall constitute a quorum for the transaction of all regular business of said commission. It shall further be the duty of said commission to investigate educational conditions in the State of Idaho, to familiarize itself with the school laws of Idaho and of other States, and to propose such amendments and additions to the present laws as shall be, in the judgment of the commission, for the best interests of educational work throughout the State. It shall further be the duty of said commission to issue a pointed report to the eleventh session of the Legislature of Idaho, which report shall show the results of all investigations made as above provided; together with a complete statement of the proposed amendments or additions to the school laws of Idaho.

"Sec. 3. It is hereby made the duty of school officials and school authorities in all schools of the State of Idaho to provide promptly, all such accurate information as shall, from time to time, in the judgment of the commission, be deemed essential to the carrying out of the provisions of this Act.

"Sec. 4. The members of said State School Law Commission shall receive no compensation for their services but shall be reimbursed for all expenditures for attendance upon meetings of said Commission including railway fares, hotel or living expenses while attending such meetings, or traveling to or from such meetings. It is further provided that all expenses including clerical service, postage or Attorneys' fees, connected with such investigations, as shall be authorized by said commission and connected with issuing of reports, as above provided shall be payable from the funds set aside for the consummation of the provisions of this Act as hereinafter provided. All claims for the payment of such expenses must be presented in such form and under such authority as is provided by law.

"Sec. 5. To carry out the provisions of this Act, the sum of five hundred (\$500.00) dollars, or so much thereof as is necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated. Such money, thus appropriated, shall constitute a fund to be known as the 'Idaho School Law Commission Fund.'"

SEC. 6. * * *

H. B. No. 29, p. 219, Mar. 15, 1909.

* For complete text of decision, see "Recent decisions," at the close of this bulletin.

D. 8 **Idaho** (1908): School Laws (Sess. Laws, 1899, p. 305), sec. 82, as amended by act of 1905 (Sess. Laws, 1905, p. 71), forbidding a trustee to be interested in any contract made with the board, or in any supplies furnished, and providing that no action shall be maintained on a contract in which a trustee is interested, but the same shall be void, is founded in public policy, and intended to prevent abuses by trustees.—Independent School Dist. No. 5 v. Collins, 98 P., 857.

D. 9 **Illinois** (1909): Act of May 25, 1907 (Laws, 1907, p. 523), to provide free high school privileges for graduates of the eighth grade, and requiring payment of the tuition from the funds of the district of the pupil's residence only in case the parents are unable to pay the tuition, is unconstitutional, as violating Const. art. 8, sec. 1, requiring the establishment of a free school system for the benefit of all children in the State.^a People v. Moore, 88 N. E., 979.

10 **Illinois**: Establishing and maintaining a system of free schools.

S. B. No. 96, p. 343, June 12, 1909.

D. 11 **Kansas** (1908): A board of education of a city of the first class may under Gen. St., 1901, sec. 6290, provide separate schools for white and colored children in grades below the high school, provided equal educational facilities are furnished; but, where the location of a school for colored children is such that access to it is beset with such dangers to life and limb that children ought not to be required to attend it, such children are denied equal educational facilities, and the action of the board requiring them to attend such school, and denying them admission to any other, is an abuse of discretion.^a—Williams v. Board of Education of City of Parsons, 99 P., 216.

12 **Kansas**: Prohibiting business colleges or commercial departments from sending agents or representatives over the State to sell tuition or scholarships without first obtaining permission from the state superintendent of public instruction; penalty.

"SECTION 1. That it shall be unlawful for any representative or any agent of any business college, or commercial department of any other school, to canvass in the state of Kansas for the purpose of selling tuition in advance, or to contract, or to secure their note for any tuition before the registration of said student in the college register at the college, without the school first making application to the state superintendent of public instruction and receiving from him a written permit, granting such school this privilege. The state superintendent of public instruction, upon receipt of said application, shall, before granting such a permit, publish a notice of said application in the official state paper for a term of thirty days, at the end of which time he shall grant the school making application such permit; providing, however, that satisfactory proof has not come to his knowledge, after a diligent inquiry, that said school or business college or commercial department is incompetent to furnish such a course of instruction as it advertises, or that the moral surroundings of the institution are not good, or that the premises are kept in an unhealthy condition, or that the agents of said institution use misrepresentations or fraudulent methods in securing contracts, notes or cash from prospective students, and in either of these cases he shall refuse to grant them a permit.

"Sec. 2. After having granted any business college, commercial school, or commercial department of any other school a permit to canvass, and such school shall violate any of the conditions required to secure a permit, then the state superintendent of public instruction shall revoke the permit and shall not reissue a permit to that school until he is satisfied that they will comply with the foregoing requirements.

"Sec. 3. Any agent or representative of any such school doing business within the state, or without the state, when operating within the state of Kansas, shall, upon request of any person, show a permit or certified copy thereof, showing that the school he represents has permission to canvass within the state.

"Sec. 4. Any person who shall violate this act by canvassing for students with the intention of selling tuition for cash, contract or note for any business college, commercial school or any commercial department of any other school without first having this permit from the state superintendent of public instruction, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be

^a For complete text of decision, see "Recent decisions," at the close of this bulletin.

punished by a fine of not less than one hundred dollars and not more than five hundred dollars, or by imprisonment not to exceed thirty days, or by both such fine and imprisonment.

"Sec. 5. Any note or contract taken by any such business college or the commercial department of any other school, or their agents or representatives, for tuition without first having complied with the provisions of this act shall be void."

Sec. 6. * * *

Chap. 204, Mar. 12, 1909.

- D. 13 **Kentucky** (1909): The schools of a city, including high schools, are a part of the State's school system, and their trustees are "officers of the State."—*City of Louisville v. Commonwealth*, 121 S. W., 411.
- D. 14 **Kentucky** (1909): While the constitution requires the general assembly to maintain separate schools for white and colored children, it does not require a separate system of education for each.—*Prowse v. Board of Education for Christian County*, 120 S. W., 307.
- D. 15 **Kentucky** (1909): Under Const., sec. 183, requiring the general assembly to provide, by appropriate legislation, an efficient system of schools throughout the State, it is for the general assembly to determine what system will be most efficient.—*Prowse v. Board of Education for Christian County*, 120 S. W., 307.
- D. 16 **Kentucky** (1909): Act of March 24, 1908 (Acts, 1908, p. 133, chap. 56; Ky. Stat., 1909, sec. 4426a), regulating public schools, did not affect the provisions of the old law requiring separate schools for white and colored children, and forbidding white children to attend colored schools, or vice versa.—*Prowse v. Board of Education for Christian County*, 120 S. W., 307.
- D. 17 **Kentucky** (1909): Act of March 24, 1908 (Acts, 1908, p. 133, chap. 56; Ky. Stat., 1909, sec. 4426a), relating to public schools, and providing that all laws, and parts of laws, in conflict therewith were thereby repealed, did not constitute the whole school law, but only repealed so much of the old law as was in conflict with the new.—*Prowse v. Board of Education for Christian County*, 120 S. W., 307.
- D. 18 **Kentucky** (1908): The prohibition against teaching white and negro pupils in the same institution, which is made by Acts, 1904, p. 181, chap. 85, does not, when applied to a corporation as to which the State has reserved the power to alter, amend, or repeal its charter, deny due process of law, or otherwise violate the Federal Constitution. Judgment (1906), 94 S. W. 623, 123 Ky. 209, affirmed.—*Berea College v. Commonwealth of Kentucky*, 29 S. Ct., 33; 211 U. S., 45; 53 L. Ed. —.
- D. 19 **Kentucky** (1908): The validity of Acts, 1904, p. 181, chap. 85, so far as it prohibits domestic corporations from teaching white and negro pupils in the same institution, can not be deemed affected by its possible invalidity under the Federal Constitution as to individuals, where the highest state court considers the act separable, and, while sustaining it as an entirety, gives an independent reason which applies only to corporations.—Judgment (1906), 94 S. W., 623; 123 Ky., 209, affirmed.—*Berea College v. Commonwealth of Kentucky*, 29 S. Ct., 33; 211 U. S., 45; 53 L. Ed. —.
- D. 20 **Michigan** (1908): A resolution of the board of education increasing the salary of the superintendent of public schools for the remainder of the term for which he was elected, looked to the future, and not to the past, so that it did not violate Const., art. 4, sec. 21, prohibiting the legislature from authorizing extra compensation to any public officer after the services had been rendered.—*Bird v. Board of Education of City of Detroit*, 118 N. W., 606; 154 Mich., 584; 15 Detroit Leg. N., 902.
- 21 * **Missouri**: Repealing secs. 9739-9801 and secs. 9814-9859, art. 1, chap. 154, Revised Statutes, 1899, and all acts amendatory thereto, relating to public schools; repealing art. 2, chap. 154, Revised Statutes, 1899, and all acts amendatory thereto relating to city, town, and village schools; enacting in lieu thereof 136 new sections.

P. 770, June 1, 1909.

*For complete text of decision, see "Recent decisions," at the close of this bulletin.

- D. 22 **Missouri** (1909): It is not a prohibited delegation of legislative power that the general assembly gives by general laws to boards of school directors and county superintendents the right of local self-government in school matters.—State ex rel. School Dist. No. 1 v. Andrae, 116 S. W., 561.
- D. 23 **Nebraska** (1909): The free high-school act of 1907 (Sess. Laws, 1907, p. 402, chap. 121) is an independent act, and its validity must be tested by the rule that changes or modifications of existing statutes as the incidental result of adopting a new law covering the whole subject to which it relates are not forbidden by Const., art. 3, sec. 11, relating to the amendment of statutes.^a—Wilkinson v. Lord, 122 N. W., 699.
- 24 **Nevada**: Amending sec. 97, chap. 182, Laws, 1909, providing for the reorganization of the system of school supervision and maintenance.
Relating to compensation of deputy superintendent of public instruction. Fixing compensation for the five supervisory districts.
Chap. 179, Mar. 24, 1909. (July 1, 1909.)
- D. 25 **New Jersey** (1907): The constitution, requiring the legislature to provide for the instruction of children between the ages of 5 and 18 years, does not limit the power of the legislature over free public schools; and a school law providing for the education of children between the ages of 5 and 20 years is not invalid.—In re Newark School Board, 70 A., 881.
- 26 **New Mexico**: Amending sec. 2, chap. 28, Laws, 1903, relative to the compilation and printing of school laws.
Adding "distribution."
Sec. 2, chap. 121, Mar. 18, 1909.
- 27 **New Mexico**: Imposing fines upon members of the board of education, county school superintendent, or other school officer for neglect of prescribed duties.
Sec. 12, chap. 121, Mar. 18, 1909.
- 28 **New York**: Relating to education, constituting chap. 16, Consolidated Laws.
Consolidating and revising entire school code.^b
Chap. 21, Feb. 21, 1909.
- 29 **New York**: Defining terms used in consolidated school law.
Academy; college; university; regents; commissioner; school commissioner; higher education; trustee; parental relation; school authorities.
Sec. 20, chap. 240, Apr. 22, 1909.
- 30 **New York**: Providing for an official index of the consolidated laws.
Preparation by commissioner of education.
Chap. 260, Apr. 27, 1909.
- 31 **North Carolina**: Providing separate schools for the Indian race in Scotland County.
Chap. 720, Mar. 6, 1909.
- 32 * **North Dakota**: Providing for the appointment of a committee for the purpose of drafting and reporting the inconsistencies, contradictions, and omissions of the school laws of the State.
Commission of five to report to the next legislature. Appropriation for expenses.
Chap. 105, Mar. 11, 1909.
- 33 **Oregon**: Providing for the free inspection of all state, county, school, city, and town records or files by all persons; and for the making of abstracts and memoranda therefrom.
Chap. 98, Feb. 23, 1909.

^a For complete text of decision, see "Recent decisions," at the close of this bulletin.

^b Chap. 21 contains the entire consolidated school law. By the provisions of chap. 458, Laws, 1909, the official edition of the consolidated law contains the amendments made after its enactment, inserted in their proper places. Only the more important of these amendments are classified and digested in this bulletin.

34 **Oregon:** Authorizing the superintendent of public instruction to annotate and compile the school laws. Authorizing the publication of 10,000 copies.

S. J. R. No. 13, p. 481, Feb. 13, 1909.

D. 35 **Virginia (1909):** Act of March 15, 1906, p. 432, chap. 248 (Code, 1904, sec. 1433), defining the powers and duties of the state board of education, was amended so as to declare that such board should "select" text-books, school furniture, and educational appliances for the public schools of the State, etc. Two days after, at the same session, Code, 1904, sec. 1458, was amended by Act, 1906, pp. 513, 515, chap. 293, and reenacted, subsection 10 of which declared that the school board of a city should have power, and that it should be its duty, to "provide" schoolhouses with proper furniture and appliances, and to care for and manage and control the school property of the city. *Held*, that such acts were in pari materia, and should be construed together, and that under them a city school board had only power to provide such school-furniture for the public schools of the city as had been selected by the state board of education; the words "select" and "provide" in such provisions not being synonymous, the word "provide" being used in the sense of "to furnish or supply," while the word "select" means "chosen" or "picked out."—*Commonwealth v. School Board of City of Norfolk*, 63 S. E., 1081.

D. 36 **Washington (1909):** A "common school," within the meaning of the constitution (article 9, secs. 2, 3), is one that is common to all children of proper age and capacity, free, and subject to, and under the control of, the qualified voters of a school district.—*School Dist. No. 20, Spokane County, v. Bryan*, 99 P., 28.

37 * **Washington:** Establishing and providing for the maintenance of a general and uniform public school system.*

Reconstruction of school code (report of school code commission).

Chap. 97, Mar. 11, 1909.

38 **Washington:** Creating a public archives commission, and defining its duties and powers.

39 **West Virginia:** See enactment No. 76.

Chap. 38, Mar. 2, 1909.

40 * **Wisconsin:** Creating sec. 926-117m, Statutes, relative to duties of city superintendents of schools.

"SECTION 1. There is added to the statutes a new section to read: Section 926-117m. It shall be the duty of each city superintendent to attend annually one convention called and held by the state superintendent for the purpose of consultation upon matters pertaining to the supervision and management of city schools. Each superintendent shall be reimbursed his actual and necessary expenses incurred for travel, board and lodging because of attendance upon such convention, such bills to be audited and allowed by the boards of education upon presentation of an itemized statement of expense accompanied by a certificate of attendance signed by the state superintendent."

SEC. 2. * * *

Chap. 253, June 1, 1909.

41 **Wisconsin:** Creating sec. 461s, Statutes, defining the term "schools" as used in sec. 461r.

"SECTION 1. There is added to the statutes a new section to read: Section 461s. The singular form of the word schools as used in section 461r shall relate to a public school only and shall be construed to be a collective body of pupils assembled in a room which is wholly or principally under the control, management, direction and instruction of a legally qualified teacher who is made wholly or chiefly responsible for the control, management, direction and instruction of such pupils and whose duty it is to keep a complete and special register for such room or department."

Chap. 256, June 1, 1909.

* Important features: Classification of school districts; county school tax; six months' minimum school term; apportionment and increased aid to high schools, parental schools and schools for defectives; budget system of finance; certification of teachers by university and state college; state basis of education.

42 Wisconsin: Amending sec. 496d (chap. 374, Laws, 1907), Statutes, relative to state graded schools.

Chap. 289, June 3, 1909.

43 Wisconsin: Indorsing United States Senate bill No. 8323, creating a national children's bureau.

Jt. Res. No. 18, p. 814, —, 1909.

44 * Wisconsin: Joint resolution relating to education.

"Whereas, Reliable statistics show that there are at least 104,000 illiterates in the State of Wisconsin at the present time.

"Whereas, There is a great movement through this entire country at the present time to establish night schools and night trade schools so that workers and those who have been denied education can not only get the elements of education, but can also improve themselves in their business in life.

"Whereas, The growing need of instruction to our people who cannot attend schools demands from us some investigation of this great problem." Therefore be it

"Resolved by the senate, the assembly concurring, That the state superintendent, the president of the University of Wisconsin, the director of the University extension division of the University of Wisconsin, the librarian of the legislative reference department, and the superintendent of the Milwaukee public schools are hereby created a commission to report to the next legislature upon remedies for these conditions. And be it further

"Resolved, That the heads of these departments are hereby directed to use their respective clerical forces to help in this matter in so far as it is necessary and to hold such conferences with teachers and associations as will enable them best to work out the plans for the betterment of these conditions, provided that none of the said officers shall receive any extra compensation for their services but may receive such traveling expenses and other expenses necessary to the fullest investigation of all these matters."

Jt. Res. No. 53, p. 842, —, 1909.

45 * Wisconsin: Providing for a joint committee of the legislature to investigate the subject of supervision and inspection of schools.

"Resolved by the senate, the assembly concurring, That bill No. 720, A., go over until the special session of the legislature to be held in January, 1910, and that the same be referred to a joint committee of three senators and five assemblymen to be appointed in the same manner and under the same conditions as the other special committees; that to the same committee be also referred all other bills now before the legislature and relating to the supervision and inspection of schools; that the same committee is also empowered to investigate and report upon the advisability of reorganizing the educational system of the state and placing the state University, the normal schools, the high schools, and all other public schools, and the state superintendent's department under the general supervision of one board or commission; and that the governor be requested to include these subjects in the call for a special session."

Jt. Res. No. 56, p. 844, —, 1909.

D. 46 Wisconsin (1908): Where complainants and all other taxpayers of a school district had known that the officers of the district had maintained a sectarian school in violation of Const., art. 10, sec. 3, and that the electors of the district each year had been informed that the school taxes had been spent for that purpose, and without protest at each meeting like expenditures were directed for the ensuing year, the officers of the district were entitled to believe that the money had been expended in accordance with the wishes of the district, so that complainants were not entitled after twenty years to compel such officers to reimburse the district for the moneys illegally expended.—Dorner v. School District No. 5, 118 N. W., 363.

* For complete text of decision, see "Recent decisions," at the close of this bulletin.

(b) State Boards and Officers.

Among the enactments classified in this group are several most characteristic of the tendency toward unity and centralization of educational control. The creation of a state board of education in Iowa (925) for the management and control of higher institutions of public education, the consolidation of the state board of education and the commission on industrial education in Massachusetts (56), the reorganization of the system of government and financial control of higher and special educational institutions in Montana (62) and West Virginia (76), and the creation of a state board of education in Vermont (74) are distinctly representative of this tendency:

The remaining enactments are, in the main, of minor administrative significance. California (48) and Michigan (57) include themselves within the list of states that have sought to raise the efficiency and extend the office of state superintendent of public instruction by providing for increased compensation.

47 **California:** Amending sec. 515, Political Code, 1906, relative to the salaries of clerks for the superintendent of public instruction.

Providing for the appointment of a statistician, a bookkeeper, and a clerk and stenographer. Compensation.

Chap. 296, Mar. 19, 1909.

48 **California:** Amending sec. 513, Political Code, relating to the salary of the state superintendent of public instruction.

Increasing annual salary from \$3,000 to \$5,000.

Chap. 366, Mar. 20, 1909.

49 **Connecticut:** Amending sec. 2111, General Statutes, 1902, relative to the constitution of the state board of education.

Chap. 217, Aug. 11, 1909.

50 **Hawaii:** Authorizing certain public officials to designate persons to act in their absence, and to define powers of persons so designated.

Including superintendent of public instruction.

Act 21, Mar. 13, 1909.

51 ***Hawaii:** Amending secs. 186, 187, and 188, Revised Laws, 1905, relating to the department of public instruction. [Consisting of superintendent of public instruction and six commissioners.]

Providing that four commissioners shall be residents of certain counties. Commissioners' terms reduced from three to two years. Provisions concerning reimbursement for expenses and meetings.

Act 42, Mar. 25, 1909.

52 **Hawaii:** Relating to inventories of government assets.

Providing for the submission annually by territorial officers of an inventory of property of the Territory held in charge of the department.

Act 77, Apr. 14, 1909.

D. 53 **Idaho (1909):** An action against the board of trustees of the Albion State Normal School to recover money judgment is, in fact, an action against the State, as the board is the agent of the State in the administration of the affairs of the school.—Thomas v. State, 100 P. 761.

54 **Iowa:** See enactment No. 925.

55 **Maine:** Amending sec. 1, chap. 171, Laws, 1907, relative to the state superintendent of public schools.

Authorizing employment of clerk to serve as deputy.

Chap. 125, Mar. 21, 1909.

56 * **Massachusetts:** Consolidating the board of education and the commission on industrial education.

"**SECTION 1.** The board of education shall consist of nine persons, three of whom shall annually in April be appointed by the governor, with the advice and consent of the council, for terms of three years, except as hereinafter provided. The members of the board shall serve without compensation. During the month of June in the current year the governor shall so appoint all of said nine members of the board, whose terms of office shall begin on the first day of July, nineteen hundred and nine, three for terms ending May first, nineteen hundred and eleven, three for terms ending May first, nineteen hundred and twelve, and three for terms ending May first, nineteen hundred and thirteen. Four of the present members of the board of education, and one of the members of the commission on industrial education shall be appointed members of the board of education provided by this act.

"**SEC. 2.** The board of education shall exercise all the powers and be subject to all the duties now conferred or imposed by law upon the present board of education, or upon the commission on industrial education by chapter five hundred and five of the acts of the year nineteen hundred and six and by chapter five hundred and seventy-two of the acts of the year nineteen hundred and eight, and acts in amendment thereof and in addition thereto, except as may otherwise be provided herein.

"**SEC. 3.** The board shall appoint a commissioner of education whose term of office shall be five years, and may fix his salary at such sum as the governor and council shall approve. Said commissioner may at any time be removed from office by a vote of six members of the board. He shall exercise all the powers and be subject to all the duties now conferred or imposed by law on the secretary of the board of education. He shall be the executive officer of the board, shall have supervision of all educational work supported in whole or in part by the commonwealth, and shall report thereon to the board. He shall be allowed for traveling expenses a sum not exceeding fifteen hundred dollars per annum. The board shall also appoint two deputy commissioners, at equal salaries, one of whom shall be especially qualified to deal with industrial education. The powers, duties, salaries and terms of office of said deputy commissioners shall be such as may be established from time to time by the board, but the board may, by a vote of six members thereof, remove from office at any time either of said deputy commissioners. The total expense for salaries incurred under this section, together with the salaries of such other assistants or agents, and the cost of such clerical and messenger service as may be necessary, shall not exceed forty thousand dollars annually, and the allowance for travelling expenses shall not exceed five thousand dollars annually, exclusive of the necessary travelling expenses of members of the board incurred in the performance of the duties of their office.

"**SEC. 4.** Section six of chapter thirty-nine of the Revised Laws is hereby amended by inserting after the word 'returns,' in the sixth line, the words:—like returns of the schools in charge of the board,—by inserting after the word 'board,' in the seventh line, the words:—together with a detailed report of all receipts and expenditures,— and by adding at the end of the section the words:—The records of the doings of the board shall be open to public inspection,—so as to read as follows:—**Section 6.** The board shall prescribe the form of census required by the provisions of section three of chapter forty-three of registers to be kept in the public schools and of returns to be made by school committees; shall annually, on or before the third Wednesday of January, make to the general court a report containing a printed abstract of said returns, like returns of the schools in charge of the board, and a detailed report of all the doings of the board, together with a detailed report of all receipts and expenditures, with observations upon the condition and efficiency of the system of public education and suggestions in regard to the most practicable means of improving and extending it. The records of the doings of the board shall be open to public inspection.

"Sec. 5. The terms of office of the present members of the board of education and of the commission on industrial education shall expire July first, nineteen hundred and nine, and said commission shall then cease to exist.

"Sec. 6. * * *

"Sec. 7. This act, so far as it provides for the appointment of the members of the board of education during the month of June, nineteen hundred and nine, shall take effect upon its passage and it shall take full effect on the first day of July, nineteen hundred and nine."

Chap. 457, May 28, 1909. (July 1, 1909.)

57 * Michigan: Amending secs. 4639 and 4640, Compiled Laws, 1897, relative to the superintendent of public instruction.*

"Sec. 1. The Superintendent of Public Instruction shall have general supervision of public instruction in all public schools and in all State institutions that are educational in their character, as follows: The University, the Agricultural College, the Institution for the Deaf and Dumb, the School for the Blind, the State Industrial School for Boys, the State Industrial Home for Girls, the State Public School for Dependent and Neglected Children, and the Home for the Feeble-Minded, and any similar institution that may hereafter be created. He shall reside at the seat of the State government and shall devote his entire time to the duties of his office. He shall be a graduate of a university, college or state normal school of good standing, and shall have had at least five years experience as a teacher or superintendent of schools. His duties shall be as follows:

"(a) To visit the institutions mentioned above and meet with the governing boards thereof from time to time;

"(b) To direct the supervision of county normal training classes and provide general rules for their management and control;

"(c) To require all boards of education to observe the laws relating to schools and he shall have authority to compel such observance by appropriate legal proceedings instituted in courts of competent jurisdiction by direction of the Attorney General;

"(d) To examine and audit the official records and accounts of any school district and require corrections thereof when necessary, and to require an accounting from the treasurer of any school district when necessary;

"(e) To require all school districts to maintain school or provide educational facilities for all children resident in such district, for at least the statutory period;

"(f) To prepare annually, and transmit to the Governor, to be by him transmitted to the legislature at each biennial session thereof, a report containing a statement of the general educational conditions of the State: a general statement regarding the operation of the several State educational institutions and all incorporated institutions of learning; to present plans for the improvement of the general educational system, if in his judgment it is deemed necessary; the report shall also contain the annual reports and accompanying documents of all State educational institutions so far as the same may be of public interest, and tabulated statements of the annual reports of the several school officers of the townships and cities of the State, and any other matter relating to his office which he may deem expedient to communicate to the legislature;

"(g) To appoint a time and place and proper instructors for a State teachers' institute, and for institutes in the several counties of the State and make such rules and regulations for their management as he may deem necessary;

"(h) He may request the Governor to remove from office any county commissioner of schools or member of the board of school examiners when he shall be satisfied from sufficient evidence submitted to him that said officer does not possess the qualifications required by law entitling him to hold the office, or, when he is incompetent to execute properly the duties of the office, or has been guilty of official misconduct, or of wilful neglect of duty, or drunkenness. In case said superintendent shall determine the charges submitted to him are well founded he shall file with the Governor a statement in writing showing the specific and definite charge or charges made against the county commissioner, and also a statement that he believes the charges to be true and that in his opinion the case demands investigation, which statement shall take the place of the statement of the prosecuting attorney of the county in which said officer

* This act, while not entirely new, is given in full here to indicate the position occupied by and the functions performed by a representative state superintendent of public instruction.

is acting; whereupon the Governor shall proceed to investigate the case as the statute provides;

(c) To do all things necessary to promote the welfare of the public schools and public educational institutions and provide proper educational facilities for the youth of the State.

"From and after the first day of July, nineteen hundred nine, the salary of the Superintendent of Public Instruction shall be four thousand dollars per annum which shall be paid monthly out of the general fund in the State treasury, upon the warrant of the Auditor General, in the same manner as the salaries of other State officers are paid.

"Sec. 2. In order to organize the work of the department of public instruction and assist the superintendent in the performance of his duties in supervising public education he may appoint a deputy superintendent of public instruction, whose educational qualifications shall be the same as those of the Superintendent of Public Instruction, who shall take the constitutional oath of office which shall be filed with the Secretary of State. Said deputy shall assist the superintendent in the performance of his duties and he may execute the duties of the office of superintendent in case of a vacancy or in the absence of the superintendent. The salary of the deputy superintendent shall be two thousand dollars per annum. The salary of the deputy superintendent shall be paid from the general fund, upon a warrant of the Auditor General, in the same manner that the salaries of other State officers are paid. The Superintendent of Public Instruction may revoke the appointment of the deputy superintendent in his discretion. There is hereby appropriated out of the general fund in the State treasury a sufficient amount to carry out the provisions of this act. The Auditor General shall add to and incorporate in the State tax for the year nineteen hundred nine and every year thereafter a sufficient amount to reimburse the general fund for the amounts appropriated by this act."

* * *

Act 9, Mar. 18, 1909.

58 Michigan: Providing for the election of a superintendent of public instruction.

Biennial elections beginning April, 1909.

Act 12, Mar. 18, 1909.

59 Michigan: Fixing the time when members of the state board of education shall be elected.

One member to be elected for a term of six years at each biennial spring election, beginning April, 1909.

Act 216, June 2, 1909.

60 Michigan: Amending sec. 1822, Compiled Laws, 1897, relative to the bond of treasurer of the state board of education.

Act 224, June 2, 1909.

61 Missouri: Making appropriations for salaries of school officers.

"Sec. 6. For salary of the superintendent of public schools, six thousand dollars (\$6,000.00); for salary of chief clerk in the office of superintendent of public schools, four thousand dollars (\$4,000.00); for salary of inspector of high schools, for articulating high schools with higher educational institutions of the state, in the office of the superintendent of public schools, three thousand six hundred dollars (\$3,600.00); for salary of inspector of rural schools, for articulating with high schools, in the office of the superintendent of public schools, three thousand six hundred dollars (\$3,600.00); for salary of statistician in the office of the superintendent of public schools, three thousand dollars (\$3,000.00); for salary of the stenographer in the office of the superintendent of public schools, two thousand dollars (\$2,000.00); in all, twenty-two thousand two hundred dollars (\$22,200.00)."

Sec. 6, p. 27, May 27, 1909.

62 * Montana: Repealing secs. 648, 672, 692, 693, 694, 695, 699, 700, 701, 703, 704, 707, 708, 735, 736, 737, 776, 1158, 1159, 1160, 1163, 1165, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1262, 1263, 1264, Revised Code, 1907, relative to the government, management, control and finances of the university, normal school, agricultural college, orphans' home, school of mines, school for the deaf and blind, and reform school.

"SECTION 1. The state board of education, as now created by law, shall have power, and it shall be its duty:

"1. To have the general control and supervision of the University of Montana, Montana State Normal College, Agricultural College of Montana, state orphan's home, Montana state school of Mines, Montana school for the deaf and blind and state reform school.

"2. To adopt rules and regulations, not inconsistent with the constitution and the laws of this state, for its own government and proper and necessary for the execution of the powers and duties conferred upon it by law.

"3. To provide, subject to the laws of the state, rules and regulations for the government of the affairs of the state educational institutions named in this section.

"4. To recommend to the legislature a uniform system of text-books to be used in the public schools of this state.

"5. To grant diplomas to the graduates of all state educational institutions, where diplomas are authorized or now granted, upon the recommendation of the faculties thereof, and may confer honorary degrees upon persons, other than graduates, upon the recommendation of the faculty of such institutions.

"6. To adopt and use, in the authentication of its acts, an official seal.

"7. To grant state diplomas valid for six years, and to grant life diplomas.

"8. To keep a record of its proceedings.

"9. To make an annual report on or before the first day of January in each year, which may be printed under the directions of the state board of examiners.

"10. To appoint and commission experienced teachers as instructors in county institutes.

"11. To have, when not otherwise provided by law, control of all books, records, buildings, grounds and other property of the institutions and colleges named in this section.

"12. To choose and appoint a president and faculty for each of the various state institutions named herein, and to fix their compensation; provided, that the person selected and now acting as the head of any of said institutions, and performing the duties of the presiding officer or college president, whether designated as president, superintendent, director, or by any other title or designation, shall hereafter be known and designated as president of such institution, and such president, as well as the faculty of said institution, shall continue to hold their respective positions in accordance with the terms and conditions of their election or appointment.

"13. To confer upon the executive board of each of said institutions such authority relative to the immediate control and management, other than financial, and the selection of the faculty, teachers and employes as may be deemed expedient, and may confer upon the president and faculty such authority relative to the immediate control and management, other than financial, and the selection of teachers and employes as may by said board be deemed for the best interests of said institution.

"SEC. 2. There shall be an executive board, consisting of three members, for each of said institutions, two of whom shall be appointed by the governor, by and with the advice and consent of the state board of education, and the president of such institution shall be ex-officio a member of said board and shall be the chairman thereof. At least two of said members shall reside in the county where such institution is located. Said executive board shall have such immediate direction and control, other than financial, of the affairs of such institution as may be conferred on such board by the state board of education, subject, always, to the supervision and control of said state board.

"Said executive boards shall also have and exercise power and authority in contracting current expenses and in auditing, paying and reporting bills for salaries, or other expenses incurred in connection with such institution, provided, the Board of Examiners may not limit the power of the Executive Board in making expenditures or contracts which in no single instance or for any single purpose does not exceed Two Hundred and Fifty Dollars. All vacan-

cies occurring in the membership of any of said executive boards, shall be filled by appointment by the governor, which appointments shall be referred to the state board of education at its first meeting thereafter for confirmation.

"Sec. 3. The executive board of each of the institutions named in section one of this act shall appoint a secretary of said board, who may also act as treasurer of said board, and who may or may not be a member of said executive board, and such secretary and treasurer shall give bond, with good and sufficient surety, for the faithful performance of his duties as such, and for the faithful accounting for and paying over to, and for the use of, said college all moneys received by him as treasurer. Said bond shall run to the state of Montana and shall be in such sum as may be designated by the state board of examiners, and when executed shall be approved by said state board of examiners.

"Sec. 4. The treasurer of each executive board shall be the treasurer of the institution.

"Sec. 5. The executive board of each of said institutions shall meet in regular session at least once in each quarter, and monthly, or oftener, if the business of such institution requires it.

"Sec. 6. Each of such executive boards shall on or before the first Monday in June of each year make a detailed statement and report of all its transactions and of the condition of the institution, including the number of teachers, professors and employes, with the salary or wages paid to each, and a detailed statement of all expenses and disbursements of such institution, which report shall contain such other information or recommendations as may be required by the state board of examiners or by the state board of education, and the state board of examiners or the state board of education shall have authority to call for a report and statement from such executive boards at any time such board may deem it advisable. All such reports by such executive boards shall be made in triplicate, one copy shall be retained by such executive board, one copy shall be filed with the state board of examiners and one copy with the state board of education.

"Sec. 7. The duties of the chairman and secretaries of each of said executive boards shall be that usually performed by such officers, or which may be designated by the state board of education or the state board of examiners.

"Sec. 8. The state board of education shall have authority to employ, or to authorize the employment of, a matron for the state orphan's home.

"Sec. 9. The treasurer of the executive board of the agricultural college of Montana shall have the authority to receive from the treasurer of the State of Montana the cash appropriation received from the United States by authority of the act of congress of August 30, 1890 (26 Statutes at Large, page 417), known as the second Morrill Act, and the act of congress March 4, 1907 (34 Statutes at Large, page 1281), known as the Nelson Amendment. And such cash appropriation shall be expended by the executive board of said agricultural college, under the general supervision of the state board of education, but only for the purposes for which the same is appropriated by congress.

"The treasurer of said executive board of said agricultural college shall also have the authority to receive all moneys appropriated by the act of congress of March 16, 1906 (34 Statutes at Large, page 63), entitled, "An Act to provide for and increase the annual appropriation for agricultural experiment stations, and regulating the expenditure thereof," and such money shall be expended by said executive board under the supervision and direction and control of the state board of education in the manner and for the purpose designated in said act of congress, and as required by section 741 of the Revised Codes of Montana of 1907. The treasurer of the agricultural college of Montana shall, on or before the first day of September of each year, make a detailed statement of the amounts received and disbursed under the provisions of the act of congress of August 30, 1890, and of March 4, 1907, and shall report the same to the secretary of agriculture of the United States and to the secretary of the interior of the United States, as required by said acts of congress, and shall file a duplicate thereof with the state board of examiners of the state of Montana on or before the 10th day of September of each year. Said treasurer shall also make a detailed statement of the amounts of money received and disbursed under the act of congress of March 16, 1906, which report shall be filed with the state board of examiners on or before the 10th day of September of each year, and shall also make such reports to the officers or departments of the United States as are now or may hereafter be required by the laws of the United States.

"Sec. 10. The ex-officio member of each of said executive boards shall hold his office during his continuance as president of such institution, and the two members appointed by the governor shall hold office for the term of four years from and after the third Monday in April, 1909, unless sooner removed by the governor or by the state board of education; provided, that of the members of the executive board first appointed under the provisions of this act, one shall be appointed for the term of two years and one for the term of four years. Such members shall qualify by taking and filing their oath of office with the state board of education.

"Sec. 11. The members of each of the executive boards, except the chairmen, shall receive such compensation for their services as shall be fixed by the state board of education, not exceeding the sum of five dollars for each day actually spent in the discharge of their official duties, and not exceeding the sum of one hundred and twenty-five dollars in any one year for each member, and such members shall also be reimbursed from the amount appropriated by the legislature for the maintenance and support of such institutions all expenses necessarily incurred by them in the discharge of their official duties as members of said boards.

"Sec. 12. That the term of office of all trustees, directors or members of any executive board or commission of any of the institutions named in this act, heretofore appointed, elected or serving as such trustees, directors or member of such executive boards or commissions, shall terminate upon the appointment and qualification of the members of the executive boards created by this act, and such boards created hereby shall have only such power and authority as is given under the provisions of this act.

"Sec. 13. The state board of examiners of the state of Montana shall have supervision and control of all expenditures of all moneys appropriated or received for the use of said colleges from any and all sources, other than that received under and by virtue of the acts of congress hereinbefore referred to, and said state board of examiners shall let all contracts, approve all bonds for any and all buildings or improvements, and shall audit all claims to be paid from any moneys, other than that received under and by virtue of the acts of congress herein referred to, but said state board of examiners shall have authority to confer upon the executive boards of such institution such power and authority in contracting current expenses and in auditing, paying and reporting bills for salaries or other expenses incurred in connection with said institution as may be deemed by said state board of examiners to be to the best interests of said institutions.

"Sec. 14. All donations, grants, gifts or devises made to any of the institutions named herein shall be made to such institutions in its legal name, and if made to any officer or boards of such institutions the same shall be immediately transferred by such board or officer to such institution."

SEC. 15. * * *

SEC. 16. * * *

Chap. 73, Mar. 4, 1909. (Apr. 15, 1909.)

63 **Nebraska:** Repealing, and re-enacting with amendments, sec. 11685, Cobbey's Annotated Statutes, 1907, relative to the salary of the deputy superintendent of public instruction.

Increasing annual salary from \$1,500 to \$1,800.

Chap. 124, Mar. 20, 1909.

64 **Nevada:** Proposing amendment to sec. 3, art. 15, constitution, relative to eligibility for office.

Making women eligible to the offices of superintendent of public instruction, deputy superintendent, and notary public. (Formerly school trustee only.)

Con. Res. No. 3, p. 349, Mar. 12, 1909.

65 **New Mexico:** Amending sec. 1, chap. 97, Laws, 1907, relative to the territorial board of education.

Raising the membership from seven to nine. Two new members not to be teachers by profession; but one, at least, to be a county superintendent at time of appointment. To be appointed during March, 1909.

Sec. 4, chap. 121, Mar. 18, 1909.

- 96 **New Mexico:** Amending sec. 11, chap. 97, Laws, 1907, relative to general powers and duties of the superintendent of public instruction.
 Requiring superintendent, at request of any county superintendent or school officer, to give his opinion in controversies arising out of construction and interpretation of school laws, and to keep record of decisions. Superintendent may submit statement of facts to attorney general for advice, and it shall be the duty of the attorney general to suggest proper decision forthwith.
 Sec. 6, chap. 121, Mar. 18, 1909.
- 97 **New York:** Amending chap. 40, Laws, 1904, relative to the university of the State of New York and the department of education.
 Number of regents three more than the existing number of judicial districts.
 Chap. 1, Feb. 1, 1909.
- 98 **North Carolina:** Making the state superintendent of public instruction, ex officio, a trustee of the university.
 Chap. 432, Mar. 2, 1909.
- 99 **North Carolina:** Amending sec. 4089, Revisal, 1905, relative to state superintendent.
 Authorizing publication of educational bulletins.
 Sec. 2, chap. 525, Mar. 5, 1909.
- 70 **North Carolina:** Preventing boards of directors of state institutions from electing one of their number to any position under their control.
 Chap. 831, Mar. 8, 1909.
- 71 **North Dakota:** Fixing salaries of state officers, providing for the payment of personal expenses, and requiring said officers to reside at the capital.
 Allowing the state superintendent \$750 per year for personal expenses and fixing annual salary at \$3,000.
 Chap. 216, Mar. 8, 1909.
- 72 **South Dakota:** Regulating the making of reports of state officers, boards, and institutions to the governor, and the printing of same.
 Chap. 290, Mar. 9, 1909.
- 73 **Utah:** Amending sec. 2075, Compiled Laws, 1907, relative to the appointment of the board of trustees of the agricultural college and fixing their terms of office.
 Increasing the membership of board from seven to nine.
 Chap. 108, Mar. 22, 1909.
- 74 **Vermont:** Providing for a state board of education.
 Constituting the governor and superintendent of education, ex officio, and three members appointed by the governor as state board of education. Board to assume powers and duties of board of normal school commissioners (secs. 946, 947, 948, Public Statutes, 1906), and of the board of distribution (sec. 1026, Public Statutes, 1906).
 Act. 34, Dec. 14, 1908.
- 75 * **Vermont:** Amending sec. 943, Public Statutes, 1906, relating to union school superintendents.
 Teachers' examinations to be conducted under the direction of the superintendent of education. Providing for meetings of superintendents with superintendent of education.
 Sec. 3, act. 36, Dec. 16, 1908., (July 1, 1909.)

76 * **West Virginia:** Providing for the government and control of the public institutions by creating a state board of control and a state board of regents; fixing duties, powers, responsibilities, and compensation.

Creating a state board of control of three members, and defining powers and duties; compensation of each member, \$5,000 per year.

"Sec. 3. The board of control shall have full power to manage, direct, control and govern the West Virginia asylum, the second hospital for the insane, the West Virginia hospital for the insane, the West Virginia penitentiary, the West Virginia reform school, the West Virginia industrial home for girls, miners' hospital No. 1, miners' hospital No. 2, miners' hospital No. 3 and the schools for the deaf and the blind and such other institutions, except educational, as may hereafter be created by law.

"Sec. 4. The board of control shall have charge and control of the financial and business affairs of the West Virginia university, of the preparatory branches of the university at Montgomery, and at Keyser, of the state normal school and its branches, of the West Virginia colored institute and of the Bluefield colored institute and have such other control and management of said institutions as are in this act provided."

"Sec. 13. The state board of control shall prescribe the records to be kept for statistical and other purposes in the several institutions named in sections three and four. It shall require a copy of such record to be transmitted to it for the preceding month, and the board shall keep in its office in a substantially bound book a copy of every report that they may require from the chief officers of any institution; and shall have authority to assemble the chief officers of the institutions or any of them at its office, for the purpose of discussing any question which may be common to their welfare. The actual expenses made necessary in traveling to and from such meeting and while upon its attendance, shall be paid out of the contingent fund of the several institutions. All bills on account of such expenses shall be made and paid as provided in section two of this act."

Creating a state board of regents of five members, including state superintendent of free schools. Annual salary of appointed regents, \$1,000.

"Sec. 18. The state board of regents shall have control of the educational departments of the several institutions named in section four, on and after July first, one thousand nine hundred and nine, and the several boards of regents now in charge of said institutions shall have no legal existence after that date. The state board of regents shall have authority to employ the head teacher or president of the university, the head teacher or superintendent of each of the other of said institutions, and the professors, other teachers and other employees of such institutions. They shall fix the compensation of such president, superintendents, professors, teachers and employees, but such compensation and the number of employees, shall be subject to the confirmation of the board of control; or if the board of control shall before the beginning of any year fix the total amount that shall be paid for the year in compensation to such president, superintendents, professors and teachers and employees, then the board of regents shall fix their respective salaries or compensation, but the aggregate thereof shall not exceed the amount fixed by the board of control and in no case shall the amount fixed exceed the appropriation made for the purpose by the legislature.

"All rights and duties heretofore belonging to the boards of regents of the institutions named in section four, which are not in conflict with the provisions of this act, are hereby given to the board of regents hereby created.

"Sec. 19. The state board of regents shall have authority in consultation with the head teacher, and professors and other teachers in each institution named in section four, to prescribe the curriculum or course of study to be pursued therein, and prescribe the text books to be used. The said board may make out and publish rules and regulations to be observed by all of said institutions, and separate rules and regulations for any one of them. The board of regents shall also from time to time establish such departments of education in literature, science, art, agriculture, military tactics and other departments as they may deem expedient, and as the funds for such purposes may warrant, and as the law may permit; also fix the tuition, fees and charges for attending and receiving instructions in any of said departments. The state

board of regents shall meet with the state board of control whenever the state board of control shall notify them of such meeting."

Chap. 58, Feb. 27, 1909.

77 **Wisconsin:** Amending secs. 237h, 237i, and 237j, Statutes, relating to the state board of immigration.

Making the dean of the college of agriculture and the president of the state board of agriculture members of the board.

Chap. 444, June 15, 1909.

78 **Wisconsin:** Amending subsec. 3, secs. 11-28, sec. 33, and subsecs. 15 and 16, sec. 38, Statutes, relating to the certification of nonpartisan nominees and delegates to national conventions and the order in which their names shall appear on the ballot.

Providing for serial change of order of names on ballots. (Affects election for state superintendent.)

Chap. 483, June 16, 1909.

(c) County Boards and Officers.

The three tendencies in recent legislation relative to county control of education noted in the reviews for previous years, (a) higher qualifications and increased compensation for county superintendents, (b) the utilization of the county as the unit for administrative and supervisory control, (c) the organization of county school board conventions, are still to be observed. Idaho (84) and Michigan (89) add themselves to the group of seven States (Minnesota, North Dakota, Oregon, Pennsylvania, South Dakota, Washington, Wisconsin) in which these conventions are now provided for. Missouri (96), by a significant act, definitely provided for county supervision; Georgia (82), for the popular election of county school commissioners; and Tennessee for the slow replacement and a longer term of office for county boards of education.

79 **California:** Amending sec. 1550, Political Code, 1906, relating to the salaries of deputy school superintendents.

Providing that the compensation of each deputy school superintendent of any county of the first class shall not be less than the minimum received by any high school principal in said county. (Applies to San Francisco (?))

Chap. 231, Mar. 13, 1909.

80 **California:** Amending sec. 1552, Political Code, 1906, relative to the traveling expenses of county, and city and county superintendents.

Chap. 586, Apr. 14, 1909.

D. 81 **Georgia (1909):** Pol. Code, 1895, sec. 223, does not render a person holding the office of county treasurer and members of a board of education ineligible as aldermen of a city in the same county.—*Long v. Rose*, 64 S. E., 84.

82 * **Georgia:** Providing for the election of the county school commissioners of the various counties by the electors of each county.

Act 252, p. 154, Aug. 16, 1909.

D. 83 **Idaho (1909):** The word "qualification," as used in Const., art. 18, sec. 6, which provides that the qualifications of the county superintendent of public instruction shall be fixed by law, means educational equipment or attainment.—*Bradfield v. Avery*, 102 P., 687.

- 84 * **Idaho:** Authorising boards of trustees of common school and independent school districts to pay the expenses of one of their members incurred in attendance upon meetings of school officers called by the county superintendent.

"SECTION 1. That the Board of Trustees of every common school district and the Board of Education of every Independent school district are authorized to select one of their members to attend any meeting called by the County Superintendent for the purpose of general instruction, and are authorized to defray the expenses of such member, in an amount not to exceed the sum of three dollars (\$3.00) per diem, and three cents (3 c.) per mile going to and from such meeting, such expense to be paid for from the general fund of the district: *Provided*, That such allowance shall not be for more than two (2) days in any one year."

H. B. No. 13, p. 19, Feb. 20, 1909.

- D. 85 **Kentucky (1909):** Where a county fiscal court illegally reduced a county superintendent's salary during his term, his acceptance of the reduced amount did not prevent his recovery of the balance after his term had expired.—*Breathitt County v. Noble*, 116 S. W., 777.
- D. 86 **Kentucky (1909):** Stat. 1909, sec. 4419, provides that the salary of the county school superintendent shall be annually allowed by the fiscal court, and Const., secs. 161, 235, prohibits the changing of the salary of an officer after his election or during his term of office. *Held*, that where, after plaintiff was elected superintendent for a four-year term, he was allowed for the first nine months of the term a salary fixed at 15 cents for each child, such order operated to establish plaintiff's salary rate for the remainder of his term, and precluded the fiscal court from thereafter changing it to a flat rate.—*Breathitt County v. Noble*, 116 S. W., 777.
- D. 87 **Kentucky (1909):** Under Stat. 1909, sec. 4419, regulating salaries of county school superintendents, it is the duty of the fiscal court to fix the salary to be allowed a superintendent before the beginning of his term; but, if it is not so fixed, it may be fixed thereafter, and when fixed, cannot be changed during his term of office.—*Breathitt County v. Noble*, 116 S. W., 777.
- D. 88 **Kentucky (1909):** Act of March 24, 1908 (Acts, 1908, p. 133, chap. 56; Ky. Stat. 1909, sec. 4426a), regulating schools and school districts, vests the power to establish school districts for white and colored children in the sound discretion of the county boards.—*Prowse v. Board of Education for Christian County*, 120 S. W., 307.

- 89 * **Michigan:** Authorizing the county commissioner of schools in each county to call a meeting of the school officers of the county.

"Sec. 1. Each county commissioner of schools in the State of Michigan shall call a meeting of the school officers of his county at least once in each year, said meeting to be held at the county seat or some other convenient place in the county for the purpose of consultation, advice and instruction upon matters pertaining to the management and welfare of the public schools of the county. The call for said meeting shall include every board of education in the county, whether rural or city.

"Sec. 2. The director or secretary of each school board or board of education shall attend such meeting and the other members of each board of education may attend. One member of the school board or board of education who attends such meeting shall be allowed and paid two dollars per day and actual traveling expenses going to and returning from said meeting, said sum to be paid from the general fund in the treasury of the school district. The county commissioner of schools shall issue to each member in attendance a certificate of attendance which shall be filed with the director or secretary of the board, and when filed shall serve as a basis of evidence for drawing the order for compensation and expenses of one member of the board.

"Sec. 3. It shall be the duty of the Superintendent of Public Instruction to assist the county commissioner of schools in conducting said meeting of school officers, and he shall attend said meeting either in person or by representative."

Act 112, May 19, 1909.

- 90 **Michigan:** Repealing sec. 4816, Compiled Laws, 1897, relative to the duties of the chairman of the township board of school inspectors, and amending secs. 4810 and 4819, Compiled Laws, 1897, relative to the election of a county commissioner of schools, to the appointing of school examiners and defining the duties and fixing the compensation for the same.

Modifying in minor manner provisional requirements for eligibility to the office of county commissioner of schools.

Act 222, June 2, 1909.

- 91 **Michigan:** Amending sec. 10, act 147, Public Acts, 1891 (sec. 4817, Compiled Laws, 1897), as amended by sec. 10, act 148, Public Acts, 1905, relative to the compensation of the county commissioner of schools.

Annual compensation to be not less than \$1,500 when there are 175 school rooms under supervision.

Act 247, June 2, 1909.

- 92 **Michigan:** Amending sec. 8, act 147, Public Acts, 1891 (sec. 4815, Compiled Laws, 1897), as amended by sec. 8, act 127, Public Acts, 1907, providing for the election of a county commissioner of schools, for the appointment of school examiners, and defining the duties and fixing the compensation for the same.

Special provisions concerning expense limit for assistance.

Act 264, June 2, 1909.

- 93 **Minnesota:** Providing for a county examiner of townships, villages, cities, school districts, and charitable and benevolent institutions in counties of this State having at any time a population of more than 100,000 inhabitants and an area of more than 5,000 square miles.

Chap. 108, Mar. 25, 1909.

- 94 **Minnesota:** Amending sec. 3, chap. 76, Laws, 1907, relative to county boards of education for unorganized territory within the State, and adding new section.

Authorizing employment of clerk to county superintendent. Authorizing per diem of \$3 to chairman.

Chap. 309, Apr. 21, 1909.

- D. 95 **Minnesota (1908):** Rev. Laws, 1905, sec. 425, provides that, whenever a vacancy occurs in the office of the county superintendent, the county board will fill the same by appointment, and section 2668 declares that the governor may remove from office any county superintendent of schools whenever it appears by competent evidence that such superintendent has been guilty of malfeasance or nonfeasance after hearing. *Held*, that county commissioners have only power to fill the office of county superintendent of schools after it has been vacated in proper judicial proceedings, or by the act of the incumbent, and have no power to remove such superintendent.—*State v. Hays*, 117 N. W., 615; 105 Minn., 399.

- 95 ***Missouri:** Repealing secs. 9803, 9804, 9808, 9809, and 9810, Revised Statutes, 1899, as amended by act of March, 18, 1903; and repealing secs. 9811, 9812, 9813, Revised Statutes, 1899, as amended by act approved March 20, 1907, and by act approved March 24, 1903, relative to public schools. Enacting new sections in lieu thereof concerning county superintendents of schools, their election, qualifications, duties, powers, and compensation.

"Sec. 9803. There is hereby created the office of county superintendent of public schools in each and every county in the state. The qualified voters of the county shall elect said county school superintendent at the annual district school meetings held on the first Tuesday in April, 1911, and every four years thereafter. Said superintendent shall be at least twenty-four years old, a citizen of the county, shall have taught or supervised schools as his chief work during at least two of the four years next preceding his election or appointment, or shall have spent the two years next preceding his election or appointment as a regular student in a normal school, college or university, and shall at the time of his

election hold a diploma from one of the state normal schools or teachers' college of the state university, or shall hold a life state certificate authorizing him to teach in the public schools of Missouri, granted by the state superintendent of public schools as the result of an examination, which shall include the subjects of school supervision and teaching in the rural schools, or shall hold a first grade county certificate. The person elected county school commissioner or county school superintendent at the annual school meeting held the first Tuesday in April, 1909, or his successor, shall, during the month of August, 1909, qualify under this act as county superintendent of public schools, and shall serve as such until the first Tuesday in April, 1911, and until his successor is elected and qualified; and the qualifications prescribed for the county school commissioner at the time of the annual school meeting, the first Tuesday in April, 1909, shall be the qualifications for the county superintendent of public schools until the first Tuesday in April, 1911. Said county superintendent of public schools shall hold his office for four years and until his successor is elected and qualified; and all vacancies, caused by death, resignation, refusal to serve or removal from the county, shall be filled by the governor by appointment for the unexpired term; the county superintendent shall turn over all books, papers, certificates, stub books and records in his possession to his successor. Wherever the term county commissioner or county board of education is used in the statutes, it shall be construed to mean county superintendent of public schools."

Sec. 9804. Election returns, how certified; duty of county clerk.

Sec. 9805. Superintendent to take oath, give bond; keep office, where; county court to furnish supplies.

Sec. 9806. The county superintendent shall have general supervision over all the schools of his county, except in city, town and village school districts employing a superintendent who devotes at least one-half of his time to the direct work of supervision. He shall visit each school under his jurisdiction at least once each year, and as many other times as practicable; he shall examine the classification of pupils, the methods of instruction, the manner of discipline, the order maintained, the results secured, and make such suggestions to teachers and school boards as he may deem advisable; he shall inspect the ventilation, note the condition of the building, furniture, apparatus, grounds and appurtenances thereto belonging, and report the same to the board in writing, with such suggestions as he may consider necessary to the health, comfort and progress of the pupils; he shall examine the teacher's register and the district clerk's record and see that they are kept according to law; he shall furnish annually statements to the district clerks showing the assessed valuation of their respective districts; he shall receive, and, if properly made, approve estimates and enumeration lists and turn same over to the county clerk; he shall assist the district clerks, when necessary, in making their reports, and see that all warrants have been duly issued by order of the board, either for services actually rendered or for material actually furnished.

Sec. 9807. The county superintendent shall hold annually not fewer than six public meetings at different points in the county for the purpose of discussing educational questions, interpreting the school law, counseling with teachers and school officers, and promoting the cause of education among the people. One of these meetings shall be held at the county seat just prior to the opening of the fall term of school, and shall be of two days' duration. It shall be the duty of directors and teachers to attend meetings called by him when such attendance does not interfere with their school duties. He shall adopt a course of study and a plan for grading the schools of his county, and forward three copies to the state superintendent of public schools, one copy to each district clerk and one copy to each teacher employed in the county, and require the same to be followed as nearly as practicable. He shall inaugurate and maintain a system of final examinations and graduation of pupils who complete the state course of study for rural schools. He shall examine the records of the county, so far as they relate to school funds and school moneys, see that the law is strictly observed, and shall be present at the August term of the county court, to give such information as may be of importance to said court in the transaction of all business pertaining to the school interests of the county; and the instruction of the state superintendent shall be his guide in the interpretation and execution of the law."

Sec. 9808. County superintendent to make statistical report annually; shall require report from all teachers.

Sec. 9809. During his term of office the county superintendent shall not engage in teaching or in any other employment that interferes with the duties

of his office as prescribed by law. He shall spend annually, studying rural school problems and supervision of schools, five days in conventions called by the state superintendent of public schools, or twenty days in the state university or in one of the state normal schools, or in some other manner approved by the state superintendent. He shall not receive his salary for the third quarter of the year until he presents a certificate, signed by the state superintendent, stating that he has spent the period prescribed by law in studying rural school problems and supervision of schools, and that his report as county superintendent of public schools has been properly made to the state superintendent of public schools.

"Sec. 9810. The county superintendent shall be allowed an annual salary, to be paid out of the county treasury, as follows: In counties having less than twelve thousand population, he shall receive seven hundred dollars; in counties having twelve thousand population and less than fifteen thousand, he shall receive eight hundred dollars; in counties having fifteen thousand population and less than eighteen thousand, he shall receive nine hundred dollars; in counties having eighteen thousand population and less than twenty-one thousand, he shall receive one thousand dollars; in counties having twenty-one thousand population and less than twenty-four thousand, he shall receive eleven hundred dollars; in counties having twenty-four thousand population and less than twenty-seven thousand, he shall receive twelve hundred dollars; in counties having twenty-seven thousand population and less than thirty thousand, he shall receive thirteen hundred dollars; in counties having thirty thousand population and less than fifty thousand, he shall receive fourteen hundred dollars; in counties having fifty thousand population or more, he shall receive fifteen hundred dollars of which the state of Missouri shall appropriate annually out of the general revenue fund of the state of Missouri four hundred dollars to each and every county. At each regular term of the county court, said court shall order a warrant in favor of the county superintendent for the proportional amount of his annual salary then due under this section; and the same shall be paid by the county treasurer out of the county revenue fund."

Sec. 9811. * * *

P. 822, Mar. 15, 1909.

97 **Nebraska:** Repealing, and re-enacting with amendments, sec. 11666, Cobbe's Annotated Statutes, 1907, relative to the general duties of the county superintendent of schools.

Chap. 128, Mar. 29, 1909.

98 **New Mexico:** Providing for the payment of the compensation of county superintendents out of the school funds of the counties, and for other purposes.

Chap. 43, Mar. 16, 1909.

99 **New Mexico:** Amending sec. 20, chap. 97, Laws, 1907, relative to powers and duties of county superintendent.

Adding proviso.

Sec. 8, chap. 121, Mar. 18, 1909.

100 **New Mexico:** Amending sec. 21, chap. 97, Laws, 1907, relating to salary of county superintendents.

Adding "all counties of the first class, as determined by the latest report of the territorial traveling auditor," to list of those carrying annual compensation of \$1,500.

Sec. 9, chap. 121, Mar. 18, 1909.

101 **New Mexico:** Amending sec. 18, chap. 97, Laws, 1907, concerning county superintendents, elections, qualifications.

Substituting "Territorial Board of Education" for the words "board of examiners in each county."

Sec. 11, chap. 121, Mar. 18, 1909.

102 **North Dakota:** Amending in a minor manner, sec. 777, Revised Codes, 1906, as amended by chap. 105, Laws, 1907, relative to salary, deputies, and traveling expenses of county superintendents of schools.

Deputies in counties having 150 teachers and over.

Chap. 104, Mar. 15, 1909.

- 103 * **North Carolina:** Amending sec. 4119, Revisal, 1905, relative to county boards of education.
 Providing for slow replacement and extending term from two to six years. Applies to boards appointed by general assembly. (See also chap. 435.)
 Sec. 5, chap. 525, Mar. 5, 1909.
- 104 **South Carolina:** Amending sec. 1200, Code, 1902, as amended by act 528, Acts, 1908, relative to duties of county board of education.
 Act 46, Mar. 3, 1909.
- 105 **South Carolina:** Amending the law relating to compensation and salaries of county officers.
 Special provisions for certain indicated counties. Includes county superintendent of schools.
 Act 111, Mar. 4, 1909.
- 106 **South Dakota:** Amending sec. 22, art. 2, chap. 135, Laws, 1907, relating to eligibility to county superintendency.
 Certificate of professional qualifications to be valid at the date of his induction into such office and at least one year previous thereto.
 Chap. 90, Feb. 25, 1909.
- D. 107 **Tennessee (1909):** Where a county board of education, under Acts, 1907, p. 848, chap. 236, sec. 10, subd. 4, making it its duty to locate schools where deemed most convenient, locates a school at a certain place so as to consolidate two schools, and ultimately three, into one, it acts within its discretion, and its decision will not be disturbed by mandamus.—*State v. Board of Education of Blount County*, 121 S. W., 499.
- 108 **Tennessee:** See enactment No. 308.
- 109 **Tennessee:** Amending sec. 10 (and other secs.?), chap. 25, Acts, 1873, relating to district school directors. [See chap. 236, Acts, 1907.]
 Creating a county board of education, and providing for the election, qualification, officers, powers, duties, and compensation of said board. Transferring to said board powers and duties of school directors now prescribed by secs. 1430-1431, Code, 1896. Applies to certain 10 counties.
 Chap. 302, Apr. 27, 1909.
- 110 **Tennessee:** Amending sec. 10 (and other secs.?), chap. 25, Acts, 1873, relating to district school directors. [See chap. 236, Acts, 1907.]
 Creating a county board of education and providing for the qualification, election, officers, powers, and duties of said board. Transferring to said board powers and duties of school directors now prescribed by secs. 1430-1431, Code, 1896. Applies to Trousdale, Houston, and Shelby counties.
 Chap. 327, Apr. 28, 1909.
- 111 **Tennessee:** Amending chap. 234, Acts, 1905, and authorizing each member of the county board of education to make contracts of consolidation with the governing authorities of city schools, academies, etc., in the incorporated cities in his district, whereby the children of his district may be taught in such city schools.
 Chap. 471, Apr. 30, 1909.
- 112 **Tennessee:** Amending chap. 25, Acts, 1873, relative to the qualifications of the county superintendent of schools.
 Sec. 1. * * *
 "Said County Superintendent shall be a person of literary and scientific attainments and of skill in the theory and practice of teaching; provided, that preceding each biennial election or any election to fill a vacancy for County Superintendent of Schools each applicant shall file with the Chairman of the County Court a certificate of qualification given by the State Board of Education; provided, that on the first Monday in October preceding each biennial election for County Superintendent of Schools each applicant for said office

shall undergo a public examination at the county site of the county in which he or she is an applicant, to be conducted by a commission of three residents of the county, said commission to be previously appointed by the Chairman of the County Court, and to be citizens who, by education and experience, are most eminently qualified to conduct said examination, the same to be held by the State Board of Education under such rules and regulations as said Board may prescribe; *provided*, that said applicant shall furnish evidence satisfactory to the said State Board of Education as to his or her moral character, said evidence to be furnished in such manner and form as shall be prescribed by the said State Board of Education; *provided, further*, that if qualified as attested by said examination and as to moral character, said applicant shall receive a certificate of qualification by the State Board of Education."

Sec. 2. * * *

Sec. 3. * * *

Chap. 508, May 1, 1909.

- 113 **Wisconsin:** Amending subsec. 9, sec. 461, Statutes, relative to power of county superintendents to hold school board conventions.

Limiting convention to two consecutive days; fixing compensation at \$2 for each day's attendance, and mileage; providing for record of attendance.

Chap. 222, May 29, 1909.

- 114 **Wisconsin:** Amending sec. 698, Statutes, relative to the election of county officers and county or district superintendents of schools.

Providing for the fixing of all salaries of county superintendents in counties having two supervisory districts.

Chap. 433, June 15, 1909.

- 115 **Wyoming:** Providing for deputy county superintendents.

Chap. 46, Feb. 18, 1909.

(d) District, Township, and Municipal Boards and Officers.

The following items stand out as exceptions in the group of generally unimportant administrative measures relating to local boards and officers: California (118), relative to the powers and duties of school district trustees and city boards of education; Connecticut (207), transferring to towns the control of public schools; Connecticut (120), and Vermont (173), extending the system of organized local supervision; Missouri (D. 150, D. 151), repeating the judicial declaration of the rights of school officers with respect to the vaccination of school children; Ohio (D. 165), defining, in accordance with the established principle of American school control, the authority of boards of education; Tennessee (171), containing the educational provisions of the charter of the city of Knoxville; Wisconsin (175), authorizing a three-year tenure for city superintendents of schools.

D. 116 **Alabama** (1909): Loc. Acts, 1896-97, p. 514, a special law creating and incorporating a separate public school district and providing that the members of the school board "shall hold office for and during the term of their residence within the district," creates a life tenure of office in such members, conditioned only on residence in the district.—*State v. White*, 49 So., 78.

- 117 **California:** Amending sec. 1876, Political Code, 1906, referring to contracts by school trustees.

Chap. 79, Mar. 3, 1909.

- 118 **California:** Amending sec. 1617, Political Code, relative to the powers and duties of trustees of school districts and of boards of education in cities.

Authorizing payment of teachers' salaries in twelve monthly payments; admission of children to deaf school at three years of age. Restricting admission of children to beginning classes to certain months. Providing for bids for expenditures exceeding \$200. New sections relating to health and transportation.

"*Twenty-third.*—To give diligent care to the health and physical development of pupils, and where sufficient funds are provided by district taxation, to employ properly certificated persons for such work.

"*Twenty-fourth.*—To provide for the transportation of pupils wherever in their judgment such transportation of pupils is advisable: *Provided*, That such transportation of pupils shall not cost the district more than fifteen cents per pupil transported per day."

Chap. 687, Apr. 22, 1909.

- D. 119 **Colorado (1909):** The power to determine the necessity of taking land for a schoolhouse site is vested in the school authorities of the district by Mills' Ann. St., sec. 4013, and is not a question for a commission or jury.—*Kirkwood v. School Dist. No. 7*, in *Summit County*, 101 P., 343.

- 120 ***Connecticut:** Amending sec. 2, chap. 195, Public Acts, 1903, and repealing sec. 5, chap. 195, Public Acts, 1903, as amended by chap. 259, Public Acts, 1907, relative to the supervision of schools.

Authorizing the formation of supervisory unions by two or more towns employing *together* more than 30 and not more than 50 teachers (formerly, not less than 25 nor more than 50 teachers). Authorizing employment of superintendents by towns employing more than 20 and not more than 30 teachers; state aid equal to one-half of superintendent's salary. Annual maximum aid, \$800. Providing for supervisory agents in towns employing not more than 20 teachers; state aid.

"Sec. 6. Every town which employs not more than thirty teachers and in which there is no superintendent of schools or supervising agent shall, at its first annual or biennial town meeting after January 1, 1910, vote by ballot to determine whether it will instruct its school visitors, town school committee, or board of education to employ a superintendent of schools or request the appointment of a supervising agent under the provisions of this act."

Chap. 225, Aug. 19, 1909.

- 121 **Connecticut:** Relating to town management of public schools. (Amending chap. 146, Public Acts, 1909.) *See No. 207.*

Providing for payments to town treasurer, agent, or school committee by towns not assuming control of schools as provided by chap. 146, Public Acts, 1909.

Chap. 251, Aug. 24, 1909.

- D. 122 **Connecticut (1909):** *New Britain City Charter*, Sp. Acts, 1905 (14 Sp. Laws, p. 915), consolidating the town and city of New Britain; providing that all vacancies in any of the offices shall be filled by the council, and declaring that the city shall be a consolidated school district; deprives the school committee of the city of the power of filling vacancies, as authorized by Gen. Stat., 1902, sec. 2218, providing that the school committee shall fill vacancies in their own number, and a vacancy in the school committee is properly filled by the council; the provision of the charter inconsistent with the general statute controlling.—*State v. Hatch*, 72 A., 575.

- D. 123 **District of Columbia (1908):** The court will liberally construe the act of Congress of June 20, 1906, chap. 3446, 34 Stat. 316, creating the board of education of the District of Columbia, so as to give the board discretion in carrying out its objects, and not interfere by mandamus with the board in the exercise of its discretion in matters pertaining to the management of the public schools, unless there has been such a gross abuse of discretion as amounts to a total lack of authority to act.—*United States v. Hoover*, 31 App. D. C., 311.

- 124 **Idaho**: Amending an act entitled, "An act to provide for the establishment of graded public schools in the city of Lewiston. An act to provide for the establishment and maintenance of graded school in the city of Lewiston (approved Dec. 30, 1880)." (And also as amended by act of Feb. 7, 1883, and as amended by act of Feb. 5, 1885, as appears in said act); providing for the organization and government of independent school district No. 1 of Nez Perce County, and for establishing and maintaining a system of schools; authorizing a superintendent therefor; providing for the assessing and collecting of the taxes therefor; providing for the refunding of the bonds thereof; providing a treasurer for said district and for depositing the funds thereof; providing for the investment of the surplus moneys of said district.
H. B. No. 105, p. 43, Mar. 6, 1909.
- 125 **Idaho**: Amending sec. 628, Revised Code, 1909, relative to the reports of school trustees.
Providing for detailed and itemized reports.
S. B. No. 145, p. 191, Mar. 15, 1909.
- 126 **Idaho**: Amending sec. 625, Revised Code, 1909, relative to the general duties of trustees.
H. B. No. 260, p. 216, Mar. 15, 1909.
- 127 **Idaho**: Amending sec. 622, Revised Code, 1909, relative to the election of trustees and voting special taxes.
H. B. No. 49, p. 430, Mar. 7, 1909.
- D. 128 **Idaho** (1908): School Laws (Sess. Laws, 1899, p. 105), sec. 82, as amended by Acts, 1905 (Sess. Laws, 1905, p. 71), forbidding a trustee to be interested in any contract with the board or in any supplies furnished, and providing that no action shall be maintained upon a contract in which a trustee is interested, but the same shall be void, does not, because the only penalty provided is that an action shall not be maintained on a contract in violation thereof, prevent a recovery by the district of money paid upon a contract in violation thereof.—Independent School Dist. No. 5 v. Collins, 98 P., 857.
- D. 129 **Idaho** (1908): School Laws (Sess. Laws, 1899, p. 105), sec. 82, as amended by Acts, 1905 (Sess. Laws, 1905, p. 71), providing that no trustee shall be interested in any contract made by the board or in any supplies furnished to the district, and that no action shall be maintained upon any contract in which a trustee is interested, but the same shall be void, is intended to prohibit a trustee from making any contract with his district in which he is pecuniarily interested.—Independent School Dist. No. 5 v. Collins, 98 P., 857.
- D. 130 **Illinois**: A board of education has power to adopt a rule excluding all pupils who are members of secret societies from participating in athletic contests, etc., and such a rule is reasonable.—(1907) Wilson v. Board of Education of City of Chicago, 137 Ill. App., 187; judgment affirmed (1908), 84 N. E., 997; 233 Ill., 464.
- 131 **Indiana**: Concerning common school corporations in cities of more than 100,000 inhabitants.
Legalizing and validating certain acts and doings of school commissioners in all cities of more than 100,000 inhabitants, relative to tax levies.
Chap. 38, Mar. 1, 1909.
- 132 **Indiana**: Concerning boards of school trustees in cities of more than 36,000 inhabitants and less than 40,000 inhabitants.
Providing for a board of school trustees of five members; prescribing qualifications, manner, and time of election. First election, November, 1909.
Chap. 75, Mar. 5, 1909.
- D. 133 **Indiana** (1909): Persons contracting with school trustees must recognize that their powers are limited by law.—Slattery v. School City of South Bend, 86 N. E., 860.

- D. 134 **Louisiana** (1909): Where the term of office of a parish superintendent of education expires by limitation, the parish board of school directors as then constituted is, under Acts, 1902, p. 406, No. 214, sec. 8, as amended by Acts, 1908, p. 49, No. 49, authorized to elect his successor; and, such successor having been so elected for the term fixed by law, the board as subsequently constituted is bound by the action, and is without authority to elect another person for such term.—State ex rel. *Wilson v. Hardin*, 49 So., 490.
- 135 **Maine**: Amending in a minor manner sec. 42, chap. 15, Revised Statutes, 1903, as amended by chap. 101, Laws, 1907, relative to payment of superintendents of towns comprising school unions.
Chap. 146, Mar. 26, 1909.
- 136 **Massachusetts**: Amending sec. 19, chap. 283, Acts, 1897, and providing that the mayor of the city of Newton shall be a member of the school committee of said city.
Replacing "president of the board of aldermen" by "mayor."
Chap. 138, Mar. 5, 1909. (Jan. 10, 1910.)
- 137 **Michigan**: Repealing secs. 1, 2, 3, 4, 5, 6, and 8, chap. 4, act 164, Public Acts, 1881 (secs. 4692, 4693, 4694, 4695, 4696, 4697, and 4699, Compiled Laws, 1897), relative to township officers and the township board of school inspectors; and amending secs. 7, 9, 10, and 11, chap. 4, act 164, Public Acts, 1881 (secs. 4698, 4700, 4701, 4702, Compiled Laws, 1897), relative to the duties of the township clerk.
Act 29, Apr. 14, 1909.
- 138 **Michigan**: Repealing sec. 4767, Compiled Laws, 1897, relative to penalties of school inspectors for neglect or refusal to qualify; and amending secs. 4752, 4754, 4756, 4757, 4758, 4759, 4760, 4761, 4762, 4764, Compiled Laws, 1897, relative to township libraries; and amending secs. 4768, 4769, and 4772, Compiled Laws, 1897, relative to penalties and liabilities of school officers for neglect of duty.
Act 32, Apr. 14, 1909.
- 139 **Michigan**: Amending sec. 21, chap. 3, act 164, Public Acts, 1881, as amended by act 165, Public Acts, 1901 (sec. 4686, Compiled Laws, 1897), relative to the duties of school district directors.
Act 173, June 1, 1909.
- D. 140 **Michigan** (1908): A superintendent of public schools is not a "contractor" within Const., art. 4, sec. 21, prohibiting the legislature from authorizing extra compensation to any contractor, etc., after the contract has been entered into or the services rendered.—*Bird v. Board of Education of City of Detroit*, 118 N.W., 606; 15 Detroit Leg. N., 902; 154 Mich., 584.
- D. 141 **Michigan** (1908): Loc. Acts, 1903, p. 236, No. 392, sec. 7, requires the board of education of a city to appoint a superintendent of public schools, who shall hold office for three years, and whose salary, not to exceed \$4,000 per annum, shall be fixed by the board, which act was amended in 1907, by Loc. Acts, 1907, p. 127, No. 406, which became effective immediately, and was substantially the same as the original act, except that it omitted the limitation on the salary to be allowed the superintendent. A superintendent was appointed under the former act; and, while he was holding under that appointment, but after the latter enactment, the board of education raised his salary to \$6,000 per annum. *Held*, that the only purpose of the amendment was to remove the limitation as to salary, and under the provision making it effective immediately the board could increase the superintendent's salary, though he was holding under an appointment under the previous statute which limited the amount of his salary.—*Bird v. Board of Education of City of Detroit*, 118 N.W., 606; 154 Mich., 584; 15 Detroit Leg. N., 902.

142 **Minnesota:** Amending secs. 1311, 1313, 1316, and 1317, Revised Laws, 1906, relating to the election of trustees and members of the school board in common districts in the State, and relating to vacancies in such board and the filling of such vacancies and providing for the payment of salaries or compensation of trustees and members of the school board in districts embracing or containing more than 10 townships.

Chap. 187, Apr. 14, 1909.

143 **Minnesota:** Legalizing, validating, ratifying, and confirming the election of trustees and members of the school board in common school districts embracing or containing 10 or more townships, where the election of such trustees and members of the school board of such district has been held or attempted to be held and such officers elected under and pursuant to sec. 3678, General Statutes, 1894, as amended by chap. 15, Laws, 1899, as amended by chap. 38, Laws, 1903, and amendments thereto, or under and pursuant to sec. 1311, Revised Laws, 1905, and amendments thereto.

Chap. 238, Apr. 19, 1909.

144 **Minnesota:** Legalizing, validating, ratifying, and confirming the payment of salaries or compensation to the trustees and members of school boards in common school districts embracing or containing 10 or more townships.

Chap. 239, Apr. 19, 1909.

145 **Minnesota:** Legalizing, validating, ratifying, and confirming the official acts of trustees and members of school boards of common school districts containing 10 or more townships, where such trustees and members of the school board and school boards have been elected or attempted to be elected and hold office under and pursuant to sec. 3678, General Statutes, 1894, as amended by chap. 15, Laws, 1899, as amended by chap. 38, Laws, 1903, and amendments thereto, or under and pursuant to section 1311, Revised Laws, 1905, and amendments thereto.

Chap. 240, Apr. 19, 1909.

146 **Minnesota:** Legalizing contracts made and entered into between April 1, 1903, and May 1, 1908, by school districts with officers and members of such school district for necessary supplies therefor and any payments on account thereof.

Chap. 255, Apr. 19, 1909.

147 **Minnesota:** Enabling boards of education in special school districts to employ clerks or secretaries who are not members of such boards.

Chap. 277, Apr. 20, 1909.

148 **Missouri:** Repealing art. 3, chap. 154, Revised Statutes, 1899, relating to the organization of school districts in cities with more than 50,000 and less than 300,000 inhabitants, and re-enacting in lieu thereof a new article providing for the organization and government of school districts in cities of over 75,000 and less than 500,000 inhabitants. [For the purpose of permitting Kansas City to retain existing school board organization.]

P. 828, May 28, 1909.

149 **Missouri:** Amending sec. 9919, Revised Statutes, 1899, relative to schools in cities with 300,000 inhabitants or over.

Applying section to cities of 500,000 or over.

P. 846, May 28, 1909.

D. 150 **Missouri (1909):** Rev. Stat., 1899, sec. 9759 (Ann. Stat., 1906, p. 4475), vests the government of the schools in a district in a board of directors of three members, and section 9764 (page 4478) authorizes the board to make all needful rules and regulations for the government of the schools. *Held*, that such board could make and enforce rules excluding from school all children who had not been externally vaccinated, whenever a smallpox epidemic either existed or was threatened in the district.—*State ex rel. O'Bannon v. Cole*, 119 S. W. 424.

- D. 151 **Missouri** (1909): The compulsory school law (Laws, 1905, p. 146; Ann. Stat., 1906, secs. 9982 (1)-9982 (9)), requiring school attendance by children of school age, did not preclude the school directors of the district from requiring, during a smallpox epidemic, existing or threatened, that no child not externally vaccinated should be permitted to attend school.—State ex rel. O'Bannon v. Cole, 119 S. W., 424.
- D. 152 **Missouri** (1909): A school board can discharge only such functions as are expressly prescribed by statute or fairly arise by necessary implication from those conferred.—State v. Kessler, 117 S. W., 85.
- 153 **Montana**: Amending sec. 882, Revised Code, 1907, relative to the letting of contracts by school trustees.
Chap. 32, Feb. 25, 1909.
- 154 **Montana**: Amending secs. 825 and 846, Revised Codes, 1907, providing for instruction by the county superintendent of schools in regard to the preparation of the annual reports of school district trustees; providing penalties for the failure to make such reports.
Chap. 98, Mar. 6, 1909.
- 155 **Nebraska**: Repealing and re-enacting with amendments sec. 11563, Cobby's Ann. Stat., 1907, relative to powers of moderator.
Chap. 120, Mar. 11, 1909.
- 156 **Nebraska**: Repealing, and re-enacting with amendments, sec. 7774, Cobby's Ann. Stat., 1907, relative to boards of education in metropolitan cities.
Changing membership of boards of education from 15 members, elected at large, to one member from each ward.
Chap. 131, Mar. 30, 1909.
- 157 **Nevada**: Providing for the date of election of school trustees, etc.
Chap. 111, Mar. 16, 1909.
- 158 **New Hampshire**: Relating to incompatibility of certain offices of school districts.
Prohibiting any member of a school board from acting as treasurer or auditor for the board, or from employment as a teacher.
Chap. 20, Feb. 24, 1909.
- 159 **New Hampshire**: Relating to the salaries of school boards and truant officers.
Chap. 22, Feb. 24, 1909.
- 160 **New Hampshire**: Creating a school committee for the city of Manchester.
Committee to consist of one member from each ward, with the mayor and president of the common council ex-officio members. Elected members to serve two years.
Chap. 323, Apr. 9, 1909.
- 161 **New Jersey**: Amending sec. 97, Acts, 1903 (sp. sess.), as amended by sec. 2, chap. 119, Acts, 1907, relating to the district clerk, records, duties, etc.
Chap. 11, Mar. 16, 1909.
- 162 **North Carolina**: Amending sec. 4145, Revised Code, 1905, relative to school committees.
Relating to compensation of township committee.
Chap. 769, Mar. 8, 1909.
- 163 **North Dakota**: Amending sec. 955, Revised Codes, 1905, relating to the compensation of members of the board of education.
Providing for compensation of \$1.50 for each meeting; not more than one meeting each month.
Chap. 101, Feb. 15, 1909.

- 164 **North Dakota:** Amending sec. 811, Revised Codes, 1905, relative to school treasurer's bond and filling of vacancies.
Sec. 1, chap. 204, Mar. 15, 1909.
- D. 165 **Ohio (1909):** Under Rev. Stat., sec. 4017, providing that the board of education shall have the management and control of all the public schools in the district, and sec. 3985, authorizing the board to make such rules and regulations as it may deem necessary for the government of the schools, so far as rules so established are reasonable and fairly calculated to insure good government of the schools and promote education, they will be sustained by the courts.—Board of Education of Sycamore v. State, 88 N. E., 412.
- D. 166 **Ohio (1908):** A broad discretion is reposed in boards of education as to the purchase of supplies, and hence, in the purchase of fuel, gradation of quality of coal, heating capacity, adaptability to heating apparatus, and experience and skill of persons managing school furnaces, are essential facts to be considered in making selection therefor, which may render it inadvisable to accept the lowest priced; and, where it appears that the board has acted in good faith, acceptance of other than the cheapest coal will not be enjoined.—Gosline v. Toledo Board of Education, 30 Ohio Cir. Ct. R., 503.
- 167 **Oklahoma:** Authorizing boards of education to construct and maintain two or more schoolhouses in certain school districts.
S. B. 295, p. 557, Mar. 17, 1909.
- D. 168 **Pennsylvania (1909):** Act of June 27, 1895 (P. L., 395), forbidding the wearing of religious garbs by teachers and imposing a fine on the board of directors permitting the same, is not to be construed so as to impose a penalty on a director who has done his duty. It is only directed against such directors as have failed to comply with the provisions of the act.—Commonwealth v. Herr, 39 Pa. Super. Ct., 454.
- 169 **South Dakota:** Amending secs. 22, 23, 36, 59, 125, 126, and 134, chap. 86, Laws, 1907, providing for the incorporation of cities under commission.
Secs. 125 and 126 referring to organization of the board of education.
Chap. 57, Feb. 19, 1909.
- 170 **South Dakota:** Amending sec. 42, chap. 135, Laws, 1907, relating to school district officers' meetings.
Removing limitation as to time of meeting.
Sec. 3, chap. 140, Mar. 3, 1909.
- 171 **Tennessee:** Charter of the city of Knoxville.
"Sec. 72. * * * That there shall be a Board of Education for the city to consist of seven members, citizens of the town, and not members of the Board of Mayor and Aldermen.
"Sec. 73. * * * That the first Board of Education after this Act takes effect shall consist of the five members of the Board of Education of the former corporation of Knoxville—one member from Park City, elected by the Mayor and Councilmen of Park City, and one member from the territory and the inhabitants thereof known as Oakwood and Lincoln Park, elected by the Mayor and Aldermen of the city of Knoxville, and thereafter that the Board of Education shall be elected by the Board of Mayor and Aldermen from the citizens and qualified voters of the town by ballot, and the term of office of each member shall be five years.
"Sec. 74. That the persons who constitute said Board of Education of said city of Knoxville at the time this Act takes effect are hereby continued in office as the Board of Education provided for herein for said city of Knoxville, and they shall continue in office as members of said Board of Education until the expiration of the terms of the members of the said Board of Education in December of each year to fill the vacancy then occurring. The persons composing such Board shall have or receive no compensation for their services.
"Sec. 75. That the said Board of Mayor and Aldermen shall have power to prescribe the duties of the Board of Education and Board of Public Works herein created; also rules and regulations for their government, and to enforce the same by appropriate ordinances, except as herein prescribed by this act.

"Sec. 76. That the Board of Education shall have charge of all school property belonging to the city and shall direct the expenditure of all money received from the State and county and the city of Knoxville for school purposes; *Provided, however*, that the erection of school buildings shall be under the direction and control of the Board of Public Works and under such regulations as the Board of Mayor and Aldermen may enact.

"Sec. 77. That the Board of Education shall annually, through its President and Secretary and the Superintendent of Schools, make to the Board of Mayor and Aldermen a full and complete statement of all amounts from the various sources for schools, and the manner of disbursements, the attendance of the schools and the average cost per capita for the different purposes, together with such additional information as the Board of Mayor and Aldermen may require. This report, together with all vouchers for expenditures, shall be carefully audited by the School Committee of the Board of Mayor and Aldermen, and said committee shall report their action in writing to the Board of Mayor and Aldermen.

"Sec. 78. That the members of the Board shall have seats in the meetings of the Board of Aldermen of said city and be entitled to take part in the proceedings and deliberations on all questions relating to matters under their charge, subject to such rules as the Board of Mayor and Aldermen shall from time to time prescribe, but without the right to vote, and one of said Board shall attend every meeting of the Board of Aldermen."

Chap. 589, May 1, 1909. (Jan. 1, 1910.)

D. 172 **Tennessee** (1909): Where a county board of education, under Acts 1907, p. 848, chap. 236, sec. 10, subdiv. 4, making it its duty to locate schools where deemed most convenient, locates a school at a certain place so as to consolidate two schools, and ultimately three, into one, it acts within its discretion, and its decision will not be disturbed by mandamus.—*State v. Board of Education of Blount County*, 121 S. W., 499.

173 * **Vermont**: Amending sec. 938, Public Statutes, 1906, relating to the union of towns for supervision.

Towns having 25 and less than 30 schools may, and a town having 30 or more schools shall, employ a superintendent of schools. Providing for discontinuance of unions.

Secs. 1 and 4, Act 36, Dec. 16, 1908. (July 1, 1909.)

D. 174 **West Virginia** (1909): A board of education exists only under the statute, having only the powers given by statute, and such as are necessary to execute such express powers, and can not lease a school lot for production of oil and gas.—*Herald v. Board of Education*, 65 S. E., 102.

175 * **Wisconsin**: Amending sec. 926-115 (chap. 360, Laws, 1903, as amended by chap. 388, Laws, 1905), relative to city superintendents of schools.

Authorizing boards of education in cities, excepting cities of the first class, to elect a city superintendent of schools for a term not to exceed three years.

Chap. 86, May 5, 1909.

176 **Wisconsin**: Repealing sec. 925-113 (chap. 480, Laws, 1907), Statutes, and creating secs. 925-113m, 925-113n, and 925-119m, Statutes, relative to the election or appointment of boards of education in cities, and the changing of school systems and school district boundaries.

Chap. 117, May 24, 1909.

177 **Wisconsin**: Amending sec. 546, Statutes, relative to a vacancy in the office of subdistrict clerk in towns under the township system of school government.

Chap. 131, May 13, 1909.

178 **Wisconsin**: Amending sec. 925-118a, Statutes, relative to authorizing the board of education in cities of the third class to have charge of erecting school buildings in such cities, and giving the same privilege to the board of education in cities of the fourth class.

Chap. 194, May 26, 1909.

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179 **Wisconsin:** Creating sec. 925-46m, Statutes, relative to the publication of the official proceedings of boards of education.
Requiring publication.

Chap. 249, June 1, 1909.

180 **Wisconsin:** Amending sec. 17, chap. 459, Laws, 1907, relative to school boards and common and high schools in cities of the first class.

Chap. 281, June 3, 1909.

181 **Wisconsin:** Creating secs. 925m-301 to 925m-318, inclusive, Statutes, relative to the organization and government of cities of the second, third, and fourth classes under a commission form of government.

"Sec. 925m-317. The board of education shall continue to be elected or appointed as provided by law, and any city work done under the direction of commissions appointed by the state shall continue to be done in the manner prescribed by law prior to the passage of these sections."

Chap. 448, June 15, 1909.

(e) School Meetings; Elections; Qualifications for Voters.

The enactments classified in this section relate principally to minor and local administrative changes concerning the time and manner of publication of notices of general and special school elections, the conduct of such elections, and the general powers and authority of district school meetings. The several measures concerning the elective franchise of women are not wholly without general significance (186, 191, 195).

182 **California:** Amending sec. 1882, Political Code, 1906, relative to the contents of notices of election for issuance of school bonds.

Chap. 301, Mar. 19, 1909.

183 **California:** Amending sec. 1881, Political Code, 1906, relative to notice of election for issuance of school bonds.

Chap. 302, Mar. 19, 1909.

184 **Colorado:** Repealing secs. 5942, 5943, 5944, and 5945, Revised Statutes, 1908, relative to school district bonds; amending sec. 5921, Revised Statutes, 1908, relative to school elections.

Chap. 205, Apr. 8, 1909.

185 **Connecticut:** Concerning biennial election of school officers.

Relating to the form of ballot to be used in local school elections.

Chap. 68, June 2, 1909.

186 **Connecticut:** Amending secs. 1629 and 1630, General Statutes, 1902, relative to the qualifications of women voters.

Extending franchise to women to elections for directors of public libraries and upon questions relating to public libraries (formerly school officers and educational questions).

Chap. 96, June 23, 1909.

187 **Connecticut:** Concerning the preparation, form, and use of ballots.

Sec. 3 prescribes the form of ballot for voting on constitutional amendments or on educational questions.

Chap. 250, Aug. 24, 1909. (July 1, 1910.)

- D. 188 **Kansas** (1909): The word "may," in Gen. Stat., 1901, sec. 6122, providing that special meetings may be called by a school district board or upon a petition signed by 10 resident taxpayers, is used in its permissive sense.—*State v. School Dist. No. 1, Edwards County*, 103 P., 136.
- D. 189 **Kansas** (1908): Laws, 1905, p. 659, chap. 397, sec. 10, providing that the proposition of establishing county high schools shall be submitted at the next general election in each county, unless previously submitted, and that, when "a majority of the voters voting" in any county shall be in favor of such proposition, the provisions of that act shall apply thereto, requires, where the election is a general one, a majority of all the voters voting on any office or proposition at such election.—*Board of Education of City of Humbolt v. Klein*, 99 P., 222.
- 190 **Michigan**: Amending secs. 17 and 20, chap. 2, and secs. 3, 4, 9, and 25, chap. 3, and secs. 4, 5, 6, chap. 10, act 164; Public Acts, 1881 (secs. 4662, 4665, 4668, 4669, 4674, 4691, 4749, 4750, and 4751, *Compiled Laws, 1897*), relative to qualifications of voters at school elections, powers of district meetings, district boards and officers, and the alteration of boundaries of graded school districts.
Act 83, May 12, 1909.
- 191 **Michigan**: Authorizing women to vote in certain cases.
Women possessing the qualifications of male electors and having property assessed for taxes in any part of the district or territory affected by such election are entitled to vote on questions involving expenditure of public money or issuance of bonds.
Act 206, June 1, 1909.
- 192 **New Hampshire**: Legalizing the proceedings of towns for the year 1909; appropriating money for school purposes.
Chap. 97, Mar. 30, 1909.
- 193 **New Mexico**: Amending sec. 1532, *Compiled Laws, 1897*, relating to the qualifications of voters at school elections.
Chap. 95, Mar. 18, 1909.
- 194 **South Dakota**: Amending sec. 180, Art. II, chap. 135, *Laws, 1907*, relating to elections in independent school districts.
Chap. 45, Feb. 19, 1909.
- 195 **South Dakota**: Submitting to vote amendment to sec. 9, art. 7, constitution, relating to qualifications of electors.
Extending franchise to women.
Chap. 138, 1909.
- 196 **Wisconsin**: Amending subsec. 14, sec. 430, *Statutes*, relative to the powers of school district electors.
Fixing length of school year at eight, previously seven, months. (See secs. 439a, 439b, 439c, 439d, *Statutes*.) Deleting portions relative to sex of teachers employed, and the time of school sessions—summer or winter.
Chap. 184, May 26, 1909.
- 197 **Wisconsin**: Creating sec. 430a-1, *Statutes*, providing for holding elections for school officers in districts containing an incorporated village or city of the fourth class.
Chap. 351, June 10, 1909.
- D. 198 **Wyoming** (1909): Under *Rev. Stat., 1899*, sec. 535 et seq., relating to district meetings of school districts, the term "district meeting" means a coming together, an assembling of the electors in a body at a stated time and place.—*Parker v. School Dist. No. 4 of Sweetwater County*, 101 P., 944.
- D. 199 **Wyoming** (1909): The general election laws of the State as to the time of opening and closing the polls have no application to school district meetings as regulated by *Rev. Stat., 1899*, secs. 535, 537, 547, 570, 571.—*Parker v. School Dist. No. 4 of Sweetwater County*, 101 P., 944.

(f) Administrative Units: Districts, Townships, Municipalities, etc.; Formation; Division; Consolidation.

The most significant features of the items grouped under this heading may be enumerated as follows: Connecticut (207), transferring after July, 1909, to towns the control of public schools; Michigan (220), providing for the organization of townships into single school districts; Missouri (D. 225), pronouncing a liberal construction of a statute since "school matters are usually in the hands of persons not learned in the law;" North Carolina (233), relating to the formation of school districts; and Texas (241), providing for the organization of school districts and discontinuing the community system.

There has been, during recent years, a noticeable decline in the legislative activity providing for the consolidation of school districts. The fundamental statutory devices and legal sanctions having been provided in the majority of States, the present record contains little beyond minor amendments for the improvement of administrative details. Of special interest in this connection, however, are the enactments of Colorado (206), Hawaii (209), Idaho (210), Indiana (212), and Minnesota (224).

200 **Alabama:** Amending sec. 6, chap. 478, Acts, 1907 (sec. 1692, Code, 1907) relative to school districts.

Excluding application of provisions of act from certain counties and cities.
Act 93, p. 115, Aug. 25, 1909 (sp. sess.).

201 **Arkansas:** Amending sec. 7668, Kirby's Digest, 1904, relative to annexation of territory to school districts.

Act 312, May 31, 1909.

202 * **Arkansas:** Providing for the creation of special or single school districts with same powers as granted to incorporated cities and towns. Elections.

Act 321, May 31, 1909.

203 **California:** Adding sec. 1580 to the Political Code, 1906, relating to joint school districts upon the organization of new counties or changes in county boundaries.

Chap. 185, Mar. 12, 1909.

204 **California:** Amending sec. 1543, Political Code, 1906, relating to the duties of the county superintendent of schools.

Provisions concerning suspended school districts.
Chap. 187, Mar. 11, 1909.

205 **California:** Adding sec. 1584, Political Code, relating to school districts embracing within their limits incorporated cities or towns.

Chap. 478, Apr. 12, 1909.

206 **Colorado:** Providing for the consolidation of adjoining school districts, and for the transportation of pupils in such enlarged districts, and for courses of instruction in the same.

Chap. 204, May 5, 1909.

207 * **Connecticut:** Relating to the town management of public schools. (See No. 121.)

Transferring, after July 15, 1909, to towns the control of public schools. Providing for the election of a school committee and prescribing powers and duties.

Chap. 146, July 14, 1909. (July 15, 1909.)

- 208 **Delaware:** Amending sec. 9, chap. 67, Laws, 1898 (sp. sess.), relating to the change of school district boundaries.
Providing that real estate not included in school districts shall be transferred to school districts; prescribing conditions.
Chap. 83, Mar. 15, 1909.
- 209 **Hawaii:** Dividing the Territory into districts for election, taxation, educational, judicial, city, county, and all other purposes. Repealing chap. 14, Revised Laws, 1905, chap. 3, act 39, Laws, 1905, and chap. 2, act 118, Laws, 1907.
Act 84, Apr. 15, 1909.
- 210 **Idaho:** Amending sec. 615, Revised Code, 1909, providing for the creation, change of boundaries, and union of school districts, and for the attendance of pupils at schools in districts other than the one in which they reside.
H. B. No. 70, p. 223, Mar. 15, 1909.
- D. 211 **Indiana (1908):** Under the express provisions of Burns' Ann. Stat., 1908, secs. 6404, 6405, a "school township" is a corporation, and has control of the schools, schoolhouses, and school funds. It is a distinct legal entity from that of the civil township.—*Teeple v. State*, 86 N. E., 49.
- 212 **Indiana:** Amending sec. 1, chap. 233, Acts, 1907 (sec. 6422 Burns' Ann. Stat., 1908), relative to the discontinuance of public schools and the transportation of pupils.
Providing for the re-establishment of schools discontinued. Prohibiting the discontinuance of certain schools for colored pupils.
Chap. 30, Feb. 27, 1909.
- 213 **Kansas:** Disorganizing certain school districts and annexing the same to other districts in certain cases
Chap. 206, Mar. 12, 1909.
- 214 **Kansas:** Repealing and reenacting sec. 6120, General Statutes, 1901, relative to fixing the time for organization of new school districts.
Chap. 207, Mar. 2, 1909.
- 215 **Maine:** Amending secs. 94, 96, and 97, chap. 15, Revised Statutes, 1903, providing for the schooling of children in unorganized townships.
Chap. 87, Mar. 16, 1909.
- 216 **Maine:** Amending secs. 40, 41, 44, and 45, chap. 15, Revised Statutes, 1903, relating to the union of two or more towns for the employment of a superintendent of schools.
Chap. 122, Mar. 24, 1909.
- 217 **Michigan:** Repealing secs. 17 and 18, act 154, Public Acts, 1903, as amending sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 15, and 16, act 176, Public Acts, 1891 (secs. 4823, 4824, 4825, 4826, 4827, 4828, 4829, 4830, 4831, 4833, 4834, 4837, 4838, Compiled Laws, 1897), relative to the organization of township school districts in the Upper Peninsula.
Act 7, Mar. 11, 1909.
- 218 **Michigan:** Amending secs. 4646, 4647, 4649, 4650, 4651, 4652, 4653, 4654, 4655, 4656, 4657, 4658, 4743, 4744, 4745, Compiled Laws, 1897, relative to the formation, alteration, methods, and powers of school districts and to appeals from action of town boards of school inspectors with reference to the same.
Act 31, Apr. 14, 1909.
- 219 **Michigan:** Relating to the boundaries of school districts in cities, and the boundaries of school districts which have been fixed by legislative act.
Act 86, May 13, 1909.

- 220 *Michigan: Providing for the organization of township school districts in the State.
 Providing for the organization of townships into single school districts; for the election of trustees, powers, and duties; for the employment of superintendents of schools.
 Act 117, May 19, 1909.
- 221 Minnesota: Amending sec. 1286, Revised Laws, 1905, as amended by chap. 188, Laws, 1907, relative to the change of boundary lines of school districts and the formation of new school districts.
 Chap. 13, Feb. 11, 1909.
- 222 Minnesota: Legalizing the change of boundaries of certain school districts, and bonds authorized by the legal voters of such districts for the purchase of school site or sites, or building, furnishing, or equipping one or more schoolhouses therein.
 Chap. 209, Apr. 17, 1909.
- 223 Minnesota: Providing for the election of school officers in special districts in cities of less than 10,000 inhabitants in which the boundaries of the city are co-terminous with the boundaries of such special school district.
 Chap. 212, Apr. 17, 1909.
- 224 Minnesota: Providing for the dissolution and annulment of common school districts in certain cases.
 Common school districts unable to raise by taxation at least \$300 for the support of each school in the district by levying the maximum tax rate allowed by law may be dissolved, annulled, and discontinued by the county board. Providing for procedure. Applying only to counties having a county board of education, as provided by chap. 76, Laws, 1907.
 Chap. 500, Apr. 24, 1909.
- D. 225 Missouri (1909): A statute regulating the public school system, and providing in Rev. Stat., 1899, sec. 9742 (Ann. Stat., 1906, p. 4463), the procedure for the organization of school districts, the formation of new districts, and consolidation of districts, will be liberally construed, since school matters are usually in the hands of persons not learned in the law.—State ex rel. School Dist. No. 1 v. Andrae, 116 S. W., 561.
- 226 Nebraska: Repealing and reenacting with amendments secs. 11503 and 11523, Cobbe's Ann. Stat., 1907, relative to the formation of new school districts.
 Modifying in minor manner procedure for the alteration of district school boundaries and the annexation of school districts.
 Chap. 117, Mar. 24, 1909.
- 227 Nebraska: Repealing, and reenacting with amendments, sec. 1, subdiv. 14, chap. 79, Compiled Statutes, 1907, relative to school districts in cities.
 Chap. 128, Apr. 5, 1909.
- 228 Nevada: Providing for union school districts, their government, support, etc.
 Chap. 46, Mar. 3, 1909.
- 229 Nevada: Authorizing boards of county commissioners to enlarge the boundaries of certain school districts or to consolidate two or more into one.
 Chap. 83, Mar. 11, 1909.
- 230 Nevada: Amending sec. 39, chap. 182, Laws, 1907, providing for a reorganization of the system of school supervision and maintenance.
 Classifying school districts into two classes. Authorizing districts of the first class to create the office of superintendent of schools. Authorizing election for a period of four years after one year of service.
 Chap. 227, Mar. 24, 1909.

231 New Jersey: Validating and confirming de facto organization of school districts in towns, townships, and boroughs acting under the provisions of art. 6, Acts, 1903 (sp. sess.), the proceedings had by boards of education, boards of estimate, and other municipal bodies therein, and the school bonds issued or authorized to be issued by said municipalities.

Chap. 186, Apr. 19, 1909.

232 New Hampshire: Amending in a minor manner secs. 1 and 2, chap. 89, Public Statutes, 1901, and defining the town school district.

Chap. 23, Feb. 24, 1909.

233 North Carolina: Amending sec. 4129, Revisal, 1905, relating to the formation of school districts.

The county board of education shall not create a school district containing less than 65 children of school age; amended by adding, "unless such district shall contain at least twelve square miles, or shall be separated by dangerous natural barriers from a schoolhouse in the district of which the proposed new district is a part."

Chap. 856, Mar. 8, 1909.

234 North Dakota: Amending sec. 796, Revised Codes, 1905, providing for the legalizing of the irregularities in the organization of school districts.

Chap. 206, Mar. 16, 1909.

235 Oklahoma: Amending sec. 5832, Statutes, 1893, relative to schools in cities of the first class. Legalizing certain official acts of boards of education; legalizing elections in school districts embracing cities.

H. B. 372, p. 555, Mar. 20, 1909.

236 Pennsylvania: Extending and conferring upon independent school districts, contiguous to cities and boroughs, the corporate powers conferred upon townships of the first class by sec. 7, act 86, Laws, 1899, as amended.

Act 218, May 3, 1909.

237 South Dakota: Relating to school district boundaries in cases where cities, towns, or villages, now organized under special charter, may reorganize under the general law.

Chap. 62, Feb. 20, 1909.

238 South Dakota: Amending sec. 174, chap. 135, Laws, 1907, relative to the organization of independent school districts.

To be organized under provisions of "article" (formerly act).

Chap. 214, Mar. 5, 1909.

239 South Dakota: Empowering county commissioners and county superintendents to create school districts out of congressional townships where two-thirds of electors of said congressional townships petition therefor.

Chap. 242, Mar. 8, 1909.

240 Tennessee: Transferring to the school commissioners of the board of education of the city of Memphis all of the public school property and the public school funds in the hands of the district school directors or the county board of education situated within the territory annexed to the city of Memphis during the present session of the legislature; providing for the management and conduct of the district schools in the territory so annexed; and for the payment of tuition fees by children residing in said annexed territory who may attend the public schools of the city of Memphis.

Chap. 458, Apr. 29, 1909. (Sept. 1, 1909.)

241 * Texas: Putting into effect the constitutional amendment adopted Nov. 1908, relating to public schools, by amending secs. 50, 57, 58, 59, 60, 61, 63, 65, 66, 76, 77, 78, 80, 81, and 154, and by adding 154a, chap. 124, Acts, 1905, relating to school districts and school funds.

Amending sec. 50. All counties not already subdivided to be divided into school districts by September 1, 1909. Striking out provisions relating to the continuance of the community system. Limiting minimum area of common school districts; not to contain less than 9 square miles; other provisions regarding the formation of school districts.

Chap. 12, p. 18, Feb. 18, 1909.

242 Texas: Putting into effect the constitutional amendment adopted Nov., 1908, relating to public schools, by amending secs. 50, 57, 58, 59, 60, 61, 63, 65, 66, 76, 77, 78, 80, 81, and 154, and by adding 154a, chap. 124, Acts, 1905, relating to school districts and school funds.

Adding sec. 154a. Placing all school districts organized under special legislative acts under general acts relating to incorporated school districts.

Chap. 12, p. 22, Feb. 18, 1909.

243 Wisconsin: Creating sec. 925-113a, Statutes, relative to the powers of electors in cities of the fourth class to change the system of school government.

Providing for method of return to ordinary district system of school government.

Chap. 237, June 1, 1909.

B. STATE FINANCE AND SUPPORT.

(a) General.

The abolishment of the office of commissioner of the school fund in Connecticut (246), the declaration of the constitutionality of act relative to taxation for educational purposes in Georgia (D. 248), the creation of the school-fund commission in Hawaii (250), the authorization of a bond issue in aid of weak school districts in New Mexico (254), the creation of the state board of public affairs in Oklahoma (256), and the measure in Wisconsin (267) relative to the auditing of certain expense accounts, represent the more important enactments dealing with general financial policy toward public education.

244 Arkansas: Appropriating funds accruing from the fees for state and professional examinations of teachers and providing for the expenditure of such funds as provided in sec. 7530, Kirby's Digest.

Act 154, Apr. 23, 1909.

245 Colorado: Concerning the money to which various counties are entitled under the agricultural appropriation act of Congress, approved May 23, 1908.

Relates to forest reserve funds; 5 per cent to be expended on roads or schools.
Chap. 2, Apr. 20, 1909.

246 Connecticut: Relating to the care and management of the school fund. Repealing secs. 148, 149, and 150, General Statutes, 1902.

Abolishing after July 1, 1909, the office of commissioner of the school fund. Transferring powers and duties to state treasurer.

Chap. 22, May 6, 1909. (July 1, 1909.)

- 247 **Delaware:** Amending sec. 1, chap. 11, Revised Code, 1893, relating to the exemption of property from taxation.

Exempting property of religious and educational institutions when not held for investment.

Chap. 36, Apr. 5, 1909.

- D. 248 **Georgia (1908):** The act approved August 21, 1906 (Acts, 1906, p. 61), in amendment of the act approved August 23, 1905 (Acts, 1905, p. 425), is not violative of Const., art. 7, sec. 2, par. 2 (Civ. Code, 1895, sec. 5884), authorizing the general assembly to exempt certain classes of property from taxation, because reciting that the tax thereby imposed for educational purposes shall be upon "all the property of the county" without making any express provision for the exemption of certain classes of property which under Pol. Code, 1895, secs. 762, 763, are exempt.—*Coleman v. Board of Education of Emanuel County*, 63 S. E., 41; 131 Ga., 643.

- 249 **Hawaii:** Authorizing the deposit of territorial moneys in banks in the Territory.
Act 123, Apr. 27, 1909.

- 250 **Hawaii:** Providing for the appointment of a school fund commission.

For the revision and betterment of the methods employed in the Territory for the raising and apportionment of school funds. Report not later than June 1, 1910.

Jt. Res. No. 6, p. 217, Apr. 28, 1909.

- 251 **Iowa:** Amending sec. 1304, supplement to the Code, 1907, relative to classes of property exempt from taxation.

Chap. 81, Apr. 16, 1909.

- 252 **Iowa:** Amending sec. 2812e, supplement to the Code, 1907, relative to the duration of school bonds.

Chap. 183, Apr. 15, 1909.

- 253 **Nevada:** Protecting the security of school bonds.

Change in boundaries not to release responsibility for bonds.

Chap. 91, Mar. 13, 1909.

- 254 * **New Mexico:** Providing for an issue of bonds for common-school purposes, and defining the purposes for which the money shall be used.

Authorizing bond issue of \$500,000, and providing for proceedings and conditions of payment.

"Sec. 15. Hereafter there shall be held in each school district in the Territory of New Mexico a term of school of not less than five months in duration, and any such school district that has not within its confines sufficient taxable property, taxed at the maximum allowed by law for school purposes, to produce sufficient revenue for such term of school, shall receive out of the fund herein created, sufficient money, in addition to that raised therein by taxation as herein provided, to enable such district to conduct a school term of five months. It shall be the duty of the school directors, of all such districts, within the Territory, to apply to the Superintendent of Public Instruction for such assistance, such application to be made upon a form prepared by the Attorney General of the Territory, giving among other things the taxable value of all property in such district, the rate levied, the salary paid, or to be paid the teacher, the number of children of school age, the number of school buildings where it is proposed to conduct school, and such other information as may be required either by the Attorney General or the Superintendent of Public Instruction; said application shall be approved by the county superintendent of schools of such county wherein such district is located, before the same is presented to the Superintendent of Public Instruction. If the Board of Trustees approve such application it shall endorse its approval thereon, and shall certify the same to the Auditor of the Territory, together with the amount to be paid thereon, and said Auditor shall draw his warrant on the Treasurer of the Territory, payable out of the fund herein provided for, in favor of such school district, and take credit for the same."

Chap. 7, Feb. 25, 1909.

* For complete text of decision, see "Recent Decisions" at the close of this bulletin.

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- 255 **New Mexico:** Providing for the distribution and application of moneys received from the United States Government as its appropriation of the income from the forest reserves within the Territory.
One-half of money to be placed to the credit of the general county school fund.
Chap. 119, Mar. 18, 1909.
- 256 **Oklahoma:** Creating a state board of public affairs.
Three members; appointment by governor; salary, \$3,000; general control of buildings, supplies and equipment for all state institutions.
S. B. 223, p. 563, Mar. 27, 1909.
- 257 **Pennsylvania:** Amending act 94, Laws, 1874, relative to taxation for public purposes of certain property.
Extending exemption provisions so as to apply to hospitals, universities, colleges, seminaries, academies, etc., where the entire revenue is applied to the support of and to the increase of the efficiency thereof.
Act 31, Mar. 24, 1909.
- 258 **Pennsylvania:** Making an appropriation for the payment of the annual fixed charge for school and road purposes on lands held for forest reserves (p. 111, Laws, 1905).
Act 555, May 13, 1909.
- 259 **South Carolina:** Prescribing the manner for the payment of the income from the fund of \$50,490 held by the state treasurer, pursuant to an act of Congress, 1873, for the benefit of the free public schools in certain parishes.
Act 242, Mar. 2, 1909.
- 260 **South Dakota:** Amending sec. 153, art. 8, chap. 135, Laws, 1907, relating to school bonds.
Chap. 132, Mar. 2, 1909.
- 261 **Tennessee:** Exempting leasehold estates and improvements thereon from taxation in the hands of the lessee, holding under incorporated institutions of learning in this State, when the rents therefor are used purely for educational purposes by said institutions, where the fee in the same is exempt for taxation to said institution by charter granted by the State.
Chap. 24, Feb. 5, 1909.
- 262 **Tennessee:** Providing for the issuance and sale of certificates of indebtedness of the State to raise funds to meet any deficiency in the current revenue of the State to satisfy additional appropriations made for educational purposes.
Authorizing \$300,000 in bonds to meet any deficiencies in appropriations.
Chap. 439, May 1, 1909.
- 263 **West Virginia:** Amending and re-enacting sec. 41, chap. 45, Code, 1906, as amended by Acts (sp. sess.), 1908, relating to the auditor's report on the general school fund.
Chap. 24, Feb. 27, 1909.
- 264 **Wisconsin:** Amending sec. 942c and subsec. 8, sec. 943, Statutes, relative to the refunding of debts lacking the constitutional levy.
Chap. 413, June 15, 1909.
- 265 **Wisconsin:** Creating sec. 401m, Statutes, relative to a biennial examination of the financial transactions and accounts of the state normal schools; making appropriation.
Chap. 495, June 16, 1909.
- 266 **Wisconsin:** Creating sec. 383m, Statutes, relative to a biennial examination of the financial transactions and accounts of the state university; appropriation.
Chap. 497, June 16, 1909.

267 * **Wisconsin:** Amending sec. 145, Statutes, relative to accounts, how verified and audited.

SECTION 1. * * * "No item shall be audited for expenses of any officer or employee of the State or university while attending any convention or other meeting held outside of the State, unless such expense shall be authorized by the governor, or specific statutory authority exist therefor." * * *

Chap. 523, June 17, 1909.

268 **Wyoming:** Amending and re-enacting sec. 6, chap. 30, Laws, 1907, regulating the deposit and safe-keeping of public money belonging to the State, or to any county, city, school, or district, or any other subdivision within the State.

Chap. 94, Feb. 27, 1909.

(b) State School Lands.

The past decade has witnessed much legislative industry for the protection and profitable investment of the landed endowments of public education. The noticeable decrease in the number of new school-land laws would seem to indicate that the policy of conservation had become clearly defined and operative. In but a few instances were significant measures enacted during the year. Excepting the general revision of the school law in Kansas (271), the proposed constitutional amendments in Nevada (276) and in North Dakota (278, 279), and the several new laws in Oklahoma (282-285), especially (283), the items of this group are of minor importance.

269 **California:** Amending sec. 3495, Political Code, relative to school lands belonging to the State and the affidavit on applications to purchase the same.

Chap. 350, Mar. 20, 1909.

270 **Colorado:** Providing for the admission of agricultural college and public school lands into irrigation districts; providing for and authorizing the assessment of agricultural college and public school lands within irrigation districts for irrigation district purposes; and providing for the payment of such assessment so levied.

Chap. 178, Apr. 5, 1909.

271 * **Kansas:** Repealing secs. 6339, 6340, 6341, 6345, 6346, 6351, 6352, 6353, 6356, 6357, 6360, 6361, 6362, and 6363, General Statutes, 1901, relative to school lands.

Revising the entire school-land law.

Chap. 218, Mar. 5, 1909.

272 **Michigan:** Authorizing the commissioner of the state land office to sell sites to school districts, churches, and cemetery associations from lands held by the State as tax homestead lands.

Act 223, June 2, 1909.

273 **Minnesota:** Providing for leasing state swamp and school lands.

Chap. 191, Apr. 14, 1909.

274 **Missouri:** Amending sec. 8169, art. 2, chap. 122, Revised Statutes, 1899, relating to school lands.

Manner of securing title when original certificate is lost or destroyed.

P. 617, June 10, 1909.

- 275 **Nebraska:** Repealing, and re-enacting with amendments, sec. 10377, Cobbe's Ann. Stat., 1907, relative to fines for waste and trespass; empowering the commissioner of public lands and buildings to lease to lessees of school lands the right to conditionally remove sand and gravel from the same.
Chap. 133, Apr. 2, 1909.
- 276 **Nevada:** Proposing amendment to sec. 3, art. 11, constitution, relating to school lands and funds for educational purposes.
Con. Res. No. 1, p. 340, Mar. 3, 1909.
- 277 **North Carolina:** Changing sec. 3746, Revisal, 1905, relating to trespass, in order to afford better protection to the lands of the state board of education.
Chap. 891, Mar. 9, 1909.
- 278 **North Dakota:** Referring to the next legislature amendment to sec. 158 of the constitution relative to the sale of school lands to railroad companies.
S. B. No. 114, p. 342, Mar. 11, 1909.
- 279 **North Dakota:** Submitting to vote amendment agreed to by the legislature of 1907, to sec. 158 of the constitution, relative to the sale of school and public lands.
Modifying conditions for nullification of contracts for sale for nonpayment of taxes.^a
H. B. No. 146, p. 341, Mar. 16, 1909.
- 280 **North Dakota:** Amending sec. 192, Revised Codes, 1905, relating to the collection by county treasurers of moneys due on school lands held under contract or lease from the State, and providing the manner of reporting such collections to the state auditor and the commissioner of university and school lands, and prescribing the duties of the county treasurers, state auditor, and land commissioner in connection therewith.
Chap. 207, Mar. 5, 1909.
- 281 **North Dakota:** Giving holders of contracts for the purchase of state land the right to bring actions in the courts in certain cases. Provisions.
Chap. 208, Mar. 13, 1909.
- 282 **Oklahoma:** Providing for the manner and procedure in leasing the public lands of the State.
S. B. 216, p. 440, Mar. 22, 1909.
- 283 * **Oklahoma:** Providing for the sale of all the public lands owned by the State taken in lieu of lands embraced in sections numbered 13, 16, 33, and 36, according to the United States survey, known as "indemnity lands;" providing also for the sale of all the lands embraced in sections numbered 33, reserved by the United States and granted to the State; providing also for the sale of the tracts of land now platted and used for town-site purposes embraced in sections numbered 13, 16, and 36; and providing also for the sale of all the lands withdrawn from the public domain, reserved from homestead entry, and granted to the State under and by virtue of section 12 of an act of Congress approved June 16, 1906, known as the enabling act of the State of Oklahoma.
Exceptions, conditions, rules and regulations, and penalties.
Amend. S. B. 1, p. 448, Mar. 2, 1909.
- 284 **Oklahoma:** Authorizing and directing the commissioner(s) of the land office to sell at public auction certain public school land adjacent to any incorporated city or town.
H. B. 528, p. 460, Mar. 20, 1909.

^a See sec. No. 507, Bulletin, 1908, No. 7.

285- Oklahoma: Providing for making available to various educational institutions the income, rentals, interest, and proceeds from certain lands, and making appropriations of such funds; designating a name by which such fund shall hereafter be known.

S. B. 322, p. 461, Mar. 25, 1909.

286 Oregon: Authorizing the state land board to purchase lands in school sections within national forest reserves, and to provide for the use of said lands as base for indemnity school selections.

Chap. 90, Feb. 23, 1909.

287 South Dakota: Amending sec. 2, chap. 226, Laws, 1907, relating to the sale of indemnity, common school, and endowment lands.

Chap. 56, Feb. 19, 1909.

288 South Dakota: Relating to the drainage of state, institutional, and school lands.

Chap. 127, Mar. 2, 1909.

289 South Dakota: Accepting an act hereafter to be passed by the Congress of the United States, and granting unto the State of South Dakota the right to choose and select from any public lands within the State, which are now being opened to settlement, 62,029.40 acres, more or less, of lands for the support of the common schools of said State in lieu of 62,029.40 acres, more or less, according to government survey, of land granted unto the State of South Dakota by an act of Congress, February 22, 1889, for the support of the common schools of said State, and of which the State has been largely deprived by the Government of the United States by the inclusion of the same within the Black Hills and the Sioux national forests, and authorizing the commissioner of school and public lands to make selections out of such lands as are now being opened to settlement in the Standing Rock and Cheyenne River Indian reservations, and relinquishing unto the Government of the United States all of said school lands so appropriated by the Government of the United States and included within the said Black Hills and Sioux national forests.

Chap. 195, Mar. 5, 1909.

290 Texas: Regulating the manner and form of making payments to the State for public lands. Defining duties of various officers and prescribing method of keeping accounts. Repealing art. 4046, Revised Civil Statutes, 1895.

Chap. 16, p. 429, May 12, 1909. (Sept. 1, 1909.)

291 Vermont: Ceding to the United States exclusive jurisdiction of the land in Burlington acquired from the university and the State agricultural college.

Act 207, Jan. 25, 1909.

(c) **Permanent State School Funds: Composition and Investment.**

The general statement already made concerning state school land legislation would apply with equal appropriateness to permanent school fund legislation. After singling out the general pronouncement of the supreme court of Kansas (D. 295), and the Montana (298, 299) and Texas (303) enactments, the remainder of this group involve minor administrative detail only.

292 California: Providing for the investment of the moneys in the estates of deceased persons fund, and also providing for payment of interest received into the state school fund.

Chap. 43, Feb. 22, 1909.

- 293 **Idaho:** Amending sec. 1587, Revised Code, 1909, relative to the investment of the permanent educational school funds of the State, and imposing duties on school district officers and providing a penalty for violation thereof.
S. B. 154, p. 373, Mar. 16, 1909.
- D. 294 **Kansas (1909):** As all the legislative power the people have is vested in the legislature, that body has the same power to direct or control the permanent school fund commission that it has in regard to any other office or commission.—*State v. City of Lawrence*, 100 P., 485.
- D. 295 **Kansas (1909):** As const., art. 6, sec. 3, expressly provides for the investment of the permanent school fund, the provision that it shall not be diminished, but that the interest shall be inviolably appropriated to the common schools, obviously does not contemplate that the fund shall never be diminished by losses or investments made in good faith, and, since losses from investments are bound to occur, there must be some power to authorize a compromise of doubtful claims, and that power rests with the legislature.—*State v. City of Lawrence*, 100 P., 485.
- 296 **Minnesota:** Amending sec. 790, Revised Laws, 1905, relative to special tax levy for the payment of municipal indebtedness to the state school fund.
Chap. 94, Mar. 24, 1909.
- 297 **Missouri:** Appropriating money for the payment of interest on the certificates of indebtedness issued and held in trust for the state school and seminary funds during the years 1909 and 1910.
P. 48, May 11, 1909.
- 298 **Montana:** Amending secs. 786, 2196, and 2197, Revised Code, 1907, concerning the investment of the funds of the state normal school, permanent university funds, permanent agricultural college, and permanent school funds.
Chap. 76, Mar. 4, 1909.
- 299 **Montana:** Providing for the deposit and disbursement of money received from the investment of the permanent funds of the state educational institutions and from the leasing of lands granted by the Federal Government to such institutions, to be known and designated as the "interest and income funds" of each of such institutions; reducing the appropriations from the general fund; providing for reports by said educational institutions of all moneys received from appropriations made to them under the laws of the United States.
Chap. 120, Mar. 8, 1909.
- 300 **Nebraska:** Repealing, and re-enacting with amendments, sec. 2, chap. 80, Compiled Statutes, 1907, relative to investment of school funds.
Chap. 129, Mar. 30, 1909.
- 301 **North Dakota:** Amending sec. 155, chap. 4, Political Codes, 1905, providing for the investment of the permanent school fund.
Chap. 106, Feb. 26, 1909.
- 302 **West Virginia:** Amending serial sec. 1701, Code, 1906 (sec. 86, chap. 45), relating to the investment of the endowment fund of the university.
Chap. 22, Feb. 27, 1909.
- 303 **Texas:** Amending secs. 2, 3, 4, 5, and 6, chap. 124, Acts, 1905, relative to the investment of the permanent school fund.
Providing for purchase by the board of education of bonds of the United States, the State, the bonds of counties, of independent school districts, and of common school districts, the bonds of any incorporated city or town; the bonds of road precincts of any county and of any drainage, irrigation, navigation, and levee district of any county or counties of the State.
Chap. 110, p. 216, Mar. 24, 1909.

304 **Wisconsin:** Amending sundry sections of the statutes, repealing sundry sections, and creating new sections relating to fish and game.

One-third of fines for violations to go to school fund (sec. 4567m).
Chap. 525, June 17, 1909.

(d) State Taxation for School Purposes.

Each of the items brought together within this group are significant of a nation-wide tendency of utilizing the State as the chief taxing unit for educational purposes. Maine (305) doubled the state tax for common schools, Oregon (307) passed a county school fund law containing several progressive provisions, and Tennessee (308) established a general educational fund, the governing provisions of which are regarded of sufficient importance to warrant presentation in full.

305 * **Maine:** Relating to the common school fund and the means of providing for and distributing the same.

(Additional tax. Increase from one and one-half to three mills. See Chap. 111, Laws, 1907.)

"Sec. 1. A tax of one and one-half mills on a dollar shall annually be assessed upon all of the property in the state according to the valuation thereof and shall be known as the tax for the support of the common schools.

"Sec. 2. This tax shall be assessed and collected in the same manner as other state taxes and shall be paid into the state treasury and designated as the common school fund.

"Sec. 3. One-third of this fund shall be distributed by the treasurer of the state on the first day of January, annually, to the several cities, towns and plantations according to the number of scholars therein, as the same shall appear from the official returns made to the state superintendent of public schools for the preceding year and the remaining two-thirds of said fund shall be distributed by the treasurer of state on the first day of January, annually, to the several cities, towns and plantations according to the valuation thereof as the same shall be fixed by the state assessors, for the preceding year."

SEC. 4. * * *

SEC. 5. * * *

SEC. 6. * * *

SEC. 7. * * *

(Provisions of act not to affect secs. 124, 125, 126, and 127, chap. 15, Revised Statutes, or sec. 2, chap. 111, Laws, 1907.)

Chap. 177, Mar. 31, 1909.

306 **Missouri:** Submitting amendment to sec. 11, art. 10, constitution, relating to revenue and taxation.

Increasing limit of minimum tax rate for school purposes.

Con. Res. No. 10, p. 911, 1909.

307 * **Oregon:** Providing for the raising of school funds in the several counties and school districts in the State and for the distribution of the same; amending sec. 3371, Bellinger and Cotton's Annotated Codes, as amended by chap. 96, Laws, 1907; and amending sec. 3374, Bellinger and Cotton's Annotated Codes, as amended by chap. 99, Laws, 1907, relative to county courts levying taxes for school purposes.

"Sec. 1. That Section 3374 of Bellinger and Cotton's Annotated Codes and Statutes of Oregon as amended by Chapter 99, General Laws of Oregon, 1907, is hereby amended to read as follows: For the purpose of creating a county school fund, the county courts of the several counties of this State are hereby required to levy, at the same time they levy other taxes, a tax for school purposes upon

all the taxable property of the county, which aggregate an amount which shall produce at least \$7.00 per capita for each and all the children within the county between the ages of four and twenty, as shown by the then preceding school census, which shall be collected at the same time, in the same manner, and by the same officers, as other taxes shall be collected; *provided*, that the per capita amount so levied in any county shall not be less than the per capita amount of the school tax levied in the county for the year 1903.

"Sec. 2. In case a district does not levy a special tax of at least five mills on the dollar for maintenance for the ensuing year or that will produce an amount sufficient to give the district for such maintenance the difference between three hundred dollars and the amount received from the county school fund as provided for in Section 1 of this act, or fails to report the same to the county clerk and county school superintendent as required in Section 4 of this act, it shall be the duty of the county court of the county in which said district is located to levy, at the same time it levies other taxes, a tax on all the taxable property of said district that will produce an amount sufficient to give to the district for maintenance for the ensuing year the difference between three hundred dollars and the amount received, or to be received by said district for the ensuing year, from the county school fund as provided for in Section 1 of this act; *provided*, that such levy by the county court shall not exceed five mills on the dollar.

"Sec. 3. In case the amount apportioned to any school district from the county school fund, provided for in Section 1 of this act, and the special district school tax provided for in Section 2 of this act, do not amount in the aggregate to the sum of three hundred dollars, the county court of the county in which such district is located shall on the first Monday in October of each year transfer from the general fund of the county to the special school tax fund of such district such an amount as may be necessary to make said sum of three hundred dollars. The county court shall include in its annual tax levy for county purposes a sufficient amount to meet the requirements of this section.

"Sec. 4. It is hereby made the duty of all school clerks to report to their respective county clerks and also to their respective county superintendents on or before December 10 of each year the amount of tax levied by their respective districts for maintenance; and, also, the amount of tax levy made by their districts for other purposes; and it is hereby made the duty of the county clerk to enter such levies on their tax rolls.

"Sec. 5. The county superintendent shall on the third Monday in December of each year make the estimates to meet the requirements of Section 2 of this act and report the same to the county court; and he shall also, on the third Monday in December of each year, make the estimates to meet the requirements of Section 3 of this act and report the same to the county court.

"Sec. 6. In the case of a joint district, the amount of tax to be levied as required by Section 2 of this act, and the amount to be transferred as required by Section 3 of this act, shall be in such ratio to the whole amount to be levied or transferred for such district as the assessed valuation of such district lying within the county bears to the assessed valuation of the whole district.

"Sec. 7. That Section 3371 of Bellinger and Cotton's Annotated Codes and Statutes of Oregon as amended by Chapter 96 of the General Laws of Oregon, 1907, is hereby amended to read as follows: Districts shall not be entitled to their proportion of the county school fund at the disposal of the county superintendent, unless they shall report to him within fifteen days after the annual school meeting, and shall have had a school taught in their district at least six months in each school year; *provided*, that a new district shall not be required to have a school taught, as aforesaid, for the space of one year from the date of its organization.

"The provisions of this section shall first apply to the school year beginning June 20, 1909, and ending June 17, 1910."

Sec. 8. * * *

Chap. 128, Feb. 23, 1909.

308 Tennessee: Relating to the improvement, unification and extension of the systems of public education of the State; creating a general education fund, and providing for its apportionment and distribution.

"SECTION 1. * * *. That for the purpose of improving, unifying, and extending the systems of Public Education of the State of Tennessee, for the purpose of giving more adequate support to public schools of all grades, and for the purpose of extending the benefits of the school system more equally to all the sections, counties, and districts of the State, a General Education Fund shall be, and the same is hereby, created, and for the year one thousand nine hundred and nine and annually thereafter twenty-five per cent of the gross

revenue of the State shall be paid into this General Education Fund, to be apportioned as hereinafter provided; and the Comptroller of the Treasury shall pass, and he is hereby directed to pass, on the first day of January and the first day of July of each and every year, to the credit of said General Education Fund, the amount due thereto according to the provisions of this Act, and to distribute the same as hereinafter provided.

"Sec. 2. *Be it further enacted*, That sixty-one per cent of the General Education Fund provided by this Act shall be apportioned to the several counties of the State according to scholastic population, as the interest on the permanent school fund is apportioned and for the same purposes.

"Sec. 3. *Be it further enacted*, That ten per cent of the General Education Fund provided by this Act shall be, and the same is hereby, set aside as a special fund to be used and expended for the purpose of more nearly equalizing the common schools in the several counties of the State, the same to be apportioned among the several counties of the State by the State Board of Education in accordance with the provisions hereinafter set forth.

"*Provided*, that before any county shall be eligible to receive any portion of this ten per cent of the General Education Fund provided by this Act, it shall levy for public schools, including the school taxes levied by the State, and excluding taxes for public high schools, a tax of not less than forty cents on each hundred dollars of taxable property, a tax of two dollars on each taxable poll, and all the privilege taxes which the laws of the State permit counties to levy for school purposes; and, *provided, further*, that this special fund of ten per cent of the General Education Fund provided by this Act shall be apportioned among the counties of the State that comply with the provisions of this section of this Act in proportion to their scholastic population and in inverse ratio of the taxable property of the several counties to scholastic population, and to be distributed as other school funds coming into the Trustee's hands are distributed; *provided, further*, that before any apportionment of this ten per cent is made, there shall, for the year 1911 and annually thereafter, first be deducted from it such an amount as may be necessary to pay a portion of the salaries of County Superintendents of Public Instruction, as provided in Section 4 of this Act.

"Sec. 4. *Be it further enacted*, That for the year one thousand nine hundred and eleven and annually thereafter, before appropriating the ten per cent of the General Education Fund provided in Section 3 of this Act, the sum of thirty-three thousand six hundred dollars (\$33,600) of the ten per cent mentioned in Section 3 of this Act, or so much thereof as may be required by the provisions of this section, shall be set aside to assist the several counties of the State to pay more adequate salaries to the County Superintendents, and that there may be more competent supervision of the public schools. Each county in the State shall receive from this fund, to be paid on the salary of the County Superintendent, an amount equal to that which is paid by the county; *provided*, that no county shall receive from this fund for this purpose more than \$350 in any one year; *provided, further*, that any County Superintendent receiving the maximum amount (\$350) from this fund as herein provided shall devote all his time to the duties of the office for a period not less than nine months in the year, and he may be required to devote thereto all his time for the entire year.

"*Provided, further*, that not more than half the amount apportioned to any county under the provisions of this section of this Act shall be paid to said county until all reports required of the County Superintendent and other county school officers have been made accurately and satisfactorily, and until all other duties required of the County Superintendent by law have been faithfully performed.

"All funds apportioned to any county under the provisions of this section of this Act shall be paid by the Comptroller on the certificate of the State Superintendent of Public Instruction and as other school funds are paid.

"Sec. 5. *Be it further enacted*, That eight per cent of the General Education Fund provided by this Act shall be used as a high-school fund, to encourage and assist the counties of the State to establish and maintain public county high schools as hereinafter provided.

"It shall be the duty of the State Board of Education to grade all high schools now established and maintained or that in the future may be established and maintained under the provisions of the county high-school law; to prescribe their minimum courses of study, requiring the elements of agriculture and home economics to be taught in all schools; and to classify them as high schools of the first, second, and third class.

"Under such regulations as may be prescribed by the State Board of Education, all qualified public county high schools may receive assistance from the fund provided by this Act and this section of this Act in proportion to the amount of money received by the several schools from other sources and expended annually for the payment of teachers' salaries and incidentals, not including permanent improvements of grounds or buildings; *provided*, that no county may receive in any one year more than one-fiftieth part of the total fund provided by this section of this Act for that year, and that no one school shall receive from this fund more than one-third the amount received from other sources and expended in that year for its maintenance, not including any amount expended for permanent improvements.

"All applications for assistance under the provisions of this section of this Act shall be made in such way as may be prescribed by the State Board of Education, and all payments shall be made on the certificate of the President and Secretary of said Board.

"All teachers in the public county high schools receiving aid from this high-school fund under the provisions of this section of this Act shall be examined and licensed under regulations prescribed by the State Board of Education, and said Board is hereby empowered and instructed to make rules and regulations for the examination and licensing of such teachers. The State Board of Education shall have the power, and the same is hereby authorized, to employ an Inspector of High Schools, at such annual salary as it may determine, his salary and traveling expenses, when engaged in the work of high-school inspection or the performance of other related duties assigned him by the State Board of Education, to be paid out of the high school fund herein provided. Said High School Inspector shall have his office in the office of the State Superintendent of Public Instruction, and shall give his time to the inspection of high schools in the State and such other related duties as may be assigned him by the State Board of Education, and shall make reports of his work and of the conditions of the high schools of the State as required and directed by said Board.

"Any portion of the high-school fund of any year provided by this Act and this section of this Act that cannot be apportioned to the public high schools of the State without exceeding the ratio to income of such schools as provided in this section of this Act shall revert to the school fund provided in Section 2 of this Act and be apportioned as therein provided.

"Sec. 6. *Be it further enacted*, That one per cent of the General Education Fund provided by this Act shall be used to encourage and assist in the establishment and maintenance of libraries in the public schools as herein provided.

"Whenever the patrons and friends of any public school in any county of the State shall raise by private subscription or otherwise and tender to the County Trustee, through the County Superintendent of Public Instruction, the sum of twenty dollars (\$20) or more for the establishment and maintenance of a library for that school, said County Superintendent shall notify the State Superintendent of Public Instruction, and, upon the certificate of the State Superintendent of Public Instruction, the Comptroller of the Treasury shall pay to the Trustee of said county, out of the fund herein provided, a sum equal to half that raised by private subscription or otherwise, to be added to the library fund of said school; and whenever ten dollars (\$10) or more shall be raised by private subscription or otherwise to supplement a library already established under the provisions of this section of this Act, said library may in like manner receive from the fund herein provided a sum equal to half the sum so raised.

"*Provided*, that no school shall receive in any one year from this fund more than twenty dollars (\$20) for the establishment of a new library, or more than ten dollars (\$10) to assist in supplementing a library already established.

"*Provided, further*, that in distributing the funds under the provisions of this section of this Act preference shall be given to applications coming from counties which have not previously received their proportionate part of this fund according to scholastic population.

"And, *provided, further*, that preference shall be given to applications for assistance to establish new libraries rather than applications to assist in supplementing libraries already established.

"It shall be the duty of the State Board of Education to make and cause to be published through the office of the State Superintendent of Public Instruction rules and regulations for libraries established under the provisions of this section of this Act lists of books from which purchases for

said libraries may be made with money received from the State as herein provided, and arrange for the purchase of such books at the lowest possible prices. All libraries receiving assistance from this fund shall comply with all the regulations made by the State Board of Education, as herein provided. All money received from the State to assist in establishing or supplementing a library under the provisions of this section shall be used to purchase books on the approved lists aforesaid, and no books shall be purchased at a higher price than the price in said approved lists. All purchases of books shall be reported to the County Superintendent, and a list of the same shall be attached to the warrant issued in payment of the same; and no commission shall be allowed the County Trustee on library funds.

"One-fifth of the amount accruing annually for school libraries under the provisions of this Act may be used for the purchase and maintenance of circulating libraries for the public schools of the State under the joint direction of the State Library and the Department of Public Instruction.

"Sec. 7. *Be it further enacted*, That thirteen per cent of the General Education Fund provided by this Act may be used for the establishment and maintenance of Normal schools solely for the education and professional training of teachers for the elementary schools of the State, as herein provided. One Normal school for the education and professional training of white teachers shall be established and maintained in each Grand Division of the State, and shall be open and free alike to white males and females resident in the State of Tennessee; and one Agricultural and Industrial Normal School for the industrial education of negroes and for preparing negro teachers for the common schools shall be established and maintained, and shall be open and free alike to negro males and females resident in the State of Tennessee; but no person shall be admitted to either of these schools who is under sixteen years of age and who has not finished at least the elementary school course prescribed for the public schools of the State; nor shall any person be admitted to either of the Normal schools for white teachers who does not first sign a pledge to teach in the public or private schools of the State of Tennessee, within the next six years after leaving the school, at least as long as he or she has attended said school.

"Each school established and maintained under the provisions of this section of this Act shall have connected with it one or more practice and observation schools, in which shall be taught at least all the subjects prescribed for the primary schools of the State; and the County Boards of Education of any county, or the District Directors of any school district, or the Board of Education of any incorporated city or town having a special school system under the provisions of its charter may, and the same is hereby empowered to, contract with the State Board of Education to provide for the teaching of children of public-school age in such practice and observation schools, and to pay to the said Normal school all or any portion of the public-school fund belonging to such county, district, or incorporated city or town, as agreed upon by the school authorities of said county, school district, or incorporated city or town, and the State Board of Education, as in the case of consolidated schools under the provisions of the State school law.

"The principals and instructors in the Normal schools for the education and training of white teachers may be required to assist in conducting Teachers' Institutes in any of the counties of the Grand Division of the State in which said school is located.

"*Provided*, that no principal or instructor may be thus required to assist in institutes more than six weeks in any one year.

"*Provided, further*, that no more than two members of the faculty of any Normal school may be required to be absent from the school for this purpose at the same time.

"And, *provided, further*, that all such service shall be performed without additional pay, except that necessary traveling expenses and hotel bills while engaged in this service shall be paid out of the funds of the Normal school.

"A certificate of graduation from any one of the said Normal schools shall entitle the holder thereof to teach in any of the public schools of the State without further examination for a period of four years from the date of such certificate. Any such graduate who completes within the said period of four years such additional courses of reading and study as may be prescribed by the State Board of Education and shall pass the required examinations in the same and has proven his ability as a teacher by teaching acceptably not less than fifteen months within this period may, upon application, be granted a permanent license to teach in any of the public elementary schools of the State.

"The course of study and the rules and regulations shall be the same for all the said Normal schools, with such minor modifications for any school as may be required by local conditions; *provided*, that such courses of study shall include instruction in ordinary English branches, in vocal music, drawing, domestic science, manual training; elements of chemistry, physics, and biology; the elementary principles of agriculture, horticulture, and home economics; and in the history, principles, and methods of education; and, *provided, further*, that the courses of study for the Agricultural and Industrial Normal School for negroes shall be of such practical nature as to fit the conditions and needs of their race.

"The general management and control of all Normal schools established and maintained under the provisions of this section of this Act shall be vested in the State Board of Education; and the said State Board of Education shall have power to employ a bookkeeper, whose duty it shall be to keep the accounts of the Normal-school funds as directed by the Board, and the salary shall be fixed by the Board and paid out of the Normal-school fund herein provided before its apportionment to the several schools and on the warrant of the Comptroller.

"All schools established under the provisions of this section of this Act shall be located by the State Board of Education; and in making such locations, said Board shall take into consideration accessibility; centralness of position, healthfulness of location, cheapness of living, opportunities for arranging for suitable practice and observation schools, and the value and usefulness of offers of donations of grounds, buildings, money, etc.

"In addition to any accepted donations of land, money, or buildings, the income from the fund provided by this Act and this section of this Act for the years one thousand nine hundred and nine and one thousand nine hundred and ten or any portion of the same may be used for buildings and equipment.

"One-seventh of all the funds derived in any year from the provisions of this Act and this section of this Act shall be apportioned to the Agricultural and Industrial Normal School established for the education and training of negroes, and the remaining six-sevenths shall be apportioned equally among the schools established and maintained for the education and training of white teachers in the three Grand Divisions of the State; but all moneys received by any one of the Normal schools established and maintained under the provisions of this Act from any other source than from the fund herein provided to be paid out of the gross revenue of the State shall, under the direction of the State Board of Education, be accounted for and paid into the treasury of the State, to be placed to the credit of said school.

"It shall be the duty of the Governor of the State to call a meeting of the State Board of Education within sixty days after the passage of this Act for the purpose of taking such steps as may be necessary to carry out the provisions of this section of this Act, looking to the location and establishment of these schools, and to the opening of the same at the earliest date practicable.

"All disbursements of money under the provisions of this Section of this Act shall be made on the certificate of the President and Secretary of the State Board of Education, by the Comptroller of the Treasury, in the manner prescribed by law for the disbursement of money to charitable institutions.

"*Sec. 8. Be it further enacted*, That for the year one thousand nine hundred and nine and annually thereafter seven per cent of the General Education Fund provided by this Act shall be, and the same is hereby, appropriated to the University of Tennessee, to be used for the maintenance and improvement of the same, as the head of the public-school system of the State, as the General Assembly of the State may from time to time direct by resolution or enactment, or as the Board of Trustees of said University may elect.

"*Provided*, that ten per cent, but not less than ten thousand dollars (\$10,000) annually, of the amount herein apportioned to the University of Tennessee shall be used for the maintenance of the Agricultural and Horticultural Experiment Station and Model Farm, located in West Tennessee, and five per cent, but not less than five thousand dollars annually, for the maintenance of cooperative agricultural experiments in Middle Tennessee.

"*Provided, further*, that an amount not exceeding five per cent of the sum apportioned annually to the University may be used to pay the traveling expenses of young men and women of Tennessee attending the University, under such rules and regulations as the Board of Trustees of said University may adopt, but the traveling expenses of no student shall be paid who does not remain through the entire school year, nor shall the expenses of any student be paid more than once each way in any year.

"Provided, further, that tuition in the academic, engineering, agricultural, and educational departments of the University shall be free to all qualified white students who are citizens of the State of Tennessee, or whose parents or guardians are citizens of the State of Tennessee; but nothing in this section of this Act shall be construed in such way as to affect or modify the existing laws in regard to State scholarship students of African descent in the Industrial Department of said University.

"SEC. 9. *Be it further enacted*, That all schools receiving assistance under the provisions of this Act shall be recognized as essential parts of the system of Public Education of the State of Tennessee, and annually, on or before the first day of August, the proper authorities of each shall submit to the State Superintendent of Public Instruction a report in regard to the work, development, and progress of the school during the year ending with the thirtieth day of June next preceding, and a clear and itemized statement of all receipts and expenditures for the same period.

"SEC. 10. *Be it further enacted*, That Chapter 537 of the Acts of 1907 and all laws and all parts of laws in conflict with this Act shall be, and the same are hereby, repealed."

SEC. 11. * * *

Chap. 264, Apr. 27, 1909.

- D. 309 Texas (1909): Const., art. 7, sec. 3, provides for an annual state tax of such an amount, not to exceed 20 cents on the \$100 valuation, as, with other available school funds, will be sufficient to support the public free schools for not less than six months in each year, and that the legislature may provide for the formation of school districts in counties and may authorize an additional annual ad-valorem tax within such districts for school purposes, upon vote of the taxpayers, not to exceed in any one year 20 cents on the \$100 valuation, but that the limitation upon the amount of district tax shall not apply to incorporated cities or towns constituting separate and independent school districts. *Held*, that an independent school district incorporated for school purposes only, and embracing an incorporated town and rural territory, is not an "incorporated city or town" within the constitution, and hence not exempted from the restriction as to taxation therein, and, where it had previously voted a tax to the full amount permitted by the constitution, it had exhausted its power to tax for school purposes and an election held to determine whether an additional school tax should be levied was void.—*Jenkins v. De Witt*, 115 S. W., 610.

(e) General Apportionment of State School Funds; Special State Aid for Elementary Education.

The distinction between the enactments classified under this heading and those placed under "State Taxation" is more or less formal. The ultimate purpose of the measures in each case is to equalize, on the basis of need, the benefits of public education, and to distribute more evenly, on the basis of ability to pay, the responsibility for its support. From one point of view, the measures relating to special state aid for elementary education—Connecticut (313), Maine (319), Minnesota (320), Nebraska (321), New Hampshire (323), North Carolina (328), South Carolina (333), Tennessee (335), Utah (337), and West Virginia (341)—may be given high rating as factors for increasing the efficiency of common school education, for at the bottom the problem of the common school, especially of the common school in non-urban districts, is one of finance; and any principle of public finance, or any device of taxation that increases and distributes equitably the revenues for the support and develop-

ment of elementary and secondary schools may be estimated as of worth in the welfare of every State.

- 311 **California:** Adding sec. 1622a, Political Code, 1906, relative to apportionment of school funds.

Special provisions to meet deficiencies, for payment of salaries and other expenses.

Chap. 404, Mar. 24, 1909.

- 312 **Connecticut:** See enactment No. 120.

- 313 **Connecticut:** Repealing chap. 102, Public Acts, 1903, and chap. 216, Public Acts, 1907, relative to support of schools.

Towns having assessed valuation of not more than \$1,750,000 to receive state aid sufficient to enable the expenditure of \$25 for each child in average daily attendance (formerly, 1903, towns having valuation less than \$500,000; 1907, less than \$1,000,000). State aid conditioned upon the levying of graduated minimum tax. Aid to be expended for teachers' salaries only.

Chap. 242, Aug. 24, 1909.

- 314 **Delaware:** Amending sec. 7, chap. 219, Laws, 1899, relative to the provision of graded school facilities for the children of the State.

Applying to the city of Wilmington provisions of act relative to the payment by the State of tuition of children attending schools from outside of district.

Chap. 85, Apr. 19, 1909.

- 315 **Delaware:** Amending secs. 5 and 6, chap. 219, Laws, 1899, relative to the provision of graded school facilities for the children of the state.

Increasing the amount of tuition paid by the State for nonresident pupils from \$15 per year, or proportional part of \$15, based on attendance, to 20 cents for each day's attendance.

Sec. 2, chap. 86, Feb. 25, 1909.

- D. 316 **Florida (1909):** Const., 1885, art. 12, sec. 7, provides for the apportionment of the state school funds, and contemplates only an apportionment and distribution on the basis of counties as units, and not on the basis of particular schools as such units; and Laws, 1905, p. 32, chap. 5381, sec. 1, making certain schools with an average attendance of 80 per cent beneficiaries of the act, is unconstitutional.—Board of Public Instruction for Santa Rosa County v. Croom, 48 So., 641.

- 317 **Maine:** Amending sec. 16, chap. 15, Revised Statutes, 1903, relative to withholding of school funds from delinquent towns.

Defining more accurately conditions for withholding state school funds from delinquent towns.

Chap. 59, Mar. 11, 1909.

- 318 **Maine:** Amending sec. 42, Revised Statutes, 1903, as amended by chap. 101, Laws, 1907, relating to state aid for town school supervision.

Special provisions concerning state aid to supervisory districts containing more than 50 schools.

Chap. 120, Mar. 24, 1909.

- 319 * **Maine:** Relating to the equalization of school privileges.

"Sec. 1. The treasurer of state shall immediately after the first day of July, nineteen hundred and ten, and annually thereafter deduct the sum of twenty thousand dollars from the state school funds and the same shall be set aside and denominated the school equalization fund which shall be distributed in the manner hereinafter provided.

"Sec. 2. Every town which raises for the support of common schools four mills or more on its valuation as fixed by the state assessors shall receive the following year from the school equalization fund herein provided a sum equal to ten per cent of its apportionment of the state school funds for the preceding year. Such portion of the school equalization fund as any town may be en-

titled to receive shall be paid by the treasurer of state at the same time and in the same manner prescribed for the payment of state school funds. The state superintendent of public schools shall annually, on or before July first, file with the treasurer of state a list of towns entitled to receive the benefits of this act. The first appointment under the provision of this act shall be made immediately after the first day of July, nineteen hundred and ten.

"Sec. 3. All of the school equalization fund not distributed nor expended during the financial year shall at its close be added to the permanent school fund."

Chap. 198, Apr. 1, 1909.

- 320 *Minnesota: Amending secs. 1417, 1421, 1423, Revised Laws, 1905, relative to state aid of public schools.

Increasing annual maximum state aid as follows: High schools, \$1,500 to \$1,750; graded schools, \$550 to \$600; semigraded schools, \$250 to \$300; common schools, \$125 to \$150 (for schools in charge of a teacher holding a first-grade state certificate; \$100 for schools in charge of a teacher holding a second-grade state certificate).

Chap. 334, Apr. 21, 1909.

- 321 *Nebraska: Repealing, and reenacting with amendments, secs. 11549, 11550, and 11551, Cobbe's Annotated Statutes, 1907, relative to state aid to schools in weak districts.

Providing a method for the determination of the amount due each district by the county superintendent. Reducing stipulated school session from seven to five months. Omitting provision relative to minimum salary (\$30) of teachers.

"Sec. 4. To determine the amount to be apportioned to each district, the county superintendent shall find the estimated expenditures of the district for the current year and subtract therefrom the estimated income of that district from all sources for the same year. The estimated income for the current year shall be the sum of all moneys belonging to the district on hand in the district and county treasuries, plus twenty-five mills times the assessed value, plus the estimated apportionment of state school funds. If said district will not receive any apportionment of money from the state school fund, then said apportionment shall not be considered in estimating the income for the current year. The estimated expenditures for the current year shall not be the amount necessary to maintain school five months; said estimate not to exceed two hundred and seventy-five dollars (\$275.00)."

Chap. 119, Mar. 29, 1909.

- 322 *Nevada: Providing an emergency school fund for new school districts, prescribing its use and manner of disbursement, and other matters properly connected therewith.

Establishing an annual emergency fund of \$3,000. Providing for distribution.
Chap. 20, Feb. 13, 1909.

- 323 *New Hampshire: Relating to the support and encouragement of the common schools.

"Sec. 1. No appropriation of money provided for in sections 2 to 3 inclusive of this act shall be held to apply to towns having an equalized valuation of more than \$7,000, per pupil of average attendance for the year preceding; or whose population by the last published federal census is more than 3,500; or whose schools have been maintained less than an average of thirty weeks for the school year next preceding; or whose tax rate for school purposes is less than \$4.50 on one thousand dollars of equalized valuation; provided, however, that the last two clauses shall not be in force until July 15, 1911.

"Sec. 2. There shall annually in the month of December be apportioned to all towns not excluded by the terms of section 1 and as hereafter provided state money as follows:

"I. To all towns having an equalized valuation per pupil of average attendance of less than \$2,000, the sum of \$1.75 per school week for every twenty-five pupils or major part thereof of average attendance for the year next preceding.

"II. To all towns having an equalized valuation per pupil, of \$2,000 or more and less than \$3,000, \$1.50.

"III. To all towns having an equalized valuation per pupil of \$3,000 or more and less than \$4,000, \$1.25.

"IV. To all towns having an equalized valuation per pupil of \$4,000 or more and less than \$5,000, \$1.00.

"V. To all towns having an equalized valuation of \$5,000 or more and less than \$7,000, per pupil, \$0.75.

"Sec. 3. When any district shall employ graduates of a New Hampshire normal school, or of any normal school in another state of equivalent grade, or persons holding a permanent New Hampshire state teacher's certificate, it shall receive a further sum of \$2 per week for every teacher so employed.

"Sec. 4. There shall annually be reserved and set aside from the appropriation provided for by this act such sums as shall be needed for carrying out the provisions of chapter 77, session Laws of 1899, relating to district supervision, and of chapter 96, session Laws of 1901, relating to high school tuition.

"Sec. 5. The sum of \$80,000 annually is hereby appropriated to carry into effect the provisions of this act, and any portion of such appropriation as shall remain unexpended in any year shall remain in the state treasury for use in subsequent years, and if in any year the above appropriation and accumulated surplus shall prove insufficient, then towns having the highest equalized valuation per pupil shall be omitted in order from the distribution provided for in sections 2 and 3.

"Sec. 6. The sum appropriated by section 5 shall be in place of the annual appropriations of \$25,000, and \$8,000, provided by chapter 77, Laws of 1899, and chapter 96, Laws of 1901, and amendments thereto, respectively, and such appropriations shall be discontinued upon the passage of this act.

"Sec. 7. All money appropriated by this act, shall be expended under the supervision of the governor and council."

Sec. 8. * * *

Chap. 158, Apr. 9, 1909.

- 324 **New Jersey:** Making distribution of part of the income of the school fund in accordance with the provisions of sec. 176, Acts, 1903 (sp. sess.), relative to the establishment and maintenance of a thorough and efficient system of free public schools.

Chap. 64, Apr. 8, 1909.

- 325 **New Jersey:** Relating to the payment of certain expenses of the educational system.

Comptroller to deduct school fund before apportionment, amount appropriated for certain educational institutions and purposes.

Chap. 65, Apr. 8, 1909.

- 326 **New Jersey:** Amending sec. 87, Acts, 1903 (sp. sess.), relative to the appointment of supervising principals.

Supervising principals to be appointed under regulations prescribed by the state board of education. No apportionment of school moneys for supervising principal unless salary paid be at least \$1,000 per year.

Chap. 170, Apr. 19, 1909.

- 327 **New Mexico:** See enactment No. 254.

- 328 ***North Carolina:** Repealing secs. 4112, 4099, and 4100-4105, Revisal, 1905, relative to state aid and special taxes for schools.

Providing for the levying of a special tax and for a special state appropriation of \$100,000 for the maintenance of one or more public schools in every school district for a term of four months. Apportionment.

Chap. 508, Mar. 5, 1909.

- 329 **North Carolina:** Amending sec. 4097, Revisal, 1905, relative to appropriations for public schools.

Increasing annual appropriation from \$100,000 to \$125,000.

Chap. 779, Mar. 8, 1909.

- 330 **North Dakota:** Amending sec. 847, Revised Codes, 1905 (sec. 6, chap. 95, Laws, 1907), relating to state tuition fund.
 Modifying conditions for withholding the apportionment of tuition fund from school districts failing to make proper census reports. Granting to county superintendent permissive authority to withhold apportionment from districts failing to maintain school session of six months.
 Chap. 97, Mar. 15, 1909.
- 331 **Oregon:** Authorizing county school superintendents to make partial apportionments of school moneys.
 Chap. 108, Feb. 23, 1909.
- 332 **Oregon:** Amending sec. 5, chap. 116, Laws, 1907, relating to the time for county school superintendents to make apportionments of the school funds.
 Chap. 116, Feb. 23, 1909.
- 333 * **South Carolina:** Increasing the average length of the school term and improving the efficiency of the public schools.
 Appropriating \$20,000 to equalize school privileges.
 "SEC. 1. * * *
 "Provided, That no school shall receive aid hereunder until a fund shall have been raised by the district, by levy or otherwise, which will equal one-half the amount to be received from this fund: *Provided, further,* That no school whose proportion of the regular school fund is sufficient to keep such school in operation for one hundred or more school days during the scholastic year, shall receive any aid under the provisions of this Act: *Provided, further,* That the maximum amount distributed to any one school, under the provisions of this Act shall be one hundred dollars per annum."
 Act 105, Mar. 3, 1909.
- 334 **South Dakota:** Amending sec. 400, art. 2, chap. 6, Revised Political Code, 1903, relating to the apportionment and investment of the school and public land funds.
 Chap. 218, Mar. 5, 1909.
- 335 **Tennessee:** See enactment No. 308. A
- 336 **Texas:** Repealing secs. 13, 14, 16, 17, 18, 23, 32, and 33, chap. 124, Acts, 1905, relating to the method of apportioning, distributing, and accounting of the available school funds, and enacting substitutes.
 Chap. 17, p. 432, May 12, 1909.
- 337 * **Utah:** Amending sec. 1870x, Compiled Laws, 1907, relative to state aid for public schools where the revenues are insufficient.
 Appropriating \$8,000,
 Chap. 8, Feb. 20, 1909.
- 338 **Utah:** Amending sec. 1867, Compiled Laws, 1907, relative to apportionment and use of school funds.
 Chap. 25, Mar. 5, 1909.
- 339 * **Vermont:** Amending sec. 941, Public Statutes, 1906, relative to the apportionment of funds to towns forming unions for supervision.
 Additional apportionment of state funds (formerly \$1,000 when superintendent's salary was not less than \$1,250) equal to one-half the amount of superintendent's salary above \$1,200 and not exceeding \$1,800. Maximum additional apportionment, \$300.
 Sec. 2, Act 36, Dec. 16, 1908. (July 1, 1909.)

- 340 Vermont: Amending secs. 1095, 1096, 1098, and repealing sec. 1099, Public Statutes, 1906, relative to state aid.

The state board of education (formerly state treasurer) to make apportionment; reserve fund of \$45,000 to be apportioned among towns expending at least 50 cents on the dollar on the grand list for school purposes. Other minor amendments.

Act 47, Jan. 28, 1909. (Apr. 1, 1909.)

- 341 West Virginia: Amending sec. 21, chap. 27, Acts, 1908 (sp. sess.), relative to the levy and to supplementing of school funds of certain districts.

Increasing maximum annual state aid to weak school districts, from \$50,000 to \$75,000; providing annual aid of \$15,000 to building funds of certain districts levying maximum tax.

Chap. 90, Feb. 26, 1909.

- 342 Wisconsin: Amending secs. 560f, 560g, 560h, and 560l (chap. 600, Laws, 1907), and creating 560n, Statutes, relative to state aid for rural schools.

Chap. 154, May 18, 1909.

- 343 Wyoming: Amending secs. 1193-1194, Revised Statutes, 1899, relative to the apportionment of the county school fund by the county superintendent.

Providing for apportionment to high school districts.

SEC. 1193. * * *

"Provided further, That in counties where there may exist a County High School, the school money shall be apportioned in the following manner: After the apportionment of one hundred and fifty dollars to each district as above provided, all money of the County School Fund, to which the districts composing the High School District may be entitled, shall be apportioned between such High School District and the districts composing the same in proportion as the number of children in such district between the ages of seventeen and twenty-one bears to the whole number of children of school age, as shown by the last school census, and after such portion of the school fund shall have been apportioned to such High School District, as last above provided, the remainder thereof shall be apportioned among the districts embraced in said High School District in accordance with the rule hereinbefore established; * * *"

Chap. 154, Mar. 1, 1909.

(f) Special State Aid for Secondary Education.

[See also under Section O—Technical and Industrial Education.]

Adequate provision for elementary schools is rightly accounted of the first importance in the educational economy of the State. More and more, however, secondary or high schools are coming to be regarded as essential parts of a unified state system. The encouragement and assistance for the growth of these schools afforded directly by the State have been among the interesting educational phenomena of the last decade or two. In practically all the States in which notable progress in public education has been made, some form of special state aid for high schools has been established. The enactments classified under this head are indicative of no new tendency; on the contrary, they bear evidence of the continued special interest evinced by the States for the care of this particular portion of their educational systems. With but one or two evident exceptions, each one of the enactments of the following group is worthy of special mention. Any comparative estimate, however, would give special

attention to the legislative activities in the Southern States for the extension and betterment of the opportunities for secondary education.

344 **Idaho:** Amending sec. 605, Revised Code, 1909, regarding the apportionment of the school fund of the county.

Providing for the apportionment of 5 per cent of two-thirds of the school fund of the county among the rural high school districts and districts organized under the consolidated plan doing high school work; maximum annual apportionment \$300 for each teacher.

S. B. 158, p. 77, Mar. 11, 1909.

345 **Kansas:** See enactment No. 602.

346 **Maine:** Amending sec. 64, chap. 15, Revised Statutes, 1903, relating to the tuition of pupils in secondary schools.

Increasing state aid from one-half to two-thirds; increasing maximum amount paid to each town from \$250 to \$500.

Chap. 112, Mar. 19, 1909.

347 **Minnesota:** See enactment No. 320.

348 **Minnesota:** See enactment No. 783.

349 * **Minnesota:** Authorizing the state high school board to make special grants of aid to state graded schools doing two years of high school work.

Chap. 444, Apr. 22, 1909.

350 **New York:** See enactment No. 604.

351 **North Carolina:** See enactment No. 605.

352 **North Carolina:** Amending sec. 4097, Revisal, 1905, relative to state appropriation for public schools and its apportionment.

Authorizing payment therefrom of part of salary of superintendent of colored normal schools and director of county institutes.

Sec. 3, chap. 525, Mar. 5, 1909.

353 **Pennsylvania:** Permitting independent school districts to share in the distribution of appropriations for borough high schools.

Act 111, Apr. 23, 1909.

354 **Pennsylvania:** Relating to public and normal schools.

"Sec. 7. For the support of the public schools and normal schools of this Commonwealth, for the two fiscal years commencing on the first day of June, one thousand nine hundred and nine, the sum of fifteen million dollars (\$15,000,000). Provided, The city of Philadelphia shall be entitled to a proper portion of this appropriation, including, not only its pro rata as provided by existing laws regulating the distribution to the several counties, but also the sum of seventy-two thousand dollars, or so much thereof as may be necessary, for the education of teachers in the Philadelphia Normal School for Girls and the Philadelphia School of Pedagogy for Young Men, to be applied on the same conditions as those specified for the education of teachers in the State Normal Schools; and out of the amount received by the city of Philadelphia, there shall be paid the sum of three thousand dollars to the Teachers' Institute of said city; the sum of ten thousand dollars to the Philadelphia School of Design for Women, for their corporate purposes; and the sum of ten thousand dollars to the Teachers' Annuity and Aid Association of said city: And provided further, That out of the amount hereby appropriated, there shall be paid for the education of teachers in the State Normal Schools, the sum of six hundred thousand dollars, to be applied as follows: For each student over seventeen years of age, who shall sign an agreement binding said student to teach in the common schools of this State two full annual terms, there shall be paid the sum of one dollar and fifty cents a week, towards the payment of the expenses for tuition of said students; provided, that each student in a State Normal School drawing said allowance

from the state must receive regular instruction in the science and art of teaching, in a special class devoted to that object, for the whole time for which said allowance is drawn; which amount shall be paid upon the warrants of the Superintendent of Public Instruction: And provided further, That out of the said amount, hereby appropriated, there shall be set apart the sum of one hundred thousand dollars (\$100,000), to aid in paying the tuition of pupils who attend high schools outside of their own district; and the sum of four hundred and fifty thousand dollars (\$450,000), for the encouragement and support of Township and Borough High Schools, including joint high schools maintained by two or more townships, or by a borough and one or more townships; but no high school shall receive appropriation as a high school of the first grade, unless it has at least three teachers who devote their entire time to high school work during a term of nine months; and no high school shall receive appropriation as a high school of the second grade, unless it has two teachers who devote their entire time to high school work during a period of eight months; nor shall any high school receive appropriation unless it has a regular attendance of twelve pupils doing high school work: And provided further, That out of the said amount hereby appropriated there shall be set apart the sum of two hundred and thirty thousand dollars, to be expended on the warrants of the Superintendent of Public Instruction, for the payment of the salaries of the County Superintendents of Public Schools, two years. The remainder of the amount hereby appropriated shall be paid on warrants of the Superintendent of Public Instruction, drawn in favor of the several school districts of the Commonwealth, in amounts designated by the State Treasurer, and whenever he shall notify the Superintendent of Public Instruction, in writing, that there are sufficient funds in the State Treasury to pay the same."

Act 659, Sec. 7, p. 906-907, May 15, 1909.

- 355 * **Rhode Island:** Amending sec. 3, chap. 544, Laws, 1898, relating to a more uniform high standard in the public schools.

Increasing annual state aid to approved high schools from \$20 to \$25 for each pupil in average daily attendance, for the first 25 pupils; and from \$10 to \$15 for each pupil in average daily attendance, for the second 25 pupils.

Chap. 446, May 7, 1909. (July 1, 1909.)

- 356 * **South Carolina:** Amending sundry secs., act 245, Acts, 1907, as amended by act 515, Acts, 1908, relative to high schools.

Making extension of state aid dependent upon levy of 2-mill special school tax. Increasing total annual state aid from \$50,000 to \$80,000. Withdrawing state aid after July 1, 1911, from high schools not coming within the provisions of high school act of 1908.

Act 55, Mar. 3, 1909.

- 357 **Tennessee:** See enactment No. 308.

- 358 * **Utah:** Proposing an amendment to sec. 2, art. 10, constitution, as amended Jan. 1, 1907, relative to the public school system, and to sec. 3, art. 10, constitution, relative to the state school fund.

Relative to the support of high schools: "Provided, That all funds derived from any State tax for high schools shall be apportioned among the several cities and school districts according to the attendance at the high schools therein; but no city or district shall be entitled to any part of the fund derived from the State tax for high schools unless the high school therein is maintained upon the standard and for the period during the year that may be fixed by the State Board of Education."

H. Jt. Res. No. 14, Mar. 22, 1909. (Jan. 1, 1911.)

- 359 * **Vermont:** Providing state aid for manual training departments in high or grammar schools.

State aid, \$250; total annual maximum, \$5,000.

Act 40, Jan. 27, 1909.

360 **Wisconsin:** Amending sec. 491b, chap. 571, Laws, 1907, Statutes, relative to free high schools.

"SECTION 1. Section 491b of the statutes is amended to read: Section 491b.
 "1. * * * Provided that the amount so appropriated to any high school having a principal and one assistant shall not exceed nine hundred dollars, and the amount appropriated to any high school having a principal and two assistants shall not exceed twelve hundred dollars, and the amount so appropriated to any high school having a principal and three or more assistants shall not exceed fifteen hundred dollars."
 2. * * *
 3. * * *

Chap. 257, June 1, 1909. (July 1, 1909.)

C. LOCAL (COUNTY, DISTRICT, MUNICIPAL) FINANCE AND SUPPORT.

(a) General.

The contents of this group have no general significance, being concerned with minor administrative detail.

361 **Alabama:** Authorizing and empowering the commissioner's court, board of revenue, or other court or county officers of similar or like jurisdiction to donate or appropriate funds from the county treasury to aid in the construction or improvement of necessary buildings and the maintenance and support of those state schools known as county high schools established under the act of the legislature approved August 7, 1907.

Act 217, p. 259, Aug. 26, 1909 (sp. sess.).

D. 362 **Kentucky (1909):** School taxes received from the State by a graded common school district cannot be used to purchase a lot or erect or furnish a school building, but must be used solely for educational purposes.—*Crabbe v. Board of Trustees of Graded Common-School Dist. No. 24, Webster County, 116 S. W., 706.*

363 **Nevada:** Providing for the disposal of the funds and property of abolished school districts.

Chap. 59, Mar. 5, 1909.

364 **Nevada:** Providing for the transfer of county and township funds for the support of public schools.

Chap. 182, Mar. 24, 1909.

D. 365 **Pennsylvania (1909):** Const., art. 9, sec. 8, after fixing the ultimate debt limit of any school district at not to exceed 7 per cent of the assessed value of taxable property therein, provides that no district shall incur any debt, or increase of indebtedness, beyond 2 per cent of the assessed valuation of the property without the assent of the electors thereof at a public election. *Held*, that a school building contract at a price which, in addition to previous existing indebtedness, would create a total debt in excess of 2 per cent of the assessed valuation of the property of the district, though payable only from "funds legally available," entered into without the holding of an election, was illegal.—*McKinnon v. Mertz, 73 A., 1011; 25 Pa., 85.*

366 **Pennsylvania:** Relating to the settlements and audits of the accounts of all officers of boroughs, townships, poor districts, and school districts, and appeals therefrom to the common pleas and thence to the supreme and superior courts; providing penalty.

Act 221, May 3, 1909.

90 STATE SCHOOL SYSTEMS: LEGISLATION, ETC., 1908-9.

- 367 **South Carolina:** Requiring all school warrants to be approved by the county superintendent of education.
Act 79, Feb. 27, 1909.
- 368 **Vermont:** Relating to grammar school lands.
Providing that grammar school lands, the income of which is not already granted, shall go to school directors of town in which land is located.
Act #6, Jan. 22, 1909. (Feb. 1, 1909.)
- 369 **Wisconsin:** Amending sec. 16, chap. 459, Laws, 1907, relative to school boards and common and high schools in cities of the first class.
Relating to duties of school boards with respect to the school fund.
Chap. 369, June 10, 1909.

(b) Local (County, District, Municipal) Bonds and Indebtedness.

The educational legislation of each biennium now contains in great numbers new and modified measures calculated to meet, through bond issues, the constantly growing and expanding material needs of the public schools. For the school, it is always *more* and ever *more*. Wisely to safeguard to-day by skillfully borrowing from to-morrow has become one of the principles of a sound and farsighted financial policy.

- 370 **Alabama:** Authorizing cities and towns to convey real or personal property and to make appropriations of money from city funds and issue bonds to aid in the location and in the construction of high schools and high school buildings.
Act 94, p. 230, Aug. 26, 1909 (sp. sess.).
- 371 **Alabama:** Authorizing the holding of elections by municipal corporations for the purpose of obtaining authority to issue bonds for public purposes; providing for holding such elections, and authorizing the issue of bonds when a majority of the voters vote in favor of the issue of such bonds; regulating the issue, execution, sale, and security of such bonds.
Including schools.
Act 195, p. 188, Aug. 26, 1909 (sp. sess.).
- 372 **California:** Validating bonds heretofore voted and issued by joint union high school districts.
Chap. 225, Mar. 13, 1909.
- 373 **California:** Validating all bonds heretofore issued, or ordered to be issued by or on behalf of any school district, high school district, union high school district, or joint union high school district, where authority for such issuance has already been given by a vote of more than two-thirds of the electors of such district.
Chap. 230, Mar. 13, 1909.
- 374 **California:** Regulating the issue of bonds of school districts in cities of the fifth class, and school districts partly within and partly without such cities of the fifth class.
Chap. 321, Mar. 20, 1909.
- 375 **California:** Amending sec. 1880, Political Code, relative to elections for the issuance of school bonds.
Chap. 588, Apr. 14, 1909.

- 376 **Delaware:** Amending sec. 2, chap. 122, Laws, 1907, prescribing the method by which school districts may borrow money for the purpose of building and furnishing or improving and enlarging schoolhouses.
Chap. 89, Mar. 22, 1909.
- D. 377 **Georgia (1909):** Acts, 1907, p. 944, authorizing the establishment of a system of public schools in a town, and providing for the issuance of bonds for the building and equipping of schoolhouses, is not unconstitutional on the ground that Acts, 1905, p. 425, as amended by Acts, 1906, p. 61, makes provision by general law for the laying out of counties into school districts and the levying of school taxes, and that the act of 1907 is a local act as to a matter thereby covered.—*Farmer v. Town of Thomson*, 65 S. E., 180.
- 378 **Indiana:** Amending sec. 1, chap. 200, Acts, 1903, and sec. 4, chap. 224, Acts, 1907, relative to the issuance of school bonds by boards of school trustees of school cities.
Chap. 41, Mar. 1, 1909.
- 379 **Indiana:** Amending secs. 1, 2, and 3, chap. 107, Acts, 1907, relative to the issuance of bonds by school trustees in cities of the second class.
Chap. 50, Mar. 3, 1909.
- 380 **Indiana:** Amending sec. 1, chap. 263, Acts, 1907, relative to the issuance of bonds by boards of trustees of school cities for the purpose of funding or refunding indebtedness.
Chap. 67, Mar. 5, 1909.
- 381 **Indiana:** Amending sec. 1, chap. 285, Laws, 1907, relative to issuance of bonds by boards of school trustees in cities of the fourth class.
Chap. 119, Mar. 6, 1909.
- 382 **Iowa:** Repealing and reenacting sec. 2820a to 2820c, inclusive, supplement to the Code, 1907, relative to the limit of indebtedness of independent school districts.
Chap. 184, Apr. 6, 1909.
- 383 **Kansas:** Repealing sec. 479, General Statutes, 1901 (sec. 1, chap. 39, Laws, 1874), sec. 519, General Statutes, 1901 (chap. 113, Laws, 1893), sec. 6264, General Statutes, 1901 (sec. 4, chap. 196, Laws, 1891), sec. 6331, General Statutes, 1901 (chap. 132, Laws, 1883), chap. 42, Laws, 1903 (sp. sess.), chap. 126, Laws, 1903, chap. 398, Laws, 1905, and chap. 128, Laws, 1907, limiting the creation of indebtedness in counties, cities, school districts, by boards of education.
Chap. 62, Mar. 5, 1909.
- 384 **Kansas:** Enabling school districts to issue bonds to pay outstanding warrants.
Chap. 205, Mar. 5, 1909.
- 385 **Massachusetts:** Authorizing the city of Fall River to incur indebtedness beyond the limit fixed by law, for school purposes.
Chap. 179, Mar. 18, 1909.
- 386 **Michigan:** Exempting from taxation bonds hereafter issued by any county, township, city, village, or school district within the State.
Act 88, May 13, 1909.
- 387 **Minnesota:** Authorizing cities in the State now or hereafter having a population of more than 50,000 inhabitants to issue and sell bonds for the purposes of acquiring grounds for public-school purposes and constructing public graded-school buildings and additions to and repairs on public graded-school buildings.
Authorizing bond issue of \$1,000,000.
Chap. 156, Apr. 8, 1909.

- 388 **Minnesota:** Amending subsec. 4, sec. 784, Revised Laws, 1905, authorizing school districts to issue bonds for certain purposes.

Modifying provision so as to include building, rebuilding, remodeling, repairing, and furnishing schoolhouses, and installing heating, ventilating, and plumbing plants.

Chap. 261, Apr. 19, 1909.

- 389 **Minnesota:** Amending sec. 1, chap. 20, Laws, 1907, authorizing cities now or hereafter having a population of more than 50,000 inhabitants to issue and sell bonds in aid of the construction of public high school buildings, and for acquiring suitable sites and grounds therefor.

Increasing authorized bond issue from \$800,000 to \$1,000,000.

Chap. 360, Apr. 22, 1909.

- 390 ***Nebraska:** Repealing and reenacting with amendments sec. 11543, Cobbe's Annotated Statutes, 1907, relative to limit of tax for school building; providing for voting a tax to create a special fund for the purpose of erecting a school building.

Chap. 118, Mar. 29, 1909.

- 391 **Nevada:** Amending chap. 59, Laws, 1907, relative to the issuance of school bonds by school districts.

Chap. 19, Feb. 8, 1908.

- 392 **Nevada:** Enabling school districts to issue negotiable coupon bonds for the purpose of erecting, furnishing, equipping, and maintaining buildings for industrial training, manual training, domestic science, and agriculture, or for any one or all of these purposes, and providing for the payment of the principal indebtedness and the interest thereon, and other matters properly connected therewith.

Chap. 109, Mar. 16, 1909.

- 393 **Nevada:** Amending sec. 1, chap. 59, Laws, 1907, as amended by chap. 19, Laws, 1908 (sp. sess.), relative to the issuance of bonds by school districts.

Chap. 149, Mar. 22, 1909.

- 394 **New Hampshire:** Amending sec. 4, chap. 89, Public Statutes, 1901, relative to the borrowing of money by school districts.

Chap. 138, Apr. 9, 1909.

- 395 **New Jersey:** Supplementing Acts, 1903 (sp. sess.), providing for a system of free public schools.

Authorizing the issuance of bonds by school districts to pay principal and interest on indebtedness not provided for.

Chap. 87, Apr. 13, 1909.

- 396 **North Carolina:** Authorizing the county boards of education of Moore and Lee counties to execute to the state board of education renewal notes for moneys borrowed for the purpose of building public schoolhouses.

Chap. 627, Mar. 6, 1909.

- 397 **North Dakota:** Legalizing certain floating indebtednesses incurred by cities, villages, and school districts under certain circumstances, and bonds issued to fund the same.

Chap. 49, Mar. 11, 1909.

- D. 398 **North Dakota (1908):** Where a school district, at a regularly called and conducted election, votes to issue bonds and from the proceeds to build a schoolhouse, such vote is an instruction, and the district officers have no discretion as to obeying the same.—*Schouweiler v. Allen*, 117 N. W., 866.

- 399 **Oklahoma:** Repealing sundry sections, Statutes, 1893, and providing for the issuance of bonds by school districts for the purpose of erecting school buildings and purchasing sites.
H. B. 65, p. 551, Mar. 26, 1909.
- 400 **Oregon:** Authorizing school districts to refund indebtedness; amending sec. 1, p. 331, Laws, 1903, amending sec. 3395, Bellinger and Cotton's Annotated Codes and Statutes, relative to the sale of school bonds.
Chap. 21, Feb. 8, 1909.
- 401 **South Carolina:** Amending act 246, Acts, 1907, relative to the issuance of bonds by public school districts.
Act 57, Feb. 23, 1909.
- 402 **South Dakota:** Submitting to vote amendment to sec. 4, art. 13, constitution, relating to limit of indebtedness of counties, cities, towns, and school districts.
Chap. 139, —, 1909.
- 403 **Tennessee:** Authorizing incorporated boards of education of public schools in cities and taxing districts of 100,000 inhabitants or over to issue bonds for certain school purposes.
Applies to Memphis. For construction, and repairs to school property.
Chap. 238, Apr. 26, 1909.
- 404 **Tennessee:** Authorizing the city of Chattanooga to issue bonds to an amount not exceeding \$275,000 for the purpose of purchasing schoolhouse sites, erecting school buildings, etc., and for other purposes.
Chap. 332, Apr. 28, 1909.
- 405 **Texas:** Putting into effect the constitutional amendment adopted Nov., 1908, relating to public schools, by amending secs. 50, 57, 58, 59, 60, 61, 63, 65, 66, 76, 77, 78, 80, 81, and 154, and by adding 154a, chap. 124, Acts, 1905, relating to school districts and school funds.
Amending secs. 77, 78, 80, and 81, relating to the issuance of bonds for school purposes and the elections therefor.
Chap. 12, pp. 20-21, Feb. 18, 1909.
- 406 **Texas:** Proposing amendment, art. 7, constitution, by adding sec. 3a, validating school districts lying in two or more counties, and the bonded indebtedness thereof, and authorizing the levy and collection of taxes to pay such indebtedness.^a
Adopted, August, 1909.
H. Jt. Res. No. 5, p. 253, —, 1909.
- 407 **Utah:** Proposing an amendment to sec. 4, art. 14, constitution, relative to limit of indebtedness of counties, cities, towns, and school districts.
Permitting cities of the third class and towns to incur indebtedness not to exceed eight per cent additional to that specified.
H. Jt. Res. No. 6, p. 349, Mar. 10, 1909.
- 408 **Vermont:** Authorizing counties, towns, cities, villages, school districts, or fire districts to convert their bonds, promissory notes, or certificates of indebtedness into registered obligations.
Act 84, Jan. 7, 1909.

^a See Parks v. West, 111 S. W., 726.

(c) Local (County, District, Municipal) Taxation for School Purposes.

The legislation of the year presents nothing of general interest or any new tendencies in the matter of local taxation. The joint resolution in Florida (416), the decision in Georgia (D. 420), the increase of the minimum town school tax in Maine (429), and the several constitutional amendments in Texas relative to local taxation may be singled out of the list of enactments otherwise of minor importance.

- 409 **Arkansas:** Providing for the formation of a special school district in Stone County, and for the segregation of taxes between whites and negroes.
Act 248, May 13, 1909.
- 410 **California:** Adding sec. 1840, Political Code, 1906, relative to the levying and collection of special district funds. Repealing secs. 1830-1839.
Chap. 49, Feb. 22, 1909.
- 411 **California:** Adding sec. 1671b to the Political Code, 1906, relative to enlarging, reconstructing, or replacing county secondary schools or increasing the capacity and accommodations thereof, and the levying of a special tax for such purposes.
Chap. 188, Mar. 11, 1909.
- 412 **Delaware:** Exempting certain lands and tenements of incorporated fraternities, established in connection with any college in the State from taxation for municipal purposes.
Chap. 37, Apr. 5, 1909.
- 413 **Delaware:** Exempting certain lands and tenements of incorporated fraternities, established in connection with any college in the State, from taxation for county purposes.
Chap. 38, Apr. 5, 1909.
- 414 **Delaware:** Amending sec. 18, chap. 67, Laws, 1898 (sp. sess.), relative to taxation for public schools.
Providing for assessment and taxation for school purposes of real and personal property owned by associations and corporations.
Chap. 82, Mar. 1, 1909.
- 415 **Delaware:** Amending sec. 11, chap. 92, Laws, 1905, as amended by chap. 125, Laws, 1907, relative to the organization and control of the public schools of the city of Wilmington.
Modifying limit of proportion of expenditures for school purposes.
Chap. 104, Apr. 15, 1909.
- 416 **Florida:** "Whereas, There are in the State of Florida thousands of male persons above the age of twenty-one years who enjoy all the protection and benefits under the laws of Florida, including a free school education for their children and the use of our public roads, and who do not pay one cent of taxes for the maintenance of said roads and schools or for other purposes; therefore,
"Be it resolved by the House of Representatives, the Senate concurring: That a Committee be appointed to consist of three on the part of the House and two on the part of the Senate, whose duty it shall be to investigate said existing conditions and to report to this House, by bill or otherwise, the proper legislation to remedy the conditions hereinabove outlined."
H. Con. Res. No. 8, p. 685, —, 1909.
- 417 **Florida:** Requiring tax assessors to furnish, to the boards of public instruction of their respective counties a list showing the total amount of special district taxes assessed in the several special school districts.
Chap. 5062 (No. 93), June 4, 1909.

- 418 **Georgia:** Authorizing the proper county authorities in all counties having therein a city with a population of not less than 54,000 population and not more than 75,000 inhabitants to raise by taxation for educational purposes a sum sufficient to pay for material used in the construction of any school building.
Act 103, p. 181, Aug. 10, 1909.
- 419 **Georgia:** Amending act 159, Acts, 1905, relative to the creation and operation of local tax district schools, and to the levy and collection of local tax by counties for educational purposes.
Provisions concerning elections to abolish local tax districts when once established.
Act 224, p. 159, Aug. 14, 1909.
- D. 420 **Georgia (1908):** The act approved August 21, 1906 (Acts, 1906, p. 61), in amendment of the act approved August 23, 1905 (Acts, 1905, p. 425), providing for the creation and operation of local tax district schools, is not invalid because not directly imposing the tax, but authorizing a submission of whether it shall be imposed in any county or district to the people, as the legislature has power to enact a law which shall become effective upon a vote of the people at an election.—*Coleman v. Board of Education of Emanuel County*, 63 S. E., 41; 131 Ga., 643.
- D. 421 **Illinois:** Peoria Special City Charter, chap. 13, relates to the subjects of public schools and the board of school inspectors, and section 8 of said chapter confers upon the board of school inspectors the power to "establish, support, and maintain public schools for all children of the city and determine the rate of taxation for school purposes in the manner hereinafter provided." Section 12 of said chapter provides that the board of inspectors shall determine the amount of money which will be required to be raised by taxation for the support of the public schools for the ensuing year, and notify the city council of the rate to be levied and collected for that purpose, not exceeding the rate authorized by the charter, and the amount so reported to the council shall be levied and collected as other city taxes, and, when collected, shall be paid over to the treasurer of the board. *Held*, that the power to fix the rate levied rests with the board of school inspectors, and that the city council is bound to levy such sum for taxes for educational purposes as the board of inspectors of the city fixes, not exceeding the statutory limit of such taxation.—(1908) *People v. City Council of Peoria*, 139 Ill. App. 488, transferred from the supreme court (1907), 82 N. E., 225; 229 Ill., 225.
- 422 **Iowa:** Amending sec. 2806, supplement to the Code, 1907, increasing the amount that may be levied for the contingent fund in a school district.
Increasing the levy for contingent fund from \$5 to \$7 per person of school age, and for the teachers' fund from \$15 to \$20 per person of school age.
Chap. 182, Apr. 15, 1909.
- D. 423 **Kansas (1909):** Where under Gen. Stat., 1901, secs. 6127, 6172, 6191, the electors of a school district, at a regular annual school meeting, vote a tax at a rate authorized by law, and such as the meeting deems sufficient for the various school purposes, and the district clerk certifies the amount so voted to the county clerk, this constitutes the levy of a school tax at such rate on all the real and personal property in the district.—*School Dist. No. 127 of Reno County v. School Dist. No. 45*, 103 P., 126.
- D. 424 **Kansas (1909):** A mistake of the county clerk in extending upon the tax rolls an assessment against the property in a school district at a less rate than that levied at the annual school meeting, and certified by the county clerk, does not deprive the school district of the aggregate sum collected through such erroneous assessment.—*School Dist. No. 127 of Reno County v. School Dist. No. 45*, 103 P., 126.

- 425 **Kansas**: Providing for depositories in which shall be kept the funds of cities of the second and third classes, and also the school funds of the board of education of cities of the second class and of school districts in which there is a city of the third class.
Chap. 89, Mar. 12, 1909.
- 426 **Kansas**: Concerning assessment and taxation; limiting the levy of taxes in the several taxing districts of the State; prescribing penalties for violation.
Chap. 245, Mar. 5, 1909.
- D. 427 **Kentucky** (1909): Laws, 1908, p. 156, chap. 61, providing a minimum school tax rate of 36 mills for cities of the second class, is not in violation of const., sec. 5a, subsec. 15, prohibiting the passage of local or special acts to authorize or regulate taxation.—*City of Louisville v. Commonwealth*, 121 S. W., 411.
- D. 428 **Kentucky** (1909): Act of March 24, 1908 (Acts, 1908, p. 133; chap. 56; Ky. St., 1909, sec. 4426a), regulating public schools, is not unconstitutional in that it requires the fiscal court to make a levy sufficient to raise the sum found necessary by the board of education, since, in obeying the constitutional mandate to provide an efficient school system, the legislature must necessarily have the discretion of choosing its own agencies and conferring on them the powers deemed by it essential to accomplish the required end.—*Prowse v. Board of Education for Christian County*, 120 S. W., 307.
- 429 **Maine**: Amending sec. 13, chap. 15, Revised Statutes, 1903, as amended by chap. 111, Laws, 1907, relative to school taxes.
Raising minimum town tax from 55 to 80 cents for each inhabitant.
Chap. 128, Mar. 24, 1909. (Jan. 1, 1910.)
- 430 **Massachusetts**: Relating to appropriations for the support of the public schools of the city of Boston.
Chap. 388, May 14, 1909.
- 431 **Minnesota**: Amending chap. 133, Laws, 1907, providing that officers of school districts may designate depositories for school district moneys and requiring the deposit of school district moneys in such depositories, and exempting school district treasurers from liability for such deposits.
Chap. 332, Apr. 21, 1909.
- 432 **Minnesota**: Amending sec. 1414; chap. 14, Revised Laws, 1905, relative to school taxes.
Increasing maximum school levy from \$300 to \$400 in districts having less than 10 voters.
Chap. 458, Apr. 23, 1909.
- D. 433 **Nebraska** (1909): In directing the county superintendent of instruction to furnish the county clerk with the data for a levy, when a school district refuses to vote taxes for free high school purposes, the free high school act of 1907 (Sess. Laws, p. 402, chap. 121) does not delegate to the superintendent a taxing power exclusively committed to school districts under Const., art. 9, sec. 6, providing that all municipal corporations may be vested with authority to assess and collect taxes.—*Wilkinson v. Lord*, 122 N. W., 699.
- 434 **New Hampshire**: Amending secs. 2 and 8, chap. 88, Public Statutes, 1901, relative to the raising of school taxes.
Chap. 52, Mar. 10, 1909.
- D. 435 **New Jersey** (1907): The school law of 1903 (P. L., p. 5) is not unconstitutional because it creates a local appointive board of estimate, with power to fix the amount to be raised by taxation.—*In re Newark School Board*, 70 A., 881.

- 436 **New York:** Amending secs. 381 and 383, chap. 21, Laws, 1909, relative to the assessment of real estate for school district taxes.
Chap. 415, May 20, 1909.
- 437 **North Carolina:** Amending sec. 4115, Revisal, 1905, relative to special taxes in special school districts.
Additional provisions concerning second elections, elections for revocation and increase.
Sec. 4, chap. 525, Mar. 5, 1909.
- D. 438 **North Carolina (1908):** A special school district created under Revisal, see sec. 4115, may levy a tax on the poll, when submitted to and approved by the qualified voters thereof in an election duly held, in excess of \$2, under the provisions of Article VII of the state constitution. The equation between the property and the poll tax established by Article V, sec. 1, and the restriction that the state and county tax combined shall never exceed \$2 on the poll, applies only to state and county taxation, and not to municipal or quasi public corporations other than counties.—*Perry v. Commissioners of Franklin County*, 114 N. C., 521.
- 439 **South Dakota:** Fixing the limit of the rate of taxation in school districts having within their boundaries incorporated cities.
Limit of taxation to be the same as for independent districts.
Chap. 87, Feb. 25, 1909.
- 440 **Texas:** Proposing amendment to the constitution relative to the formation and taxing power of school districts.^a
Increasing maximum limit of local tax levy in school districts from 20 to 50 cents on the \$100 valuation.
Adopted, August, 1909.
H. Jt. Res. No. 6, p. 250, —, 1909.
- 441 * **Texas:** Putting into effect the constitutional amendment adopted November, 1908, relating to public schools, by amending secs. 50, 57, 58, 59, 60, 61, 63, 65, 66, 76, 77, 78, 80, 81, and 154, and by adding 154a, chap. 124, Acts, 1905, relating to school districts and school funds.
Amending sec. 154, relating to the issuance of bonds and taxation for school purposes in incorporated school districts. Increasing maximum limit of annual school tax from 25 to 50 cents on the \$100 valuation.
Chap. 12, p. 21, Feb. 18, 1909.
- 442 * **Texas:** Putting into effect the constitutional amendment adopted November, 1908, relating to public schools, by amending secs. 50, 57, 58, 59, 60, 61, 63, 65, 66, 76, 77, 78, 80, 81, and 154, and by adding 154a, chap. 124, Acts, 1905, relating to school districts and school funds.
Amending sec. 57, relating to the levy of special tax for school purposes. Majority (formerly two-thirds) of the qualified tax-payers voters. Maximum tax 50 cents (formerly 20 cents) on the \$100 valuation.
Amending sec. 58 (as amended by chap. 83, Acts, 1907), and secs. 59, 60, 61, 65, and 66, relating to the procedure for levying special district school tax.
Chap. 12, pp. 18-20, Feb. 18, 1909.
- 443 **Wisconsin:** Amending sec. 539, Statutes, relative to school taxes.
Secretary of board of directors to certify estimated tax, whenever town electors fail to vote sufficient fund to maintain a school term of eight (formerly seven) months.
Chap. 104, May 11, 1909.

^a See *Parke v. West*, 111 S. W., 726.

D. BUILDINGS AND SITES.

(a) General.

The most obvious evidence of the expansion and growth of public education is to be found in the number of legislative measures intended to provide readier means and larger resources for securing better and adequate material school accommodations. With few exceptions these measures have been included under the heading of local bonds and indebtedness. The omission of legislation of a special and local character from the present classification does not permit detailed presentation of the very large number of measures enacted in the Southern States authorizing the levying of taxes or the contraction of indebtedness by particular communities for the purpose of building and equipping new public schools. In fact, though, the latter measures are in themselves a sign of the energy and enthusiasm with which the South is attacking its educational problem. All this has significance of national rather than state import.

The utilization of the school buildings for other than the commonly accepted public school purposes gave rise during the biennium to several decisions and enactments indicative of the opportunities for the wider usefulness of the school plant; and, also, some of the obstacles thereto. (Missouri, D. 452, 453; Oregon, 458; South Dakota, 460.)

444 **Alabama:** Amending sec. 1989, Code, 1907, relative to the payment of funds to district trustees for erection and repair of public schoolhouses.

Act 57, p. 44, Aug. 20, 1909 (sp. sess.).

445 ***Arkansas:** Authorizing school districts to exercise the power of eminent domain and to take and use private property for school purposes.

Act 331, May 31, 1909.

446 ***Hawaii:** Amending sec. 491, Revised Laws, 1905, relating to the taking of private property for public purposes.

Adding "schools and school recreation grounds" to the list of enumerated purposes.

Act 10, Mar. 5, 1909.

447 ***Hawaii:** Amending sec. 9, act 39, Laws, 1905, relating to general powers, liabilities, and limitations of counties.

Adding provisions regarding maintenance of enumerated public works and buildings. Special provisions concerning maintenance and repair of existing schoolhouses.

Act 100, Apr. 21, 1909. (July 1, 1909.)

448 ***Hawaii:** Amending subsec. 7, sec. 23, act 118, Laws, 1907, relating to the powers of the board of supervisors of the city and county of Honolulu.

Providing for the establishment and maintenance of water works and sewer works; and for the building and maintenance of buildings for enumerated public purposes, including schools.

Act 101, Apr. 21, 1909. (July 1, 1909.)

- D. 449 **Illinois**: Under the statutory power to "grant the temporary use of schoolhouses when not occupied by schools * * * for such meetings as the directors may deem proper," they could let the premises to fraternal societies, the lodges being tenants at sufferance, and subject to ouster whenever the directors so willed.—(1908) *Lagow v. Hill*, 143 Ill. App., 523, judgment affirmed (1909), 87 N. E., 369.
- 450 **Kansas**: Conferring upon the boards of education of all cities of the first and second class and school districts in which is located a city of the third class and boards of trustees of county high schools the right of eminent domain.
Chap. 86, Mar. 5, 1909.
- 451 **Michigan**: Amending sec. 4729, Compiled Laws, 1897, relative to sites for schoolhouses.
Act 232, June 2, 1909.
- D. 452 **Missouri (1909)**: Under Rev. Stat., 1899, sec. 9763 (Ann. Stat., 1906, p. 4477), authorizing the use of the schoolhouses for literary, etc., purposes on the demand by a majority of the voters at an annual meeting, and providing that, if the persons so using a schoolhouse fail to keep it clean, etc., the directors may refuse further use, etc., where such use was voted, the members of a literary society could unlock the door and enter the building, though the key used was not procured from one authorized by the board to deliver it; the board being authorized to interfere with the use only for the society's failure to keep the house clean, etc.—*State v. Kessler*, 117 S. W., 85.
- 453 **Missouri**: Amending sec. 9763, chap. 154, art. 1, Revised Statutes, 1899, relative to the care of school property.
Authorizing the use of schoolhouse and school premises (formerly schoolhouse), for religious, literary, or other public purpose or for the meeting of any farmer or labor organization or society for educational purposes. Majority vote at district meeting necessary.
P. 826, May 6, 1909.
- 454 **New Jersey**: Amending sec. 84, Acts, 1903 (sp. sess.), relative to corporate character of each board of education.
Vesting title to school property in board of education.
Chap. 174, Apr. 19, 1909.
- 455 **North Dakota**: Amending sec. 830, Revised Codes, 1905, relating to schoolhouse sites.
Increasing maximum area from 2 to 5 acres.
Chap. 202, Mar. 11, 1909.
- 456 **Ohio**: Amending sec. 3990, Revised Statutes, allowing a board of education to file an accurate plat and description of the parcel of land sought to be condemned in the insolvency court.
S. B. 9, p. 20, Mar. 15, 1909 (sp. sess.).
- 457 **Ohio**: Providing for the purchase of a certain school site in the village of Collinwood, Cuyahoga County, for the purpose of establishing and maintaining thereon a memorial building and park.
H. B. 140, p. 24, Mar. 12, 1909 (sp. sess.).
- 458 **Oregon**: Giving the board of directors power and authority to use county school rooms and schoolhouses for all proper purposes and neighborhood gatherings under certain restrictions.
"Sec. 1. A district school board may at its discretion permit a schoolhouse, when not occupied for school purposes, to be used under careful restrictions for any proper purpose, giving equal rights and privileges to all religious denominations or political parties, but for any such use or privilege it shall not be at the cost of fuel or otherwise to the district. No dancing shall be permitted in any school room. Nor shall any furniture which is fastened to the floor be removed, and whoever removes any school furniture for any other

purpose than repairing the same or repairing the school room, shall be guilty of a misdemeanor, and shall be fined not less than \$5 nor more than \$10 for each offense. All fines imposed and collected under the provisions of this subdivision shall be paid into the general school fund of the State; *provided*, that the power delegated to the board by this act may be denied a district school board by a majority of the legal voters present and voting at the annual meeting, or at a special meeting called for that purpose."

Sec. 2. * * *

Chap. 165, Feb. 23, 1909.

- 459 **South Dakota:** Authorizing county commissioners or township supervisors to locate and establish public highways upon or across any common school, endowment, or other state lands.

Chap. 32, Feb. 17, 1909.

- 460 * **South Dakota:** Permitting certain public schoolhouses to be used for public meetings.

"Sec. 1. That the public school houses in the state of South Dakota, outside of cities and towns, may hereafter be used for public meetings, including singing, literary societies, political and other meetings of moral purposes; *provided*, such use shall be entirely without expense to the school district having control of such school house for heat and light and care of same; and *provided further*, that any person or persons or public body so using any such school house shall be responsible to such school district for any and all damage that may be caused to such school house or any fixture or furniture therein by reason of such use or occupancy as aforesaid.

"Sec. 2. If any person residing within the district wishes to secure the school house for any meeting or meetings, such as are enumerated above, and makes application to the chairman of the school board or other school officer having custody of the school house in said district, it shall be the duty of said chairman or school officer having custody to grant permission for such meeting or meetings; *provided*, such meeting or meetings shall in no way interfere with the school that may be in session at the time. *Provided further*, such chairman or other school officer having custody of such school house may refuse such applicant if the school house has been previously engaged for any similar meeting covering the same period of time."

Sec. 3. * * *

Chap. 114, Feb. 27, 1909.

- D. 461 **Texas (1909):** A lodge and citizens of a community, desiring to erect a building, contributed money to build a lodge and schoolhouse; the upper story to be used for lodge purposes and the lower room for school purposes, and the building to be erected on the land of the lodge under the direction of a joint committee. A free school district when formed began and continued to use the lower story of the building as a schoolhouse with the knowledge and acquiescence of the school committee. *Held*, That the school district should not be deprived of the use of the lower story, while the community had the right to such use. Judgment (Civ. App., 1908), 112 S. W., 433, affirmed.—*Rhodes v. Maret*, 119 S. W., 1139.

- 462 **West Virginia:** Accepting the donation from the schools for the purchase of the mound at Moundsville, and appropriating an additional sum for the purchase thereof.

Chap. 75, Mar. 3, 1909.

- D. 463 **Wisconsin (1908):** Stat., 1898, sec. 430, authorizes the officers of a school district to rent or build a schoolhouse in which the district is required to maintain a common school by section 423, and also authorizes the district to vote a tax to hire a schoolhouse. *Held*, That where a schoolhouse owned by a district was inadequate the district had power to rent a part of a parochial school building within the district in which to maintain a common school.—*Dorner v. School District No. 5*, 118 N. W., 353.

- 464 **Wisconsin:** Amending sec. 477, Statute, relative to the location of schoolhouse sites.

Chap. 171, May 20, 1909.

- 465 **Wisconsin:** Creating sec. 1275m, Statutes, relative to the laying out of a highway to a schoolhouse site for a public school.
Chap. 318, June 9, 1909.
- 466 **Wisconsin:** Creating sec. 496p-1, Statutes, providing for the erection of school buildings and maintenance of schools in certain cases.
Chap. 493, June 16, 1909.

(b) **Buildings and Sites: State Aid; Approval of Plans.**

The measures of Maine (468) and Utah (470) are of great importance and indicative of the tendency, noted during previous years, toward an increased amount of state supervision over buildings constructed and used for public-school purposes. The creation of the schoolhouse commission in Utah would appear to contain possibilities of much hygienic reform and the means for the prevention of much of existing health danger in schools.

- D. 467 **Alabama (1908):** Loc. Acts, 1898-99, p. 30, confers on the board of revenue of Lawrence County such powers and jurisdiction as county commissioners have. Code, 1907, sec. 133, authorizes the county commissioners to erect court-houses, jails, hospitals, and other necessary county buildings; sections 134, 138 relate to the levy and collection of special taxes for purposes therein named; and section 158 authorizes the county commissioners to order elections to determine whether the bonds of the county shall be issued to construct public buildings, including schoolhouses. Act of Aug. 7, 1907 (Gen. Acts, 1907, p. 728), sec. 3, provides that when the "citizens" of a county shall secure a suitable site and erect a high-school building, and convey the same to the State, the State will then make an annual appropriation to maintain such high school. *Held*, that Code, 1907, secs. 133, 134, 138, 158, relate only to those schoolhouses owned by the county, and do not relate to a high-school building erected pursuant to act of Aug. 7, 1907 (Gen. Acts, 1907, p. 728), and that the board of revenue is without power to appropriate county funds to aid in the construction of such high-school building.—*Kumpe v. Bynum*, 48 So., 55.
- 468 * **Maine:** Relating to school buildings.

* * *

"SEC. 1. It shall be the duty of the state superintendent of public schools to procure architects' plans and specifications for not to exceed four room school buildings, and full detail working plans therefor. Said plans and specifications shall be loaned to any superintending school committee or school building committee desiring to erect a new school building. For the use of the state superintendent of public schools in procuring such plans and specifications the sum of two hundred dollars is hereby appropriated for the year nineteen hundred and nine and a like sum for the year nineteen hundred and ten.

"SEC. 2. Where the plans and specifications prepared by the state superintendent are not used, all superintending school committees of towns in which new schoolhouses are to be erected, shall make suitable provision for the heating, lighting and ventilating and hygienic conditions of such buildings, and all plans and specifications for any such proposed school building shall be submitted to and approved by the state superintendent of public schools and the state board of health before the same shall be accepted by the superintending school committee or school building committee of the town in which it is proposed to erect such building.

"SEC. 3. In case no special building committee has been chosen by the town, the superintending school committee shall have charge of the erection or re-construction of any school building, provided that said superintending school committee may, if they see fit, delegate said power and duty to the superintendent of schools."

Chap. 88, Mar. 16, 1909.

469 North Carolina: Amending sec. 4829, Revisal, 1905, relative to the protection of state property from destruction by fire.

Plans for buildings to be submitted and approved by insurance commissioner.

Chap. 880, Mar. 9, 1909.

470 * Utah: Amending sec. 1823, Compiled Laws, 1907, providing for school sites and buildings; that plans and specifications for school buildings be submitted to a commission herein provided.

"SECTION 1. * * *

"Provided, That no schoolhouse shall hereafter be erected in any school district of this State not included in cities of the first and second class, and no addition to a school building in any such place the cost of which schoolhouse or addition thereto shall exceed \$1000 shall hereafter be erected until the plans and specifications for the same shall have been submitted to a commission consisting of the State Superintendent of Public Instruction, the Secretary of the State Board of Health, and an architect to be appointed by the Governor, and their approval endorsed thereon. Such plans and specifications shall show in detail the ventilation, heating, and lighting of such buildings. The commission herein provided shall not approve any plans for the erection of any school building or addition thereto unless the same shall provide at least fifteen square feet of floor space and two hundred cubic feet of air space for each pupil to be accommodated in each study or recitation room therein, and no such plans shall be approved by them unless provision is made therein for assuring at least thirty feet of pure air every minute for each pupil and the facilities for exhausting the foul or vitiated air therein shall be positive and independent of atmospheric changes. No tax voted by a district meeting or other competent authority in any such school district shall be levied by the trustees until the commission shall certify that the plans and specifications for the same comply with the provisions of this Act. All schoolhouses for which plans and detailed statements shall be filed and approved, as required by this Act, shall have all halls, doors, stairways, seats, passageways, and aisles, all lighting and heating appliances and apparatus arranged to facilitate egress in cases of fire or accident, and to afford the requisite and proper accommodations for public protection in such cases.

"No schoolhouse shall hereafter be built with the furnace or heating apparatus in the basement or immediately under such school building.

"Sec. 2. Compensation. Expenses. The Commission herein provided shall serve without compensation, but shall receive their actual and necessary expenses incurred in the performance of their official duties, except the architect, who shall receive as above provided and four dollars per day while attending meetings of the Commission, the account for which shall be verified on oath and be paid from the State School Fund."

Chap. 32, Mar. 9, 1909.

(c) Buildings and Sites: Decoration, Care, Sanitation, Inspection.

Within this group of measures concerning the sanitation and inspection of school buildings, those relating to fire protection are of most importance and more numerous than during any legislative period of recent years. Were one to speculate, it would be that recent disasters, real and narrowly averted, have been the cause of arousing public sentiment to the necessities of the situation as found in the majority of American public-school buildings. The measures enacted in Connecticut (471), Kansas (477), Maine (478), and Missouri (481) are thought important enough for the presentation of the complete text.

All in all, the Wisconsin measure (496) providing for the inspection of public-school buildings is a notable bit of legislation for the improvement of the sanitary environment of the school.

471 Connecticut: Relating to the construction and fireproofing of public schoolhouses.

• "SEC. 1. All public schoolhouses, the construction of which was not begun before the passage of this act, shall be constructed in accordance with the provisions hereof.

"SEC. 2. No schoolhouse for the accommodation of pupils of grammar school grade, or of a lower grade, shall be constructed so as to contain more than two stories above the basement. No schoolhouse for the accommodation of pupils of a higher grade than grammar school grade shall be constructed so as to contain more than two stories above the basement, unless such schoolhouse is of fireproof construction throughout, and in that event shall not exceed three stories above the basement.

"SEC. 3. All schoolhouses of eight or more class rooms not of fireproof construction throughout shall be built as follows: (a) The outer walls shall be of brick, natural or artificial stone, terra cotta blocks, re-enforced concrete, or other fire-proof material. (b) The walls separating the schoolrooms from the halls or corridors shall be of masonry or other fireproof material. (c) There shall be a stairway constructed in at least two opposite sides of the building leading to the ground floor from the floor or floors above, and no such schoolhouse hereafter built shall contain circular stairs. (d) There shall be one exit constructed in at least each of two opposite sides of the building upon the first floor leading to the ground, which may be the same as the exits from the floor or floors above the first. (e) The stairs and stairways shall be of fireproof construction. (f) All doors leading from rooms into halls or corridors shall be hung so as to swing into the hall or corridor, and all doors leading from the corridors out of the building shall be so hung as to swing outward. (g) There shall be a door of fireproof material at the head of each stairway leading from the first floor to the basement. (h) All wooden partitions, ceilings, floors, and woodwork about the heating apparatus or plant shall be covered with asbestos, tin, sheet iron, or other fire-proof material so as to effectually overcome danger from fire.

"SEC. 4. No door leading from a schoolroom into a hall or corridor, or from a hall or corridor out of the building shall, during school hours, be locked or bolted or secured in any other manner than by a spring which will readily yield to pressure from the inside.

"SEC. 5. There shall be placed in a hall or corridor of every such school an alarm consisting of a bell or gong arranged or equipped so as to be sounded from at least one convenient station or place upon each floor and of sufficient size and volume of tone to be distinctly heard in every room when sounded. In the absence of such alarm there shall be placed in each room an alarm consisting of a bell or gong of sufficient volume to be heard throughout the room where placed, all of which alarms shall be arranged or equipped so as to be sounded simultaneously from the same station or place, at least one of which stations or places shall be conveniently located in a hall or corridor upon each floor.

"SEC. 6. Any janitor, teacher, or other person who violates the provisions of the fourth section of this act shall be fined not more than three hundred dollars, or imprisoned not more than three months, or both. Every member of a board of education, school board, board of school visitors, or building committee, or official who is charged with the duty of planning, contracting for, or building a public schoolhouse, who plans or contracts, or participates in contracting for, or votes to build, or builds such schoolhouse in violation of any of the provisions of this act shall be fined not more than three hundred dollars, or imprisoned not more than three months, or both."

Chap. 81, June 10, 1909.

472 Connecticut: Relating to water-closets and privies in connection with school buildings.

Providing for the maintenance and proper construction of water-closets in schools.

Chap. 106, June 24, 1909.

473 Connecticut: Relating to exits in public buildings.

Public buildings, excepting town halls and including school buildings, to be provided with one or more exits. Doors to swing outward. Penalties.

Chap. 128, June 29, 1909.

474 Florida: Requiring proper fire protection for teachers and students of public schools, prescribing the means for such protection, and prescribing penalties for not constructing, introducing, and maintaining the means for such protection.

Chap 5937 (No. 68), June 4, 1909.

475 Indiana: Repealing chap. 222, Acts, 1903, and enacting a substitute, providing for the protection of human life from fire; providing for its enforcement and for penalties.

Chap. 118, Mar. 6, 1909.

476 Iowa: Amending sec. 4999-a9, supplement to the Code, 1907, relative to protection against fire.

"The entrance and exit doors of all hotels, churches, lodge halls, court houses, assembly halls, theaters, opera houses, colleges and public school houses, and the entrance doors to all class and assembly rooms in all public school buildings, in all cities and incorporated towns, shall open outward."

Chap. 220, Mar. 12, 1909.

477 * Kansas: Protecting schoolhouses and school children from danger of fire; describing certain duties of public officers; prescribing penalties.

"SECTION 1. That the doors of all public or private schoolhouses of more than one story shall open outwards, and all doors of schoolhouses shall remain unlocked while school is in session.

"SEC. 2. That in every public or private schoolhouse of two or more stories every story above the first shall be provided with either two or more exits from the upper floor separate and distinct from the exits of the lower floor, or shall be provided with sufficient and suitable fire-escapes, which shall be built of iron or steel.

"SEC. 3. That the tops of all furnaces in public and private schoolhouses shall be covered with asbestos covering or masonry, and the top of such furnace shall not be nearer than eighteen inches to the nearest woodwork above. The ceiling above said furnaces shall be covered with asbestos.

"SEC. 4. That no contract shall be let for the erection of any school building, nor shall any public funds be paid out for the erection of schoolhouses of two or more stories, until the plans for such buildings shall have been submitted to the state architect and approved as to all the requirements of this act.

"SEC. 5. That each county superintendent shall annually inspect each public school building, including the county high school building, in districts under his supervision; and the mayor or fire marshal shall annually inspect all public and private school buildings in cities of the second class; and the fire marshal shall annually inspect all public and private school buildings in cities of the first class. The examining officer under this section shall report to the respective school boards having jurisdiction any violation of this act, or any conditions which he may deem dangerous, or which will in any way prevent a speedy exit from the building, and it shall be the duty of said school board when thus notified immediately to make such changes as are required by this act, and such boards are hereby authorized to draw upon their general revenue funds, without further appropriation, to comply with all the requirements of this act.

"SEC. 6. That in every public or private school having more than one hundred pupils (excepting colleges and universities) a fire-drill and summary dismissal from the building shall be practiced at least once each month at some time during school hours aside from the regular dismissal at the close of the day's session.

"SEC. 7. That any officer or member of a school board who shall permit any provision of this act to be violated for sixty days may be removed from his office by a civil action. Independent of such civil action, any officer, member of a school board, city superintendent, principal or teacher violating any provision of this act shall be guilty of a misdemeanor, and shall be punished by a fine of not less than fifty dollars or more than five hundred dollars, or by imprisonment in jail not exceeding six months, or by both such fine and imprisonment; provided, however, that this act shall not prevent the prosecution and punishment of an officer or other person under the ordinary provisions of the crimes

act for death or injury to any child in a public or private school occasioned by the negligence of such officer or other person.

"Sec. 8. That within sixty days after the taking effect of this act the provisions of section 1 of this act must be fully complied with, and within one hundred and twenty days the provisions of sections 2 and 3 must be complied with; and any neglect to comply with the provisions of this act beyond the times herein specified shall subject the officers and persons named in this act to the penalties prescribed in this act."

SEC. 9.

Chap. 209, Feb. 23, 1909.

478 **Maine:** Relative to the safeguarding of schools against danger from fire.

"Any building which is used in whole or in part as a school house shall be provided with proper egresses or other means of escape from fire sufficient for the use of all persons therein accommodated. These egresses and means of escape shall be kept unobstructed, in good repair and ready for use. Stairways on the outside of the building shall have suitable railed landings at each story above the first, accessible at each story from doors or windows and such stairways; doors or windows shall be kept clean of snow, ice and other obstructions. In school buildings of more than one story there shall be at least two separate means of egress by inside or outside stairway, and each story above the first shall be supplied with means of extinguishing fire consisting of pails of water or other portable apparatus, or of a hose attached to a suitable water supply and such appliance shall be kept at all times ready for use and in good condition. Upon written notification by the superintending school committee that any school building does not meet the specifications herein named, the municipal officers of the town shall at once proceed to correct the defects, and any failure so to act shall render the town liable to the provisions of section sixteen of chapter fifteen of the revised statutes."

Chap. 100, Mar. 18, 1909.

479 **Maine:** Amending sec. 38, chap. 28, Revised Statutes, 1903, relative to protection of life in buildings used for public purposes.

Providing for fire escapes on all school buildings two stories or more in height.

Chap. 194, Apr. 1, 1909.

480 **Minnesota:** Prohibiting any school board of any public school in any city having a population of 20,000 or more inhabitants from using basement rooms for grade school purposes and fixing the punishment for the violation thereof.

Chap. 52, Mar. 12, 1909.

481 **Missouri:** Repealing sec. 1, act approved Mar. 24, 1903, relative to fire escapes on public buildings, and enacting a substitute.

"Sec. 1. It shall be the duty of the owner, proprietor, lessee or keeper of every hotel, boarding and lodging house, tenement house, school house, opera house, theatre, music hall, factory, office building, except fire-proof office buildings, in which all structural parts are wholly of brick, stone, tile, concrete, reinforced concrete, iron, steel, or incombustible material, and which are not used for lodging purposes, in the state of Missouri, and every building therein where people congregate or which is used as a business place, or for public or private assemblages, which has a height of three or more stories, to provide said structure with stair fire escapes attached to the exterior of said building and by stair cases located in the interior of said building. The fire escapes shall commence at the sill of the second story window, and run to the upper sill of the upper story with an iron ladder from the upper story to the roof. The fire escape shall extend downward from said second story to within nine feet of the ground, pavement or sidewalk. School buildings, opera houses, theatres and church buildings; also, hospitals, blind and lunatic asylums and seminaries, shall each have a stair fire escape built solid to the ground. In no case shall a fire escape run past a window where it is practicable to avoid it. All fire escapes required by this act must be of the kind known as stationary fire escapes. All buildings heretofore erected shall be made to conform to the provisions of this act."

P. 713, June 12, 1909.

482 **Nebraska:** Relative to providing buildings three or more stories high with fire escapes and fire protection under the supervision of the commissioner of labor or deputy commissioner of labor, providing for the expense thereof and penalties for violations. Repealing secs. 15, 16, 17, 18, 19, and 20, Compiled Statutes, 1907.

Including school buildings. Providing for annual inspection.
Chap. 61, Apr. 2, 1909.

483 **New Hampshire:** Amending, in a minor manner, sec. 7, chap. 116, Public Statutes, 1901, relative to the doors of public buildings.

Chap. 108, Mar. 31, 1909. (Sept. 1, 1909.)

D. 484 **New York (1909):** New York City Building Code, sec. 105, providing that every building hereafter erected or altered to be used as a school shall be built fireproof, does not forbid the use of a building not fireproof for a school; and where a company in good faith made alterations in its building, to be used as an office building pursuant to plans approved by the department of buildings, it could subsequently lease portions of the building for a school, though the building was not fireproof.—City of New York v. Realty Associates, 117 N. Y. S., 207.

485 **North Carolina:** Relating to the protection of the sanitary condition of certain free-school rooms in Pitt County.

"Sec. 1. That it shall be unlawful for any person or persons to expectorate upon the floors or walls of certain free-school rooms which are situated in Chicod Township, in Pitt County, North Carolina, and designated as the McGowan and Mills schoolrooms.

"Sec. 2. Any person or persons violating the provisions of this act shall be liable to a fine of not less than one dollar nor more than five dollars.

"Sec. 3. It shall be the duty of the school trustees of said free school districts to see that the provisions of this act are properly executed."

Sec. 4. * * *

Sec. 5. * * *

Chap. 601, Mar. 5, 1909.

486 **North Carolina:** Providing fire escapes and protecting human life. Includes school dormitories.

Chap. 637, Mar. 6, 1909.

487 **North Carolina:** Providing proper sanitary surroundings for the state charitable and educational institutions.

Making, upon petition, the keeping of swine or swine pens unlawful within a radius of one-quarter of a mile of any educational or charitable institution.

Chap. 706, Mar. 6, 1909.

488 **North Dakota:** Requiring one or more stationary fire escapes, consisting of stairways, to be attached to the outside of each one and every story, above the first story, of all schoolhouses in this state having more than one story, designating those whose duty it shall be to have said fire escapes installed, and prescribing punishment for a violation thereof, etc.

Chap. 124, Mar. 15, 1909.

489 **North Dakota:** Defining the duties of district boards in relation to the planting, cultivation, and protection of trees and shrubs upon schoolhouse grounds.

Chap. 201, Feb. 15, 1909.

490 **North Dakota:** Amending sec. 829, Revised Codes, 1906, relating to schoolhouses and sites.

Constituting the county superintendent of health, the chairman of the board of county commissioners, and the county superintendent of schools a board of inspection for schoolhouses and outbuildings. Providing for the furnishing of plans for one and two room schools.

Sec. 2, chap. 204, Mar. 15, 1909.

- 491 **Oregon:** Requiring the doors of buildings used for public purposes to open outward and providing penalty for violation.
Chap. 5, p. 517, Mar. 17, 1909 (sp. sess.).
- 492 **Oregon:** Requiring the doors of public buildings used for public purposes to open outward, and providing a penalty for violations.
Chap. 110, Feb. 23, 1909.
- 493 **Pennsylvania:** Providing for the safety of persons from fire or panic in certain buildings, not in cities of the first and second classes, by providing proper exits, fire escapes, fire extinguishers, and other preventives of fire; by vesting jurisdiction for the enforcement of this act in the department of factory inspection; providing proper penalties.
Act 233, May 3, 1909.
- 494 **South Dakota:** Creating the office of state building inspector; providing for the inspection and regulation of public buildings.
Including public school buildings and defining conditions for inspected structures.
Chap. 274, Mar. 9, 1909.
- 495 **Wisconsin:** Repealing secs. 1636-4 and 4390a, Statutes, and creating a new section to be numbered sec. 1636-4, Statutes, relative to fire escapes on buildings.
Including schools.
Chap. 479, June 16, 1909.

- 496 * **Wisconsin:** Creating secs. 524m-1, 524m-2, 524m-3, 524m-4, 524m-5, 524m-6, and 524m-7, Statutes, providing for inspection of public school buildings.

"Section 1. There are added to the statutes seven new sections to read: Section 524m-1. The inspector of rural schools, the inspectors of state graded schools, and the inspector of high schools of the state, in addition to their other duties are hereby made inspectors of public school buildings. Said inspectors shall act under the direction of the state superintendent, and under such regulations as may be established by him.

"Sec. 524m-2. Whenever any county or district superintendent, city superintendent, member of a school board or board of education, or any voter of a school district, or a member of a board of health, shall make a complaint in writing to the state superintendent that any building used for or in connection with any public school in his county, district, city, village, or town, as the case may be, is in an unsanitary condition; or that the conditions are such as to endanger the life and health of the children attending such school, or that the schoolhouse is unfit for school purposes one of said inspectors designated by the state superintendent shall personally investigate and examine the premises and buildings concerning which said complaint is made.

"Sec. 524m-3. Upon such investigation and examination, said inspector shall, if conditions warrant it, make an order directing the school board, the board of education, the town board of school directors, or other officer or officers having control of the school district or school corporation, to repair and improve such building or buildings as may be necessary, and to place said buildings in a safe and sanitary condition; or if the said inspector shall deem the schoolhouse unfit for school purposes and not worth repairing he shall state said fact and recite the reason therefor.

"Sec. 524m-4. The said inspector shall file said order in the state superintendent's office, and cause true copies thereof to be delivered, by mail or otherwise, to the clerk of the district board, the secretary of the town board of school directors, the clerk of the board of education of the district or school corporation where such schoolhouse and premises are located, and shall deliver as provided herein copies of said order to the proper county, district or city superintendent, and also the clerk of the town, city, or village in which the schoolhouse is located.

"Sec. 524m-5. The said order shall state the time in which it shall be complied with, and shall take effect from its date, and shall continue in force and full effect until reversed. The decision of the inspector may be appealed from to the state superintendent in the time and manner now provided for taking

appeals to said superintendent, and the decision appealed from shall be stayed pending such appeal.

"Sec. 524m-6. Whenever any school district, school corporation, school board, board of education, or town board of school directors shall refuse to comply with the order of said inspector within the time therein specified, such school district or school corporation shall forfeit absolutely its apportionment of the fund derived from the seven-tenths mill tax, provided for in section 1072a of the statutes, and amendments thereto, and shall continue to so forfeit its regular apportionment of such fund until there is full compliance with the requirements of said order.

"Sec. 524m-7. Nothing in this act shall be deemed to interfere with the operation of the provisions of subsection 3 of section 461 of the statutes, relating to the duties of county superintendents of schools, or with the provisions of section 1418b of the statutes, relating to the inspection and regulation of the sanitary conditions of schoolhouses by boards of health."

Chap. 550, June 17, 1909.

(d) Buildings and Sites: Prohibition Districts.

497 *Arizona: Prohibiting the maintenance of saloons, gambling houses, or other places inimical to good morals, within the territory embraced within a radius of 800 yards of the center of the grounds of any territorial normal school.

Chap. 74, Mar. 18, 1909. (Apr. 1, 1909.)

498 Arkansas: Amending Act 278, Acts, 1907, prohibiting the sale of liquor within 5 miles of the university.

Act 127, Apr. 12, 1909.

499 California: Adding section 172a, Penal Code, relative to the sale of vinous or alcoholic liquors upon or within 1½ miles of the grounds of any university having an enrollment of more than 1,000 students, more than 500 of whom reside or lodge upon said university grounds.

Chap. 447, Mar. 25, 1909. (July 1, 1909.)

500 Michigan: Amending the title and secs. 1, 2, 4, 5, 6, 7, 8, and 17, act 313, Public Acts, 1887 (secs. 5379, 5380, 5382, 5383, 5384, 5385, 5386, and 5395, Compiled Laws, 1897), relative to sale, etc., of intoxicating liquors, and adding five new sections thereto.

No license to be issued for new saloons within 400 feet from front entrance of church or public schoolhouse. Proviso. (Sec. 37.)

Act 291, June 2, 1909.

501 Missouri: Repealing act, p. 257, Laws, 1907, prohibiting the granting of a dram-shop license within 5 miles of any state educational institution enrolling 1,500 or more students.

P. 471, June 1, 1909.

502 Montana: Prohibiting the establishment or maintenance of saloons as places where malt, vinous, or spiritous liquors are sold at retail, within 2,000 feet of any state educational institution, and prohibiting the issuance of permits or licenses therefor; fixing a punishment for violation.

Chap. 90, Mar. 5, 1909.

503 Tennessee: Prohibiting the sale of intoxicating liquors as a beverage near any schoolhouse, public or private, where a school is kept, whether the school be in session or not.

Establishing 4-mile limit.

Chap. 1, Jan. 20, 1909. (July 1, 1909.)

(e) United States Flag in Schools.

504 Massachusetts: Amending sec. 50, chap. 42, Revised Laws, 1902, relative to the display of the United States flag on schoolhouses.

Making display obligatory; formerly permissive.

Chap. 229, Mar. 27, 1909.

505 Nevada: Requiring school trustees to procure and hoist on public schoolhouses the United States flag.

Chap. 97, Mar. 13, 1909.

506 Vermont: Providing for the display of flags on school premises.

Act 48, Dec. 2, 1908.

E. TEACHERS IN ELEMENTARY AND SECONDARY SCHOOLS.

By reason of their volume, and of their many evidences of educational progress, the enactments concerning the standards of qualification and the conditions of certification of teachers in the public schools continue to represent one of the most interesting phases of the legislative activity of the year, especially when considered with those dealing with normal schools and other institutions set up for the purpose of the professional education and training of teachers. (See section G, enactments 565-623.)

Of the measures of general importance, the following appear to merit mention: California (507), providing for the classification of schools and prescribing conditions for certain certificates; Alabama (510), amending in several important respects the code provisions governing examination and certification; Idaho (516), relative to questions and examiners; Missouri (519) and West Virginia (524), adding agriculture to the list of required subjects for teachers' examinations; Vermont (523), providing for a more uniform system of examination; Wyoming (527), amending the entire code governing certificates; and North Dakota (540), encouraging professional spirit among teachers.

Evidences of the movement for the centralization of control over the examination and certification of teachers are to be found in the Utah amendment (509) relative to the minimum qualifications for teaching; in the Colorado measure (513) creating a state board of examiners; and in the Vermont amendment (522) relative to the conduct of teachers' examinations by the superintendent of education.

The conditions for the recognition of certain diplomas as teachers' certificates, defined by Michigan (537), Minnesota (538), and Texas (539), are in accord with the trend of the day in the matter of the higher education of teachers.

The steps taken by Missouri (534) are similar to those taken in several States during recent years for the protection of boards of education from a class of teachers who violate valid contracts. Such

measures reflect in a striking way certain of the ethical and economic circumstances of the teaching profession.

The new requirement of six weeks of professional training in Wisconsin (526) as a condition for certification after July 1, 1910, and the minimum educational requirements for teaching established in Utah (509) represent important forward steps.

(a) Teachers: Qualifications; General.

507 California: Amending sec. 1663, Political Code, relating to the classification of schools and teachers' certificates.

"1663. 1. The public schools of California, other than those supported exclusively by the state, shall be classed as day and evening elementary, and day and evening secondary schools.

"The day and evening elementary schools of California shall be designated as primary and grammar schools.

"The day and evening secondary schools of California shall be designated as high schools and technical schools, and either class may include a portion of the other class.

"No teacher shall be employed to teach in any way, in any school, if the certificate held by the teacher is of a grade below that of the school or class to be taught: *Provided*, That the holders of existing primary certificates or of the same when hereafter renewed or made permanent shall be eligible to teach in any of the grades of a day or evening elementary school below the sixth year and not including the kindergarten grades; and in any day or evening elementary school of the county, or city and county, which the county, or city and county superintendent shall designate as a primary day or evening elementary school: *And provided further*, That the holder of any valid special certificate for kindergarten work, or of any kindergarten-primary certificate, shall be eligible to teach in the kindergarten grades of day elementary schools."

Chap. 595, Apr. 14, 1909.

508 California: Amending Sec. 1771, Political Code, relative to the powers of the county board of education.

Amending classification of teachers' certificates granted. Providing for the adoption of supplementary books. Authorizing revocation or suspension of teachers' certificates; conditions.

Chap. 644, Apr. 17, 1909.

509 *Utah: Amending sec. 1795, Compiled Laws, 1907, relative to the requirements for the certificate of teachers.

Section 1. * * *

"*Provided*, That in 1911 and thereafter all applicants for teachers' certificates to be eligible to enter the examination required by law, must file with the State Board of Education evidence of their having had at least four years' high school education or its equivalent, and in addition thereto must pass a successful examination in Psychology and History of Education: *Provided further*, That this requirement shall not be made of teachers who have had three years' successful teaching experience in the schools of the State."

Chap. 34, Mar. 10, 1909.

(b) Teachers' Examinations and Certificates; General.

510 *Alabama: Amending secs. 1721, 1722, 1723, and 1741, Code, 1907, relative to the examination and certificates of teachers.

Secs. 2, 3, 4, and 7, Act 73, p. 105, Aug. 21, 1909 (sp. sess.). (Dec. 1, 1909.)

511 **California:** Amending sec. 1775, Political Code, 1906, relative to the duties of county boards of education.

Reclassifying grades of certificates granted. Conditions for renewal.
Chap. 126, Mar. 8, 1909.

512 **California:** Amending in a minor manner sec. 1521, Political Code, 1906, relative to the powers and duties of the state board of education with reference to teachers' certificates.

Chap. 257, Mar. 15, 1909.

513 * **Colorado:** Establishing a state board of examiners; prescribing duties; repealing sec. 2, chap. 135, Laws, 1899. Providing for the granting of state diplomas.

"Sec. 1. There is hereby created a State Board of Examiners which shall consist of a state superintendent of public instruction who shall be president of the board, and eight other persons who shall be appointed by the State Board of Education in the manner following: Immediately upon the passage of this act the State Board of Education shall appoint two members of said State Board of Examiners, one of whom shall be recommended to it for that purpose by the president of the State Agricultural College and both of whom shall be citizens of Colorado, actively engaged in educational work and who are not members of the faculties of either the State Agricultural College, the University of Colorado, the State School of Mines, or the State Normal School, which said members shall hold office until the first day of May, A. D. 1910, and whose respective successors shall in like manner be appointed to hold office for successive terms of four years thereafter.

"And the State Board of Education shall also in like manner appoint two members of said State Board of Examiners, one of whom shall be recommended to it for that purpose by the president of the University of Colorado and both of whom shall be citizens of Colorado, actively engaged in educational work, and who are not members of the faculties of either the State Agricultural College, the University of Colorado, the State School of Mines or the State Normal School, which said members shall hold office until the first day of May, A. D. 1911, and whose respective successors shall in like manner be appointed to hold office for successive terms of four years thereafter.

"And the State Board of Education shall also in like manner appoint two members of said State Board of Examiners, one of whom shall be recommended to it for that purpose by the president of the State School of Mines and both of whom shall be citizens of the State of Colorado, actively engaged in educational work, and who are not members of the faculties of either the State Agricultural College, the University of Colorado, the State School of Mines or the State Normal School, which said members shall hold office until the first day of May, A. D. 1912, and whose respective successors shall in like manner be appointed to hold office for successive terms of four years thereafter.

"And the State Board of Education shall also in like manner appoint two members of said State Board of Examiners, one of whom shall be recommended to it for that purpose by the president of the State Normal School and both of whom shall be citizens of the State of Colorado; actively engaged in educational work, and who are not members of the faculties of either the State Agricultural College, the University of Colorado, the State School of Mines or the State Normal School, which said members shall hold office until the first day of May, A. D. 1913, and whose respective successors shall in like manner, be appointed to hold office for successive terms of four years thereafter.

"Sec. 2. The State Board of Examiners shall, as often as directed by the State Board of Education, and at least as often as once a year, and after having given due public notice of the same, examine all applicants for State diplomas in such branches and upon such terms as in the judgment of the State Board of Examiners, shall be requisite to prove the applicant's possession of academic and professional attainments, fully equivalent to those set forth in section 4 of this act.

"Sec. 3. And the State Board of Education shall grant State diplomas to such persons as shall by virtue of such examination, be found to possess the requisite scholarship and culture and who shall also exhibit evidence satisfactory to the State Board of Education, of good moral character.

"Sec. 4. The State Board of Education shall issue State diplomas upon application, without examination, to applicants who shall be graduates of colleges situated within the State of Colorado, which maintain a standard

four-year course of collegiate work, and require four standard years of High school work or its equivalent for admission, and who shall also exhibit evidence satisfactory to the State Board of Education of good moral character, and who shall also present evidence satisfactory to the State Board of Education that they have had twenty-four months of successful teaching experience, and who shall also produce evidence satisfactory to the State Board of Education of professional training equivalent to at least one-sixth of a standard four years' college course and at least three of the following groups of subjects, one of which shall be Practice Teaching, to-wit:

- (1) General and Educational Psychology.
- (2) History of Education.
- (3) Science and Principles of Education.
- (4) Practice Teaching and Special Methods.
- (5) Organization and Management of Schools.
- (6) Philosophy, Sociology and Anthropology.

"Sec. 5. The State Board of Education shall grant State diplomas to all persons who shall be teaching in the public High schools of the State of Colorado at the time of the passage of this act and who shall, within a period of six months thereafter, satisfy the State Board of Education that they have had forty-five months successful teaching experience in the public High schools of the State of Colorado.

"Sec. 6. The State Board of Education may, in their discretion, issue State diplomas without examination, to those persons who, in addition to good moral character and scholarly attainments, have in the opinion of the State Board of Education, rendered eminent service in the educational work of the State for a period of not less than six years.

"Sec. 7. State diplomas, granted under the provisions of this act, shall license the holders thereof to teach in the public schools of any county, city, town or district in the State without the necessity of any other examination, for a period of five years unless sooner revoked by the State Board of Education, and at the expiration of said time, the same may be renewed for a like period of five years in the discretion of the State Board of Education, and at the expiration of this time, the same may be renewed for life upon presentation to the State Board of Education of satisfactory evidence of professional growth and efficiency: Provided, That the State Board of Education shall issue upon application, without examination, to those persons who possess the qualifications set forth in section 4 of this act, experience in teaching alone excepted, a temporary, non-renewable certificate to teach for five years in the public schools of Colorado.

"Sec. 8. Section 2 of an act entitled 'An act to amend Sections 3 and 4 of an act entitled 'An Act to establish and maintain a system of free schools, approved March 20, 1877,' approved April 29, 1899,' and all other acts and parts of acts in conflict with this act, are hereby repealed.

SEC. 9. * * *

Chap. 165, Apr. 23, 1909.

514 *Idaho: Amending secs. 591 and 592, chap. 6, art. 4, Revised Code, 1909, relative to the certification of teachers.

Providing for the issuance of professional primary certificates to applicants otherwise qualified, holding a certificate not below second grade and in addition having completed at least one year of professional primary training in a state normal school.

H. B. No. 28, p. 24, Mar. 5, 1909.

515 Idaho: Amending sec. 561, Revised Code, 1909, relative to the duties of state board of public instruction regarding the issuance of state certificates and state diplomas.

S. B. No. 130, p. 225, Mar. 15, 1909.

516 Idaho: Amending secs. 568 and 599, Revised Code, 1909, regarding the duties of the state superintendent of public instruction.

Relating to the preparation of teachers' examination questions and to the appointment and compensation of examiners.

S. B. No. 31, p. 273, Mar. 15, 1909.

- 517 **Kansas:** Preventing the sale, distribution, or the having in possession of examination questions prior to the time that such questions are properly ready for distribution; providing penalties for the violation thereof.
Chap. 208, Mar. 2, 1909.
- 518 **Michigan:** Amending sec. 4808, Compiled Laws, 1897, providing for the election of a county commissioner of schools, for the appointment of school examiners, and defining the duties and fixing compensation for the same.
Second (formerly third) grade certificate required of examiners.
Act 221, June 2, 1909.
- 519 **Missouri:** Amending sec. 9798, art. 1, chap. 154, Revised Statutes, 1899, relative to qualifications for teachers' certificates.
Adding elementary agriculture to the list of required subjects.
P. 827, May 14, 1909.
- 520 **Montana:** See enactment No. 62.
- 521 **South Dakota:** Amending sec. 16, chap. 135, Laws, 1907, relative to fees for life diplomas.
Chap. 260, Mar. 9, 1909.
- 522 **Vermont:** See enactment No. 75.
- 523 **Vermont:** Repealing sundry secs., Public Statutes, 1906, and amending other sundry secs., relative to the examination and certification of teachers.
Providing for a more uniform and economical system of examination.
Act 37, Jan. 25, 1909. (July 1, 1909.)
- 524 **West Virginia:** Amending and re-enacting secs. 81 and 82, chap. 45, Code, 1906, as amended by Acts, 1908, relating to the examination of teachers.
Adding agriculture to list of required subjects. Other amendments.
Chap. 25, Mar. 1, 1909.
- 525 **West Virginia:** Amending and re-enacting sec. 92, chap. 27, Acts, 1908 (sp. sess.), relative to the issuing of teachers' certificates.
Chap. 26, Feb. 16, 1909.
- 526 * **Wisconsin:** Creating sections 450-1 to 450-5, inclusive, Statutes, relative to the examination, qualification, and certification of teachers.
"SECTION 450—1. 1. Every applicant for a third grade certificate shall be examined in orthoepy, spelling, reading, penmanship, arithmetic, elementary composition and grammar, geography, the history of the United States, the civil government of the United States and of the state of Wisconsin, physiology and hygiene with special reference to the effects of stimulants and narcotics upon the human system, school management, the manual of the elementary course of study for the common schools of Wisconsin, and the elements of agriculture; and in addition to passing examinations in the aforesaid branches he shall have attended a professional school for teachers for at least six weeks and shall have received in such school standings in school management, and in the methods of teaching reading and language, arithmetic and geography, provided, however, that the provisions of this section relative to attendance at professional schools for teachers shall not apply to persons who have taught successfully in the public schools for at least eight months prior to July 1st, 1910.
"2. In this act 'professional school for teachers' shall mean a state normal school, a county training school for teachers, any school in rank above a high school, offering a course for teachers equivalent to that offered in the state normal schools of Wisconsin, or, in counties remote from a state normal school or county training school for teachers, a teachers' institute maintained under such conditions and restrictions as may be provided for by the board of regents of normal schools, provided that such institute shall be taught by at least two teachers and be of not less duration than six weeks, and shall have in connection therewith a model or practice school.

"3. A third grade certificate shall entitle the holder to teach for such period, not more than one year, as may be specified therein, in the superintendent's district in which the certificate is issued. A third grade certificate may be renewed if the holder shall during the life of the certificate attend a professional school for teachers for a period of not less than six weeks and shall receive in such school credits in at least two subjects. The holder of a third grade certificate may also renew the same by passing an examination in all the subjects required for a third grade certificate. Not more than three third grade certificates shall be granted after 1910 to the same person.

"Sec. 450-2. 1. An applicant to receive a second grade certificate shall have taught successfully in the public schools for at least eight months and shall pass a satisfactory examination in all the branches required for a third grade certificate, and in addition in physical geography, American literature, English composition, and in the cataloging and use of school libraries. The county or city superintendent may transfer the standings of a third grade certificate in force to a second grade certificate if the holder of such third grade certificate has taught a school successfully for at least eight months and has attended, since receiving such third grade certificate, a professional school for teachers for at least six weeks and received credits in at least two subjects.

"2. A second grade certificate shall entitle the holder to teach in the superintendent's district where it is issued and shall be in force three years from the date of its issue.

"3. A second grade certificate may be renewed if the holder thereof shall pass an examination in all the subjects required for a second grade certificate. A second grade certificate may also be renewed without examination provided the holder thereof has taught successfully for two years during the life of such certificate and has attended a professional school for teachers for at least six weeks and received credits in at least two subjects.

"Sec. 450-3. 1. An applicant to receive a first grade certificate shall have taught successfully for at least eight months in the public schools and shall pass a satisfactory examination in all the branches required for a second grade certificate, and in addition in English literature, theory and art of teaching, algebra, physics and English history. The county or city superintendent may transfer the standing of a second grade certificate in force to a first grade certificate if the holder of such second grade certificate has taught a school successfully for at least eight months and has attended, since receiving such second grade certificate, a professional school for teachers for at least six weeks and received credits in at least two subjects.

"2. A first grade certificate shall entitle the holder to teach in the superintendent's district in which it is issued and shall be in force for five years.

"3. A first grade certificate may be renewed by the county or city superintendent for one or more periods of five years each, provided the holder has taught successfully for a period of ten years.

"Sec. 450-4. Whenever the supply of legally qualified teachers in any county has been exhausted the county or city superintendent with the approval of the state superintendent may issue special third grade certificates on examination in the subjects required for such certificates to as many persons as are necessary to supply the schools, provided that not more than one such certificate shall be issued to the same person.

"Sec. 450-5. 1. No first, second or third grade teacher's certificate shall be issued after July 1st, 1910, except as provided in sections 450-1 to 450-4 inclusive, of this act, provided further that nothing in this act shall repeal the provisions of section 450a of the statutes.

"2. Any person so desiring, may, however, qualify for the several grades of certificates, provided for in this act, as therein required, at any time after its passage and publication."

Chap. 378, June 11, 1909.

527 *Wyoming: Repealing sundry sections, Revised Statutes, 1899, as amended by sundry chapters, Session Laws, relating to the state board of examiners, their powers, duties, and compensation; the examination of teachers and the issuance of certificates.

Chap. 33, Feb. 18, 1909.

(c) Teachers' Examinations and Certificates: Special.

528 **Michigan:** Amending sec. 1, act 166, Public Acts, 1901, as amended by act 24, Public Acts, 1905, relative to the legal qualifications of kindergarten, music, and drawing teachers.

Act 111, May 19, 1909.

529 **North Dakota:** Amending sec. 871, Revised Codes, 1905, relative to state teachers' certificates.

Minor amendment concerning diplomas from teachers' college of the university. Providing for special certificates in domestic science, nature study, and elementary agriculture.

Chap. 96, Mar. 15, 1909.

(d) Teachers' Certificates: Validity; Indorsement; Registration; Revocation.

530 **Alabama:** Repealing sec. 1742, Code, 1907, relative to forfeiture of life certificates whenever the holder discontinues teaching for five consecutive years.

Sec. 8, act 73, p. 106, Aug. 21, 1909, sp. sess. (Dec. 1, 1909.)

531 **California:** Amending chap. 5, Statutes, 1880, continuing in force school teachers' certificates, state educational diplomas, and life diplomas.

Validating certificates and diplomas granted previous to February 1, 1909.

Chap. 186, Mar. 11, 1909.

532 **Idaho:** Amending sec. 593, chap. 6, art. 4, Revised Code, 1909, relative to issuance of special certificates.

Defining in detail conditions for recognition of diplomas and degrees from other States; establishing equivalency.

H. B. No. 168, p. 192, Mar. 15, 1909.

533 **Iowa:** Amending secs. 2734g and 2734h, supplement to the Code, 1907, relative to the renewal of teachers' certificates.

Chap. 181, Apr. 8, 1909.

534 **Missouri:** Repealing sec. 9962, chap. 154, art. 6, Revised Statutes, 1899, as amended by p. 248, Laws, 1901, relating to the revocation of teachers' certificates.

Making the annulment of written contracts with boards of directors without the consent of the members of the board cause for revocation. Providing for written charges and hearings in all cases of revocation. Procedure.

P. 849, June 14, 1909.

535 **South Dakota:** Amending secs. 4 and 15, chap. 135, Laws, 1907, relating to the renewal, validation, and revocation of state certificates.

Secs. 1 and 2, chap. 140, Mar. 3, 1909.

(e) Teachers' Certificates; Recognition of Normal School and College or University Diplomas.

D. 536 **Idaho (1909):** A teacher's certificate issued under Rev. Codes, sec. 593, empowering the state board of education to authorize county superintendents to issue teachers' certificates to graduates of state normal schools or any chartered college or university having the right to grant degrees, providing that an applicant for a certificate shall have been successfully engaged in teaching not less than 27 months, and shall present to the state board a certificate of graduation from a normal school or a literary degree from a college or university, should be

dated as of the date of the application and completion of proof, and relates back to the date applicant showed himself entitled thereto.—Bradfield v. Avery, 102 P., 687.

- 537 *Michigan: Authorizing the state board of agriculture to grant teachers' certificates in certain cases.

"SEC. 1. The State Board of Agriculture, on recommendation of the president and heads of departments of the Michigan Agricultural College, is hereby authorized to grant to persons who have completed the regular four year course in agriculture, together with a course in pedagogics covering at least a half year's special instruction in such subject, a teacher's certificate, which shall serve as a legal qualification to teach agriculture and the related sciences in any of the public schools of this State for the period of three years."

SEC. 2. * * *
SEC. 3. * * *

Act 165, June 1, 1909.

- 538 Minnesota: Amending sec. 1361, Revised Laws, 1905, defining the value of teachers' certificates issued by the state university and diplomas from the state normal schools, and repealing sec. 1369, Revised Laws, 1905, relating to the validity of teachers' certificates issued by the state university.

Defining separately the value of certificates granted to graduates of the college of education of the university and graduates of the normal schools.

SEC. 1. * * *
SEC. 2. * * *

"SEC. 3. Elementary diplomas granted by the state normal school upon the completion of such portion of the course of study as may be prescribed therefor by the normal school board, shall be valid as first grade certificates for the period of three years from their date, and shall not be renewable; except that any holder of such an elementary diploma may have the force and effect thereof, as such first grade certificate, extended for a further period of three years, by the completion of an additional one year of work in a Minnesota state normal school, and the certificate of endorsement thereon by the president of such school and the state superintendent; *Provided*, That the provisions of this section shall not apply to persons now holding Minnesota elementary normal diplomas, nor to any student heretofore enrolled in a Minnesota state normal school who shall be graduated prior to September 1, 1911."

SEC. 4. * * *
SEC. 5. * * *
SEC. 6. * * *

Chap. 455, Apr. 23, 1909.

- 539 Texas: Amending secs. 122, 123, and 124, chap. 124, Acts, 1905, relative to teachers' certificates.

Further defining conditions for recognition for state teachers' certificates, or degrees, diplomas, and certificates granted by the university of Texas. Further defining conditions for recognition of diplomas and degrees granted by colleges and universities of the first class.

Defining grades and conditions for granting certificates in cities.

Chap. 7, p. 394, May 6, 1909.

(f) Teachers' Associations.

- 540 North Dakota: Providing for the encouragement of professional spirit among teachers.

Authorizing boards of education to permit superintendents, principals, and teachers to attend meetings of state educational association held during school session without loss of salary.

Chap. 98, Mar. 15, 1909.

F. TEACHERS: EMPLOYMENT; CONTRACT; APPOINTMENT; DISMISSAL.

(a) General.

The passage of a permanent tenure law for teachers in New Jersey (545) is by far one of the best illustrations of the legislative year for the increase of the efficiency of public education, seeking as it does to reduce the well known disadvantages to progress arising from an unstable instructional force. The amendment approved in South Dakota (548), permitting the participation of the people in certain school districts in the selection of teachers, and the decision of the Pennsylvania superior court (546-547) with reference to the wearing of religious garb by teachers, are not without significance as features of the modern state educational policy.

- D. 541 **District of Columbia** (1908): The board of education of this District has the power to inquire into the qualifications of a teacher of the public schools and to dismiss her without giving her the hearing required by section 10 of the act of Congress of June 20, 1906, chap. 3446, 34 Stat., 321, which provides that, "when a teacher is on trial or being investigated he or she shall have the right to be attended by counsel and by at least one friend of his or her selection;" that section being an independent provision for the protection of teachers against all charges that are not confined to the professional qualifications of a teacher.—United States v. Hoover, 31 App. D. C., 311.
- D. 542 **Iowa** (1908): The rules applicable to ordinary contracts of employment as to measure of damages obtain in cases of breach of contract to teach a public school.—Byrne v. Independent School Dist. of Struble, 117 N. W., 983.
- D. 543 **Iowa** (1908): Where a contract to teach a public school is disregarded by the district, and the teacher is denied the right to perform, he must find other employment to mitigate the damages, but his damages are not to be diminished for failure to secure other employment, unless by reasonable diligence he might have secured employment of the same grade in the same locality.—Byrne v. Independent School Dist. of Struble, 117 N. W., 983.
- 544 **Montana**: Amending sec. 904, Revised Code, 1907, relative to construction of teacher's contract with respect to legal holidays.

Chap. 28, Feb. 25, 1909.

- 545 * **New Jersey**: Supplementing Acts, 1903 (sp. sess., Oct. 19), establishing a free public school system so as to provide permanent tenure for teachers. (See secs. 106-108.)

"Sec. 1. The service of all teachers, principals, supervising principals of the public schools in any school district of this State shall be during good behavior and efficiency, after the expiration of a period of employment of three consecutive years in that district, unless a shorter period is fixed by the employing board; *provided*, that the time any teacher, principal, supervising principal has taught in the district in which he or she is employed at the time this act shall go into effect, shall be counted in determining such period of employment. No principal or teacher shall be dismissed or subjected to reduction of salary in said school district except for inefficiency, incapacity, conduct unbecoming a teacher or other just cause, and after a written charge of the cause or causes shall have been preferred against him or her, signed by the person or persons making the same, and filed with the secretary or clerk of the Board of Education having charge of the school in which the service is being rendered, and after the charge shall have been examined into and found true in fact by said Board of Education, upon reasonable notice to the person charged, who may be repre-

sented by counsel at the hearing. Charges may be filed by any person, whether a member of said school board or not.

"Sec. 2. Said Board of Education shall have power to issue writs of subpoena on behalf of either party to compel attendance of witnesses to testify before said board in the matter under investigation, which subpoena shall be issued under the seal of said board and be signed by the secretary or clerk thereof, and shall be served in the same manner as subpoenas issued out of the Courts of Common Pleas of this State, and every person who refuses or neglects to obey the command of such a writ, or, who, after appearing, refuses to be sworn and testify, shall in either event be liable to a penalty of fifty dollars, to be sued for in the name of said board in any court of competent jurisdiction, which penalty when collected shall be paid to the treasurer or custodian of moneys of said board. Any member of said board is hereby authorized to administer oaths to such witnesses as may appear or be brought before it, and any person who shall have been so sworn and who shall testify falsely, shall be guilty of perjury.

"Sec. 3. Nothing herein contained shall be held to limit the right of any school board to reduce the number of principals or teachers employed in any school district when such reduction shall be due to a natural diminution of the number of pupils in said school district; and, provided further, that the service of any principal or teacher may be terminated without charge or trial who is not a holder of a proper teacher's certificate in full force and effect."

Sec. 4.

Chap. 243, Apr. 21, 1909. (Sept. 1, 1909.)

- D. 546 Pennsylvania (1909): The provision in Act June 27, 1895 (P. L., 395), "That no teacher in any public school of this Commonwealth shall wear in said school or whilst engaged in the performance of his or her duty as such teacher any dress, mark, emblem or insignia indicating the fact that such teacher is a member or adherent of any religious order, sect or denomination," does not disqualify any person from employment as a teacher "on account of his religious sentiments." It is directed against the acts, not beliefs, and only against acts of the teachers whilst engaged in the performance of his or her duties as such teacher.—Commonwealth v. Herr, 39 Pa. Super. Ct., 454.

The religious freedom and the rights of conscience guaranteed by the Constitution do not necessarily and always stand in the way of the enforcement of laws commanding or prohibiting the commission of the acts even by those who conscientiously believe it to be their religious or moral duty to do or to refrain from doing.—*Id.*

The right of the individual to clothe himself in whatever garb his taste, his inclination, the tenets of his sect, or even his religious sentiments may dictate is no more absolute than his right to give utterance to his sentiments, religious or otherwise. In neither case can it be said that a statute cannot restrain him from exercising these rights whenever, wherever, and in whatever manner he conscientiously believes it to be his moral or religious duty to do so.—*Id.*

- D. 547 Pennsylvania (1909): Act June 27, 1895 (P. L., 395), entitled "An act to prevent the wearing in the public schools of this Commonwealth, by any of the teachers thereof, of any dress, insignia, marks, or emblems indicating the fact that such teacher is an adherent or member of any religious order, sect or denomination, and imposing a fine upon the board of directors of any public school permitting the same," is sufficient in title, and does not violate Const., art. 3, sec. 3, declaring that no bill, except general appropriation bills, shall contain more than one subject which shall be expressed in the title.—Commonwealth v. Herr, 39 Pa. Super. Ct., 454.

The statement in the title that the fine is to be imposed on the "board of directors," whereas the penal provision contained in the body of the act is directed against the director or directors who offend, does not render the act unconstitutional.—*Id.*

The title of Act June 27, 1895 (P. L., 395), entitled, "An act to prevent the wearing in the public schools of this Commonwealth by any of the teachers thereof, of any dress, insignia, marks or emblems indicating the fact that such teacher is an adherent or member of any religious order, sect or denomination and imposing a fine upon the board of directors of any public school permitting the same," is sufficient to cover provisions relating to the suspension and disqualifying of teachers who violate the act and to cover the provisions relating to the fining of individual directors, of the deprivation of the directors of their office, or their disqualification for office.—*Id.*

548 * **South Dakota:** Amending sec. 110, chap. 135, Laws, 1907, relating to the employment of teachers.

"Sec. 110. * * * *Provided, further,* That in any school district consisting of one or more townships, in any school except in a city, town or village of more than fifty inhabitants, if a petition be presented to the clerk of said district or school board on or before the regular school meeting in July, signed by three-fourths of the parents or guardians of persons of school age belonging to any school in said district, such petition asking that a certain teacher be employed for the following school year, provided said teacher at the time of said meeting is the holder of a valid second or third grade certificate or certificate of higher grade, it shall be the duty of the school board so petitioned to employ said teacher provided said teacher is willing to teach said school at the wages paid other teachers in said district of like qualifications and holding like certificates." Chap. 36, Feb. 17, 1909.

(b) Teachers' Salaries.

The year presents little of importance with regard to teachers' salaries. In a number of States minimum salary laws were proposed, but Rhode Island (554) was the single conspicuous illustration of favorable consideration. The authorization in California (549) for the payment of the annual salaries of teachers in twelve installments and the declaration of the Ohio circuit court (D. 553) in the matter of payment of teachers for attending teachers' institutes are concerned with items of a progressive educational policy.

549 **California:** See enactment No. 118.

550 **California:** Amending sec. 1622, Political Code, 1906, as amended by chap. 86, Statutes, 1907, relative to the payment of state and county school moneys for teachers' salaries.

Providing that salaries of city superintendents and supervising principals may be paid from teachers' salary fund.

Chap. 203, Mar. 13, 1909.

551 **New Mexico:** Amending sec. 26, chap. 97, relative to teachers' wages.

Repealing clause concerning full pay for legal holidays and Christmas holiday vacation.

Sec. 10, chap. 121, Mar. 18, 1909.

D. 552 **New York (1909):** Greater New York charter, sec. 1091 (Laws, 1901, p. 473, chap. 466), providing that no female teacher of a mixed class shall receive less than \$60 a year more than a female teacher of a girls' class of a corresponding grade and years of service, has reference only to teachers in the regular graded school work and does not entitle a kindergarten teacher to such additional compensation.—*Bronx Borough Teachers' Assn. v. Board of Education*, 118 N. Y. S., 483.

D. 553 **Ohio (1908):** A stipulation in a teacher's contract that the teacher will not exact pay allowed by Rev. Stat., sec. 4091 (Lan. Rev. Stat., sec. 6683), for attending teachers' institute is void, as against public policy, and the teacher can recover the sum fixed by the statute.—*Board of Education of Elizabeth Tp. v. Burton*, 30 Ohio Cir. Ct. R., 411.

554 * **Rhode Island:** Relative to securing greater efficiency in teaching in the public schools of the State.

"Sec. 1. The annual salary of a teacher regularly employed in any public school of this state, except in cases of persons engaged in practice-teaching in the state or city training schools, on and after the first of September in the year one thousand nine hundred and ten, shall not be less than four hundred dollars.

"Sec. 2. Any town conforming to the provisions of section one of this act shall be entitled to receive from the state, annually, for each teacher employed for a school year, a sum equal to one-half of the excess four hundred dollars is over the average salary paid to any teacher for the school year of such town ending in the year one thousand nine hundred and nine."

Chap. 458, May 7, 1909.

555 Vermont: Supplementing and amending sec. 1054, Public Statutes, 1906, relative to the payment of teachers' salaries.

Teachers may demand monthly payment. Payment for last four weeks of teaching only upon certificate of clerk that register is completed.

Act 45, Jan. 25, 1909.

(c) Teachers' Pensions.

[See also enactments under Section P, Higher Institutions, subsection d., Carnegie Fund.]

The movement for the establishment of pension funds for public-school teachers was encouraged during the year by the new laws in Colorado (557), Minnesota (559), and Nebraska (561). Rhode Island (563) and Wisconsin (564) amended in an important manner the existing laws on this subject, while Missouri proposed a constitutional amendment concerning teachers' pensions.

556 California: Amending, in a minor manner, sec. 10, chap. 166, Statutes, 1895, as amended by chap. 169, Statutes, 1897, as amended by chap. 230, Statutes, 1901, as amended by chap. 231, Statutes, 1903, relative to a public-school teachers' annuity and retirement fund.

Chap. 189, Mar. 11, 1909.

557 Colorado: Establishing a public-school teachers' retirement fund.

"Sec. 1. In every school district of the first class, there may be created a school teachers' retirement fund which shall be controlled by the board of school directors of the school district concerned.

"Sec. 2. The Board of directors in any such district is hereby authorized to establish a public school teachers' retirement fund, and shall be authorized to pay out of such fund a sum not to exceed forty dollars (\$40) per month to any man teacher sixty years of age or any woman teacher fifty years of age, who has been in active service as a teacher for a period of twenty-five years, of which not less than fifteen years shall have been within said school district.

"The board of school directors of any such district may also, subject to the above limitations make provisions for such teachers as may become permanently incapacitated from teaching, while in the service of the district, provided, however, that the said beneficiary shall have served in the school district for a period of not less than ten years.

"Any teacher of such school district coming under the provisions of this act who may, by making application, or by action of the board of school directors be entitled to receive the benefit from the public school teachers' retirement fund as provided for in this act, shall not be entitled to receive benefit while drawing a salary as a teacher in active service.

"Sec. 3. The moneys for the use of the public school teachers' retirement fund shall be secured by a special levy upon the said school district, such special levy, however, not to exceed one-tenth (1-10) of one mill, and from any gifts or bequests which may be made to said fund."

Chap. 214, May 5, 1909.

558 Massachusetts: Relating to the payment of pensions to teachers in the public day schools of the city of Boston.

Providing conditions under which annuitants of the Boston Teachers' Retirement Fund Association at the time when chap. 589, Acts, 1908, took effect, and those previously retired, may become beneficiaries of the fund established by said act.

Chap. 587, June 19, 1909.

559 Minnesota: Authorizing the creating of retirement fund associations and the granting of annuities to retired teachers in cities having a population of more than 50,000 inhabitants, and providing a fund out of which such annuities may be paid.

"SECTION 1. In every city of this state now or hereafter having a population of more than fifty thousand inhabitants, the teaching body may, with the consent of the common council or city council in said city, establish an association to be known as 'Teachers' Retirement Fund Association,' said association to be formed and organized and to have powers and privileges as hereinafter provided.

"SEC. 2. Any plan for the establishment of such an association shall include a provision for the organization of a corporation under the provisions of chapter fifty-eight of the Revised Laws of 1905 and acts amendatory thereof.

"SEC. 3. Whenever any teaching body of any city of this state having a population of more than fifty thousand inhabitants desires to avail itself of the privileges of this act, said teaching body shall formulate a plan for the formation and incorporation of such an association and the collection and disbursement of a fund for the benefit of retired teachers in said city, which said plan shall be submitted to the common council or city council of said city for approval, and when the same is approved by said common council or city council, the said association so established and incorporated shall have full power and authority to receive and disburse funds in accordance with the said plan so adopted.

"SEC. 4. No such association shall be incorporated and commence to collect and disburse funds until the plan so to be proposed by the said teaching body shall be approved in writing by a majority of all the teachers in the employ of the board of education and when the said corporation is formed there shall be filed with the articles of incorporation an affidavit made by some officer of the board of education that a majority of the said teachers have approved in writing of the formation of said association.

"SEC. 5. Said plan so to be adopted shall include a provision that only such teachers as make a contribution to the said fund, as provided in said plan, shall be entitled to the benefits thereof, and may include a provision that a portion of said fund shall be raised by taxation upon the property of the said city; it being understood, however, that all teachers who are willing to comply with the terms and conditions of the articles of association and by-laws of said association shall be entitled to participate in the benefits of said fund.

"SEC. 6. When said plan is adopted, as hereinbefore set forth, and said association is formed and incorporated, the proper officers of said association shall certify annually to the proper authorities, who have charge of the levying of taxes in said city and in the county in which said city is located, the amount which it will be necessary to raise by taxation in order to carry out the plan so adopted, as hereinbefore set forth, for the coming year, and it shall be the duty of the said authorities so having charge of the levying of taxes to include in the tax levy for the ensuing year, a tax in addition to all other taxes, sufficient to produce said sum so certified.

"Provided, however, that said tax shall in no event exceed one-tenth of a mill upon all taxable property of said city; and the said tax shall be collected as other taxes are collected in said city and when so collected shall be paid over to the treasurer of said association to be held and disbursed in accordance with the provisions of said plan so to be adopted.

"SEC. 7. Any such association so to be formed shall be empowered to receive, hold and dispose of real estate or personal property acquired by them, either by gift or purchase or in any other lawful way, as provided by their articles of association so to be adopted, as herein provided.

"SEC. 8. Said plan may provide in the event that the funds of the association are not sufficient to pay annuities in full, as provided in said plan, in any particular year, that the amount available shall be pro-rated between those entitled to receive the same.

"SEC. 9. The word teachers as used in this act shall include superintendents, supervisors, principals, as well as instructors, who are in the employ of the board of education or board of school inspectors in the city mentioned in this act.

"SEC. 10. * * * and be in force from and after its passage."

Chap. 343, Apr. 21, 1909.

560 **Missouri:** Submitting amendment to constitution concerning the pensioning of teachers by school boards or boards of education.

Con. Res. No. 2, p. 908, —, 1909.

561 ***Nebraska:** Providing for a retirement fund for public school teachers in school districts in metropolitan cities, and for the retirement of teachers in such districts, and for the control and distribution of such fund.

"Sec. 1. In every School District in a city of the metropolitan class in the State, there shall be created a Public School teachers retirement fund, which fund when created, and the management and disbursement thereof, shall be under the control of the Board of Education of such School District. Such retirement fund shall be created and maintained in the following manner.

"1st. By an assessment of not less than 1% nor more than 1½% of every installment of salary paid to a teacher regularly employed by such School District.

"2nd. By the setting aside from the general fund of such School District of an amount which shall be not less than one and one-half times the amount of such salary assessments, and not less than the amount necessary to meet the payments herein provided for.

"3rd. By the receipt by gift or otherwise of any real, personal or mixed property, or any interest therein.

"Sec. 2. Such a retirement fund when thus created and maintained, or so much thereof as shall be necessary, shall be disbursed in the manner hereinafter set forth. And any surplus of fund not needed for immediate disbursement may be invested by the Board of Education of such School District; (1) In bonds of the city constituting such School District; (2) In bonds of the County wherein such School District is situated; (3) In bonds of the state of Nebraska; (4) In bonds of the United States of America.

"Sec. 3. Any teacher who has been credited under the rules and regulations of such Board of Education with an aggregate of thirty-five years of teaching experience may be retired by such Board of Education, and any teacher who has been so credited with an aggregate of forty years of teaching experience shall be retired, for no other cause than length of service. Any teacher so retired under either of the foregoing provisions of this Section, provided that at least twenty years of such accredited teaching experience shall have been in the Public Schools of such District, shall be entitled to receive from such retirement fund, so long as such teacher may live, equal monthly payments which shall aggregate \$500.00 per annum.

"Sec. 4. Any teacher who has been credited under the rules and regulations of such Board of Education with an aggregate of twenty-five or more years of teaching experience, may be retired by such Board of Education on account of disability or incapacity, physical or otherwise. Any teacher so retired, provided that at least twenty years of such accredited teaching experience shall have been in the Public Schools of such School District, shall be entitled to receive from such retirement fund, during the period of retirement, monthly installments, the annual aggregate of which shall be such percentage of the sum of \$500.00 as the number of years of such accredited teaching experience of the beneficiary, shall bear to the term of thirty-five years. Any teacher so retired may, at the discretion of the Board of Education, should such teacher's incapacity or disability be removed, be reinstated as a teacher, and any right to any payments from this fund until such teacher again be retired shall cease with such reinstatement. And shall any teacher be so reinstated, the years of such retirement shall be included in arriving at the term of service when such teacher may again be retired, but no credit for such years of retirement shall be given in arriving at the amount such teacher shall be entitled to receive from the retirement fund.

"Sec. 5. No heirs, legatees, creditors or assignees shall be entitled to any moneys from the fund created in accordance with the provisions of this act, and the same shall be exempt from garnishment or execution.

"Sec. 6. Nothing in this act shall be construed to prevent the discharge of any teacher at any time in the discretion of the Board of Education of such School District. Discharge of any teacher for cause other than disability or incapacity, physical or otherwise, or other than for length of service, shall forfeit any right of such teacher to benefit from the fund created in accordance with the provisions of this act.

"Sec. 7. In construing this act, the word teacher shall include all members of the teaching staff employed by the Board of Education of such School District, which shall include supervisors and assistants to the superintendent of instruction, principals and teachers.

"Sec. 8. It is hereby made the duty of the treasurer of such School District to keep any fund arising under the provisions of this act, as a separate fund, and to disburse the same in accordance with the instructions and orders of the Board of Education of such School Districts.

"Sec. 9. It is hereby provided that the salary of any teacher regularly employed by such School District, who, at the time this law shall take effect, shall be under a tenure of permanent employment by said School District, may, if approval of the Board of Education of such District is had, be exempt from assessment hereinbefore provided for; providing such teacher shall make request in writing for such exemption, and file the same with the Board of Education of such School District on or before the first day of August, 1909. And such a request, when filed and approved by the Board of Education of such School District, shall constitute a waiver and a bar to the receipt of any benefits from the retirement fund herein provided for.

"Sec. 10. The Board of Education shall have power to adopt rules and regulations for the carrying out of the purpose of this Act, not in conflict herewith."

Sec. 11. * * *

Chap. 132, Mar. 24, 1909.

- 562 **New York:** Amending greater New York charter (chap. 466, Laws, 1901), relative to public school teachers' retirement fund, by adding new section.

Provisions for administrative expenses.

Chap. 505, May 26, 1909.

- 563 * **Rhode Island:** Amending sec. 1, 1468, Laws, 1907, relating to pensions of public school teachers.

Striking out the age limit of sixty years as a condition for pension.

Chap. 401, Apr. 29, 1909.

- 564 **Wisconsin:** Repealing and reenacting sec. 925—xx (chap. 453, Laws, 1907), Statutes, relative to a public school teachers' annuity and retirement fund in cities of the first class.

"SECTION 925—xx. 1. The president of the board of school directors, of the managing body, ex-officio, two female teachers, not more than one of whom shall be a principal or vice-principal, two male teachers, not more than one of whom shall be a principal or vice-principal, and four members of the board of school directors of the managing body of the schools in cities of the first class, are hereby constituted a board of trustees of the public school teachers' annuity and retirement fund to manage the same as hereinafter directed. Said board shall be known as the public school teachers' annuity and retirement fund trustees, and its members shall serve without pay.

"2. All teachers employed in the public schools of cities of the first class, at the time of the organization of said board of public school teachers' annuity and retirement fund trustees, in such cities, desiring to come under the provisions of this act, shall file a written application therefor with the superintendent of schools, the clerk or secretary of the school board, or other managing body of such schools, together with written authority addressed to the board of school directors or other managing body authorizing said board or other managing body to deduct from each monthly salary due the applicant, the sum of two dollars and pay the same regularly into the city treasury as part of said annuity and retirement fund as herein provided.

"3. One year after the first meeting of said board of trustees for organizing as herein provided and forever thereafter, every teacher desiring to enter the service of such city as teacher and not actually in the service of said city as teacher at the time of the first meeting of said board of trustees, before entering upon the duties of his or her position may be required by the board of directors or other managing body to sign a contract, agreeing to serve said city, under the provisions of this act and accept the benefits derived under this act as a part of consideration for the services so to be rendered.

"4. When twenty-five or more teachers in such schools shall have filed their application as aforesaid, and otherwise fully complied with the terms of this

act, a meeting of all the teachers who have made such application may be called by five or more of such teachers, who shall designate the time and place of holding such meeting, and publish notice thereof at least once a week for two successive weeks, in a newspaper published in such city. Such teachers shall, at such meeting elect by ballot, one female teacher, who shall hold office as trustee aforesaid, for a term of one year, one female teacher who shall hold office as trustee for a term of two years, one male teacher who shall hold office as trustee for a term of one year, and one male teacher who shall hold office for a term of two years: and a majority of all the votes cast shall be necessary in each case for an election.

"5. Annually thereafter, at a meeting duly called by the board of trustees of the public school teachers' annuity and retirement fund, on the last Saturday of September, one female and one male teacher shall be elected in the same manner for a term of two years. At the next meeting of the board of school directors or managing body, held after the election of such trustees as aforesaid, the board of school directors, or other managing body in such cities, shall elect two of their number to be members of the board of trustees, of the public school teachers' annuity and retirement fund, for the term of one year, and two of their number to be members of said board of trustees for a term of two years, and annually thereafter at their first regular meeting held after the last Saturday of September the board of school directors or other managing bodies of schools in such cities, shall elect two of their members to be members of the board of trustees of the public school teachers' annuity and retirement fund, for the term of two years. Such trustees shall hold office until their successors are elected and qualified.

"6. A majority of the members of said board of trustees hereby created shall constitute a quorum for the transaction of business. Such board of trustees shall, within ten days after the election of such trustees, as hereinbefore provided, hold a meeting and organize, by the election from their members, of a president, vice-president, and secretary, and may adopt rules of order not inconsistent with this act. In case of a vacancy, the board of trustees shall, within ten days after its occurrence, fill the same for the unexpired term.

"7. A teachers' annuity and retirement fund is hereby created in cities of the first class, and the fund shall consist of: A permanent and general fund. The permanent fund shall be made up of gifts and legacies, specifically given to said permanent fund.

"The general fund shall be made up of:

- (a) Gifts and legacies not specifically given to said permanent fund.
- (b) Interest derived from said permanent fund.
- (c) All moneys obtained by such other methods of increment as may be duly and legally devised for the increase of said fund.

"The general fund may be drawn upon for the purposes of this act by said board of trustees.

"8. Said board shall have control of the annuity and retirement fund and the investment thereof, investing the same only in such securities as savings banks are authorized by law to invest in. The board shall receive and consider all applications for annuity under this act, shall determine the amount if not otherwise provided and direct payment of the annuities. Whenever any member of the board shall cease to hold a position as a member of the board of school directors or other managing body or as a teacher in the public schools, his or her membership in said board of trustees shall thereupon cease.

"9. The city treasurer shall, ex-officio, be the custodian of said annuity and retirement fund, and shall make payments therefrom; he shall keep the books of account concerning such fund, in such manner as may be prescribed by said board of trustees, which books of account shall always be subject to the inspection of the board of trustees, or any member thereof, and any contributing teacher. He shall also keep and truly account for all moneys, profits and securities coming to his hands as such treasurer, belonging to such fund, and at the expiration of his term of office shall pay over, surrender and deliver to his successor all moneys, profits, securities, and other property of whatever kind, nature, or description which may be in his hands or under his control as custodian aforesaid.

"10. Beginning with the monthly payment of teachers' salaries in November, after the first meeting of the board of trustees aforesaid, the board of school directors, or other managing body, shall reserve from the salary of each teacher who has come under the provisions of this act, pursuant to authority theretofore given, and from every monthly payment thereafter, for the period of twenty-five years, or until the total sum of five hundred dollars is paid, the sum of two

dollars, and shall pay the sums so reserved into the public school teachers' annuity and retirement fund as herein provided.

"11. The city treasurer, upon the order of warrant of the board of trustees shall pay out of said annuity and retirement fund, in monthly payments, to each teacher who shall retire from the service of the city upon the recommendation of the board of trustees determined by a majority vote, and under the provisions of this act, and be entitled thereto, the sum of four hundred dollars annually; provided, however, that if said annuity and retirement fund shall at any time be insufficient to make such payments, the amount in said fund during said period shall be pro-rated among the parties entitled thereto, but in no case shall any teacher receive such annuity until he has taught twenty-five years, and for at least fifteen years in the public schools of the city to which this act applies, except as hereinbefore provided; provided, however, that should a teacher who has taught for fifteen years or more in any such city, become incapacitated, having paid the amount of fifteen years contributions or more, as herein provided, the board of trustees may, in its discretion allow such teacher, six months after he has ceased active service in the school, upon a certificate of such incapacity furnished by the attending physician and by a physician employed by the board of trustees, an annuity, the amount of which shall be determined by the board of trustees, and such annuity shall cease when the incapacity ceases. Should such incapacity become permanent and should such teacher retire from the service of such city, the board of trustees may pay to such teacher a proportionate annuity. Such annuity shall be as nearly as practicable, as many twenty-fifths of the full annuity provided in this section as the years of service of such teacher in said city are a part of twenty-five.

"12. All annuities granted by the board of trustees or other managing body under the provisions of this act, shall be uniform in amount except as otherwise provided.

"13. No annuity shall be paid to any teacher until such teacher shall have contributed to the general fund a sum equal to all the assessments for twenty-five years, to-wit: five hundred dollars, except as herein otherwise provided. Any contributing teacher who has taught in said city for a period of four years or more may in addition to the monthly payments provided by section five, pay into the city treasury as a part of said funds in sums of ten dollars or any multiple thereof, until the entire sum of five hundred dollars is paid by such teacher, whereupon all monthly payments shall cease.

"14. Any contributing teacher who shall retire voluntarily or involuntarily from the service, not being in receipt of an annuity, or being less than sixty-five years old, shall, if application is made within three months after date of his retirement, receive the total amount paid by him into said fund, and in case of the death of any contributing teacher, his heirs or legatocs shall be entitled to receive the total amount paid by such teacher into said fund, upon application therefor within three months after the date of death, and upon proof of death and upon said claim made to the satisfaction of said board of trustees.

"15. Any member of the teaching or supervising force who shall have attained the age of sixty-five years and who shall have been engaged in the work of teaching or supervision for a period aggregating twenty-five years, at least fifteen years of which shall have been in the public schools of said city, shall, if he or she desires to retire, be entitled to receive, after retirement, out of the teachers' annuity and retirement fund an annuity of four hundred dollars per year, if the general fund shall permit this sum to be paid to other retired members; otherwise he or she shall receive the same amount as is permitted to be paid to the other retired members.

"16. All annuities granted under the provisions of this act shall be exempt from execution, attachments and garnishment process, and no annuitant shall have the right to transfer or assign his or her annuity.

"17. All elections or appointments of teachers by the board of school directors or other managing bodies in cities of the first class shall be on probation, and after a successful probation for four years, the election or appointment shall be permanent, during efficiency or good behavior, provided that teachers having taught four years or more in cities to which this act applies shall be deemed to have served their term of probation. No teacher who has become permanently employed as herein provided by reason of four or more years of continuous service, shall be discharged, except for cause upon written charges, which shall after ten days' written notice thereof to such teacher, upon such teacher's written request, be investigated, heard and determined by the board of school directors, whose action and decision in the matter shall be final.

"18. The term 'teacher' in this act shall include all superintendents, principals, supervisors, and regular instructors employed in the public schools of cities of the first class, provided, however, that nothing herein contained shall be taken to effect the election, appointment or tenure of the superintendent, the assistant superintendent and special supervisors.

"19. If at any time the general fund derived from the sources hereinbefore mentioned in this act, shall be found insufficient to pay in full the annuities allowed and due under the foregoing provisions of this act, then the board of school directors shall pay into the public school teachers' annuity and retirement fund out of the school fund assessed, levied, and collected from the taxable property of such city for general school purposes, a sum not to exceed one per cent. of the gross amount thereof and in no case exceeding in any one year the amount paid into the annuity and retirement fund during the preceding year by the teachers, as hereinbefore provided.

"Section 3. Laws or parts of laws inconsistent with this act are hereby repealed."

Chap. 510, June 16, 1909.

G. TEACHERS: PROFESSIONAL TRAINING AND EDUCATION.

(a) University Departments and Schools of Education.

The one measure falling under this heading should be considered in connection with the enactments relating to normal schools. The designation of the Iowa State Teachers College is also pertinent to this topic.

565 *Utah: Amending secs. 2305 and 2307, Compiled Laws, 1907, relative to the name of the state normal school, its relation to the university, courses of study, normal scholarships, certificates, and diplomas.

"SECTION 1. Sections amended. * * *

"2305. Name changed to 'The State School of Education'. Normal Scholarships. The State Normal School shall be continued as a department of the University, for students of both sexes, and it shall also be known as 'The State School of Education,' and its special work and purpose shall be to train teachers for all grades and departments of the public school. It shall offer courses of study which shall include educational theory and practice in teaching, leading to degrees; and shall prescribe work including educational theory and practice in teaching leading to teachers' certificates and diplomas. Four hundred scholarships shall be maintained in the School of Education; provided, that the holders of such scholarships enrolled in the secondary training department of the School of Education shall at no time exceed two hundred. The holders of these scholarships shall be exempt from payment of all matriculation fees. The appointment shall be made for a term of years corresponding to the length of the course or prescribed work the student elects to pursue and shall terminate at the time such student is graduated, or receives a teacher's certificate or diploma. On or before the first day of May of each year the President of the University shall determine the number of appointments to be made for the succeeding year, and shall send notice thereof to the State Superintendent of Public Instruction."

"2307. Id. Normal certificates and diplomas. Holders of Normal scholarships shall be required to declare their intentions to complete the prescribed work of normal instruction for a degree, diploma or certificate, and, after completion of such work, to teach in the public schools of this State. In the event of such students discontinuing their studies at the University before said instruction is completed, they shall be required to pay to the University the amount of matriculation fees required of other students for a corresponding term of attendance; provided, that the president of the University may grant leave of absence not exceeding one year at any time to a holder of a normal scholarship, and may appoint to the vacancy during the absence on leave of the regular holder. The president of the University may at any time cancel, for

neglect or incompetency, the normal scholarship of any student, and he may require, upon such cancellation, the payment to the University of all fees unexact by reason of the scholarship. Holders of teachers' certificates issued by the School of Education of the University shall be entitled, without further examination as to scholarship, to teach the grades or subjects mentioned in the certificates for a period of five years after such certificates are issued. Holders of teachers' grammar grade diplomas thus issued shall be entitled thereafter to teach in the elementary schools without examination as to scholarship, provided, that the holder of such diploma after having had two years of successful experience in teaching in this State shall be entitled to a life grammar grade diploma to be issued by the State Board of Education. The University may confer degrees upon students who have satisfactorily completed the prescribed courses in the School of Education, which degrees shall thereafter be sufficient evidence of the holder's qualification to teach in the elementary and high schools without examination as to scholarship; provided that a degree from the University with an accompanying diploma conferred prior to September 1, 1911, shall have the same force as a degree given for the completion of a course in the School of Education."

Chap. 45, Mar. 11, 1909.

(b) State Normal Schools.

The establishment of new state normal schools—California (569), Colorado (570), Maine (575), Nebraska (581-582), New Hampshire (583), New Mexico (584), North Dakota (586), Oklahoma (587-589), Texas (593), and Wisconsin (601)—constitutes the most important feature of the legislation on this subject. Directly opposed to this was the attitude taken in Oregon (590) toward the normal schools. An attempt to bring the work of the state normal schools into closer and more harmonious relationships with the other higher educational institutions of the State is observable in those States centralizing the administration of higher education—Iowa (925), Montana (62), Vermont (74), West Virginia (76).

The designation of the Iowa state normal school as the Iowa State Teachers College (572) is undoubtedly the forerunner of similar measures for the elevation of the standards and dignity of the professional education of teachers. The unification of the course of study for normal schools in Arizona (566), the inclusion of special instruction in physical defects as a part of the normal-school course of study in California (568), the authorization of a special course of study in the North Dakota state normal schools (585) for pupils from rural schools, the recognition of the course of study for rural-school teachers in the Wisconsin state normal schools (598), the establishment of normal-school scholarships in Connecticut (571), and the creation of a special commission in Vermont (595) to consider ways and means of improving the public schools by increasing the facilities for training teachers, are typical of the several movements for the betterment of the service rendered by these schools.

While seldom revealed by the general legislation, the fact that the normal schools in the great majority of States received greatly increased appropriations for the expansion and development of their work is worthy of note.

128 STATE SCHOOL SYSTEMS: LEGISLATION, ETC., 1908-9.

566 * **Arizona:** Providing for the uniform courses of study for the territorial normal schools of Arizona.

Chap. 58, Mar. 16, 1909. (June 30, 1909.)

567 * **Arizona:** Providing for the government and attendance of children of school age at training schools established in connection with normal schools.

Chap. 87, Mar. 18, 1909.

568 **California:** Amending sec. 1492, Political Code, 1906, relative to the duties of the joint board of state normal-school trustees.

Normal-school course of study to include manual training, domestic science, agriculture, physiology, and hygiene, and "the methods of distinguishing such physical defects as tend to retard the physical and mental development of the child."

Chap. 146, Mar. 10, 1909.

569 * **California:** Establishing in the city of Santa Barbara a state normal school of manual arts and home economics.

Chap. 471, Mar. 27, 1909.

570 **Colorado:** Making an appropriation for the erection and construction of a building, and the furnishing of the same, for the state normal school at Gunnison (approved, except as to an item of \$25,000 for furnishing).

Chap. 79, May 5, 1909.

571 * **Connecticut:** Providing for trained teachers for small towns.^a

"The state board of education may at all times maintain, in any of the normal schools, one student, selected on the basis of scholarship and general fitness, from each town in the state having a valuation by the board of equalization of less than one and one-half million dollars, upon the recommendation of the town school committee or board of school visitors of such town; and for students admitted to said schools under the provisions of this act living expenses, not to exceed one hundred and fifty dollars for each pupil in any one year, shall be provided by said state board of education free of charge. Every person entering a normal school under the provisions of this act shall enter into an agreement with the state board of education to remain at the normal school for two years, unless in case of ill health or dismissal by the school authorities, and to teach in one of the towns from which such students are nominated or appointed for a period of three years after graduation unless excused by the state board of education."

Chap. 198, Aug. 5, 1909.

572 * **Iowa:** Amending sec. 2675, Code, 1897, relative to the normal school at Cedar Falls.

Changing official title to Iowa State Teachers' College.

Chap. 171, Apr. 6, 1909.

573 **Iowa:** Amending sec. 1, chap. 186, Laws, 1905, relative to the levy of a millage tax for the state normal school and providing for the expenditure thereof.

Chap. 236, Apr. 12, 1909.

574 **Maine:** Amending sec. 112, chap. 15, Revised Statutes, 1903, relating to normal schools and training schools.

Removing requirement of incidental fee for students.

Chap. 27, Feb. 26, 1909.

575 * **Maine:** Establishing an additional normal school to be located at Machias, in the county of Washington.

Chap. 44, Mar. 3, 1909.

576 **Maine:** Amending sec. 113, chap. 15, Revised Statutes, 1903, as amended by chap. 11, Laws, 1905, relative to the number of trustees of state normal schools.

Increasing number of trustees from 8 to 9. Conditional.

Chap. 103, Mar. 13, 1909.

^aAppropriating \$15,000. See chap. 467, p. 1107, Special Acts, 1900.

- 577 * **Maine:** Amending sec. 115, chap. 15, Revised Statutes, 1903, relative to appropriations for the normal schools.
Increasing annual appropriation from \$40,000 to \$65,000.
Chap. 106, Mar. 18, 1909.
- 578 * **Missouri:** Repealing sundry secs., art. 1, chap. 155, Revised Statutes, 1899; establishing normal schools and providing for their government by boards of regents; defining the powers and duties of said board.
P. 851, June 1, 1909.
- 579 * **Montana:** See enactment No. 62.
- 580 * **Nebraska:** Repealing, and re-enacting with amendments, secs. 1 and 22, subdivis. 13, chap. 79, Compiled Statutes, 1907 (secs. 11720 and 11744, Cobbe's Annotated Statutes, 1907), relative to the control of state normal schools.
Re-creating a normal board of education and extending the authority of it to all state normal schools and junior normals.
Chap. 125, Apr. 1, 1909.
- 581 * **Nebraska:** Providing for the location and erection of an additional state normal school at some suitable place; providing for its maintenance and receiving donation therefor.
Appropriating \$35,000.
Chap. 126, Apr. 5, 1909.
- 582 * **Nebraska:** Authorizing and directing the purchase of the Nebraska Normal College at Wayne by the State, to be used thereafter for a state normal school.
Appropriating \$90,000.
Chap. 127, Apr. 6, 1909.
- 583 * **New Hampshire:** Establishing a normal school at Keene.
Appropriating \$10,000 for establishment, and \$12,000 for maintenance.
Chap. 157, Apr. 9, 1909.
- 584 * **New Mexico:** Relating to the establishment of the New Mexico Spanish-American normal school.
Establishing a normal school, the chief object of which is to educate Spanish-speaking natives as teachers in the public schools in the counties and districts where the Spanish language is prevalent.
Chap. 97, Mar. 18, 1909.
- 585 * **North Dakota:** Authorizing the superintendent of public instruction and presidents of the state normal schools to arrange a course of study for the state normal schools to provide for students from the rural schools.
Special course of study in state normal schools, ten and one-half months in extent for pupils who have completed the eighth grade of the common schools. Graduates of such schools to be entitled to a certificate equivalent to a second-grade certificate. Defining content of course.
Chap. 100, Mar. 12, 1909.
- 586 * **North Dakota:** Submitting to vote proposed amendment to sec. 216 of the constitution.
Establishing and locating a normal school at Minot.
H. B. 6, p. 339, Mar. 16, 1909.
- 587 * **Oklahoma:** Creating a normal school at Ada, and making an appropriation for the erection of suitable buildings.
S. B. 83, p. 560, Mar. 25, 1909.

- 588 * **Oklahoma:** Creating the Southeastern Normal School at Durant, and making an appropriation for the erection of a suitable building.
H. B. 25, p. 561, Mar. 6, 1909.
- 589 * **Oklahoma:** Providing for the creation and location of a northeastern state normal at Tahlequah, Cherokee County, for the purchase of the Cherokee Female Seminary for that purpose, and for the maintenance of same.
H. B. 236, p. 562, Mar. 6, 1909.
- 590 * **Oregon:** Abolishing the Central Oregon State Normal School, and authorizing the board of regents of normal schools to dispose of the real property belonging to said normal school.
Chap. 85, Feb. 23, 1909.
- 591 **Tennessee:** *See enactment No. 308.*
- 592 **Tennessee:** Permitting municipalities or counties to issue and sell bonds for the purpose of purchasing sites and erecting and equipping state normal schools; providing for the payment of interest on bonds and for a sinking fund with which to retire same, and other matters pertaining thereto.
Chap. 580, May 1, 1909.
- 593 * **Texas:** Establishing the West Texas State Normal College, and providing that the state board of education shall control the same.
Chap. 119, p. 235, Mar. 31, 1909.
- 594 **Vermont:** Amending sec. 952, Public Statutes, 1906, relative to appropriations for normal schools.
Sec. 1; Act 35, Jan. 28, 1909.
595. * **Vermont:** Creating a commission of 5 members to investigate and consider ways and means of improving the public schools by increasing facilities for training teachers, by making the work in such schools more practical through instruction in agriculture and manual arts. Report to the general assembly of 1910; plans for new normal schools to be submitted.
Sec. 2, Act 35, Jan. 28, 1909.
- D. 596 **Washington (1909):** A model training school, intended to be established by Laws, 1907, p. 181, chap. 97, by drafting as many pupils as are necessary from the school district in which each normal school is situated, is not a common school within the meaning of Const. art. 9, secs. 2, 3, requiring that the revenue for common schools shall be exclusively applied to the use and support thereof, and hence so much of such chapter as provides (section 4) for an apportionment of the funds of the school district to the support of such training school contravenes the constitution.—School Dist. No. 20, Spokane County, v. Bryan, 99 P., 28.
- 597 **West Virginia:** *See enactment No. 76.*
- 598 **Wisconsin:** Amending subsec. 5 of sec. 404 and sec. 405, Statutes, relative to normal schools.
Providing for the issuance of teachers' certificates to students completing the course for teachers of country schools; said course of study to be equivalent to the course of study prescribed for the county training schools.
Chap. 204, May 27, 1909.
- 599 **Wisconsin:** Amending sec. 406a, Statutes, relative to the annual appropriation for normal schools.
Increasing the annual appropriation for normal schools from \$215,000 to \$340,000.
Chap. 319, June 9, 1909.

600 Wisconsin: Appropriating certain sums of money to the normal school fund income to make additions, enlargements, and changes to and in the normal school buildings at La Crosse, Milwaukee, Oshkosh, Platteville, Stevens Point, Superior, and Whitewater, and to purchase additional lands at Milwaukee for the use of the normal schools.

SECTION 1. * * *

Sec. 2. * * *

Sec. 3. * * *

Sec. 4. * * *

Sec. 5. * * *

Sec. 6. "There is hereby appropriated from the general fund of the state out of any moneys in the state treasury not otherwise appropriated, to the normal school fund income, the sum of sixty-five thousand dollars for building a woman's dormitory and furnishing and equipping the same at the normal school in the city of Superior."

Sec. 7. * * *

Sec. 8. * * *

Chap. 320, June 9, 1909.

601 Wisconsin: Providing for the location of a state normal school site at the city of Eau Claire.

City of Eau Claire to furnish site.

Chap. 421, June 15, 1909.

(c) County and Local Normal and Training Schools.

The measures assembled under this heading indicate continuation of the movement in certain quarters to utilize the high school as a semiprofessional training school—Kansas (602), New York (604), North Carolina (605), and Porto Rico (606). Nevada (603) provided for the establishment of county normal training schools, while Wisconsin (609) offered evidence of the success of such schools by increasing their number from 20 to 26.

602 * Kansas: Providing for normal training in high schools and academies, and providing for state aid to high schools giving such normal training.

"SECTION 1. That for the purpose of affording increased facilities for the professional training of those preparing to teach, and particularly those who are to have charge of our rural schools, the State Board of Education shall make provisions for normal courses of study and for normal training in such high schools as said Board of Education shall designate; provided, that said high schools shall be selected and distributed with regard to their usefulness in supplying trained teachers for schools in all portions of the state and with regard to the number of teachers required for the schools in each portion of the state.

"SEC. 2. Each high school designated for normal training and meeting the requirements of the State Board of Education shall receive state aid to the amount of five hundred dollars per school year, to be paid in two equal instalments, on the first day of March and the first day of June each year, from the state treasury, on a voucher certified to by its superintendent or principal and approved by the state superintendent of public instruction; provided, that no part of such money received from the state shall be used for any other purpose than to pay teachers' wages; and provided further, that in case more than one high school in any one county shall establish a normal course in accordance with the provisions of this act and shall be accredited by the State Board of Education, the total state aid distributed in such counties shall not exceed one thousand dollars, and in case there are more than two high schools in any one county designated and accredited by the State Board of Education, state aid to an amount not exceeding one thousand dollars shall be equally divided among said schools.

"Sec. 3. In order that a high school shall be eligible to receive state aid under this act, it shall have in regular attendance in its normal training-courses at least ten students during each semester, and such normal training-work shall be given under such rules and regulations as the State Board of Education may prescribe, subject to the provisions of this act.

"Sec. 4. On the third Friday and Saturday of May each year in each high school accredited under the provisions of this act, an examination of applicants for normal-training certificates shall be conducted, under such rules as the State Board of Education may prescribe. This examination shall be in charge of two competent persons appointed by said board. The said State Board of Education shall prepare the questions and fix the standard for the issuing of said certificates; provided, that said certificates shall be issued only to graduates of said normal courses of study, and shall be issued for a period of two years, and shall be renewable on conditions established by the State Board of Education. A fee of one dollar shall be charged each applicant, and the money so collected shall be turned over to the treasurer of the school where such examination is held, and the treasurer of such school shall pay the persons conducting said examination for their services in a sum not to exceed three dollars per day each. The manuscripts shall be properly wrapped and sealed and sent to the state superintendent of public instruction, accompanied by a fee of ten dollars from the funds of the schools. All moneys received by the state superintendent of public instruction from such source shall be turned into the state treasury, and shall become available to pay the expenses incurred by the State Board of Education in securing and paying for a competent examination and grading of said manuscripts. Said certificates shall be issued by the State Board of Education and shall be valid in any county of the state. All moneys received from such source during the fiscal years ending June 30, 1910 and 1911, are hereby appropriated to pay for said expenses of said State Board of Education. Said expenses shall be paid on the warrants of the state auditor, upon the filing of proper vouchers approved by the state superintendent of public instruction.

"Sec. 5. Accredited academies are eligible to the operation of this act except as to receiving state aid.

"Sec. 6. The sum of fifty thousand dollars for the fiscal year beginning July 1, 1909, and the sum of fifty thousand dollars for the fiscal year beginning July 1, 1910, or so much thereof as may be necessary, is hereby appropriated out of any funds in the general fund not otherwise appropriated, to carry out the provisions of this act."

Sec. 7. * * *

Sec. 8. * * *

(Chap. 212, Mar. 5, 1909.

- 603 * **Nevada:** Providing for the establishment of normal training schools and for the maintenance and control of the same.

Providing for county normal training schools, and constituting the state board of education the normal training school board. Defining duties and providing for the maintenance and conduct of schools.

Chap. 146, Mar. 20, 1909.

- 604 **New York:** Amending art. 17, chap. 21, Laws, 1909, by adding new section relative to the apportionment of funds for training of teachers in academies and high schools.

Seven hundred dollars to each school maintaining training class in accordance with art. 25: Balance to cities maintaining classes in accordance with art. 21 and art. 25. Prescribing regulations.

Chap. 406, May 20, 1909.

- 605 **North Carolina:** Repealing sec. 19, chap. 820, Laws, 1907, relative to special appropriation for teachers' training school in high schools.

Leaves total of state appropriation, \$50,000, for high schools.

Sec. 8, chap. 525, Mar. 5, 1909.

- 606 * **Porto Rico:** Amending sec. 2 of the act to provide for high-school-grade instruction in commercial subjects.

Authorizing normal instruction in certain high schools.

P. 148, Mar. 11, 1909.

607 **Wisconsin:** Amending secs. 411-7 and 411-8 (chap. 373, Laws, 1901, as amended by chap. 338, Laws, 1903), Statutes, relative to joint county training schools for teachers.

Joint county training-school board.

Chap. 98, May 10, 1909.

608 **Wisconsin:** Amending sec. 411-11, Statutes, relative to collection of tuition for nonresident students who attend county training schools for teachers.

Fixing maximum tuition fee at 75 cents per week for each nonresident pupil.

Chap. 223, May 29, 1909.

609 **Wisconsin:** Amending secs. 411-4 and 411-5, Statutes, relative to the number of county training schools for teachers that may be established.

Increasing number of schools from 20 to 26.

Chap. 264, June 2, 1909.

(d) Teachers' Institutes and Summer Schools.

Institutes and summer schools for teachers have come to be regarded as integral parts of the state educational system, and as such entitled to adequate support and effective organization. The legislative measures of the year are concerned in such a great variety of ways with the institute and summer school as to make difficult any general statements as to country-wide tendencies. The following items, however, are indices of the direction of development in different States. Florida (614) continued the appropriation for summer training schools; Minnesota (616) amended the law of 1907 by authorizing a summer session at the state normal schools of less than twelve weeks; New Mexico (618) sought to increase the importance of teachers' institutes by providing for obligatory attendance and larger funds; South Dakota (620) made a number of amendments to the institute law considered important enough for complete presentation; Wyoming (623) increased considerably the appropriation for institutes.

610 **California:** Amending sec. 1565, Political Code, 1906, relative to the disposition of fees for teachers' certificates.

Defining conditions for expenditure of the funds to which paid; teachers' institute and library.

Chap. 41, Feb. 20, 1909.

611 **California:** Amending sec. 1564, Political Code, 1906, relative to expenses of county teachers' institutes.

Increasing authorized expenditure for conducting separate teachers' institutes.

Chap. 594, Apr. 14, 1909.

612 **California:** Amending sec. 1560, Political Code, relating to county teachers' institutes.

Providing for joint institutes; penalties for county superintendent failing to hold institutes.

Chap. 597, Apr. 15, 1909.

184 STATE SCHOOL SYSTEMS: LEGISLATION, ETC., 1906-9.

613 **Delaware:** Amending sec. 23, chap. 67, Laws, 1898 (sp. sess.), relating to the county superintendent of schools.

Providing that teachers' institutes may be held in any county (formerly in "his" county).

Chap. 84, Apr. 19, 1909.

614 ***Florida:** Requiring teachers' summer training schools and making appropriations therefor.

Appropriating \$8,000 for the biennium 1909 and 1910.

Chap. 5881 (No. 12), May 22, 1909.

615 **Idaho:** Amending secs. 538 and 540, Revised Code, 1909, regarding summer normal schools.

H. B. No. 108, p. 299, Mar. 11, 1909.

616 ***Minnesota:** Amending sec. 1, chap. 164, General Laws, 1907, providing for a summer session at the normal schools.

Authorizing state normal boards to shorten session to less than twelve weeks.

Chap. 112, Mar. 28, 1909.

617 **New Hampshire:** Amending chap. 29, Laws, 1903, concerning attendance on teachers' institutes.

Chap. 28, Feb. 24, 1909.

618 ***New Mexico:** Amending sec. 6, chap. 97, Laws, 1907, relative to teachers' institutes.

Making at least two weeks' attendance at county institutes annually obligatory for all persons intending to teach. Making conditions by which teachers may receive \$15 for full-term attendance upon county institute and exempting from institute fee. Adding \$50 to institute fund already provided for in counties having full term of four weeks. Board of education given power to waive institutes in counties where authorized summer schools are held.

Sec. 5, chap. 121, Mar. 18, 1909.

619 **North Carolina:** Amending sec. 4167, Revisal, 1905, relative to teachers' institutes.

County boards of education shall (formerly may) appropriate funds for.

Sec. 6, chap. 525, Mar. 5, 1909.

620 **South Dakota:** Amending par. 6, sec. 136, chap. 135, Laws, 1907, relative to the attendance of teachers upon institutes.

"Sec. 1. * * *

"The county superintendent shall divide his county into districts as may be convenient for the purpose of holding district teachers' institutes during the school year on Saturdays, and all teachers employed in the schools of each institute district shall be required to attend the meetings in such district, but not less than two nor more than four such meetings shall be held in each district during any school year, nor shall such meetings be held oftener than once in two months. The county superintendent shall organize the teachers of each institute district at or near the beginning of the school year by appointing a manager and a secretary from among the teachers of the district, who shall, in conjunction with the county superintendent, prepare the programs for the several meetings to be held, and it shall be the county superintendent's duty to give all the teachers of the district at least two weeks' notice of such meeting. Each meeting shall consist of one session of approximately three hours. The program shall be so arranged that all teachers of the district shall be given an active part as often as practicable. The work as outlined by the state teachers' reading circle board shall constitute one-third of the work, and the balance of the program shall also be for the general improvement of the teachers.

"The manager and the county superintendent shall keep complete records of the work at such meetings which shall show the absence, tardiness and attendance of all teachers and the manner in which each one performed the duty or duties assigned. Within five days after the holding of such district institute the county superintendent shall forward the clerk of the school board or the

secretary of the board of education of all schools in the institute district a certificate of attendance, duly signed and sealed, which shall entitle the holder thereof to the sum of \$2.00 and five cents mileage each way for every mile necessarily traveled from the residence of the teacher in the district to the place of holding the institute, but such attendance shall be in the institute district in which the school is located.

"*Provided*, That if a teacher fails to attend the district institute, after due notice, or fails to perform the duty or duties assigned, the county superintendent shall certify that fact to the clerk of the school board or to the secretary of the board of education of the school district in which such teacher may be employed, who shall then cause to be deducted the sum of \$1.50 from the salary of such teacher, unless such absence shall be caused by illness or other reason as shall be approved by the county superintendent.

"*Provided further*, That whenever a teacher of a school or the majority of the teachers of a graded school desire to attend a state or district state association the school board or the board of education is hereby authorized to close such school or schools for not more than five days to enable such teacher or teachers to do so; *Provided*, That the teacher or teachers must make up any time so lost from their engagement, unless the school board or board of education pass a resolution to other effect."

Sec. 2. * * *

Chap. 143, Mar. 3, 1909.

621 **Vermont:** Amending in a minor manner sec. 1025, Public Statutes, 1906, relating to time allowed teachers for attending teachers' meetings or institutes.

Act 42, Dec. 2, 1906.

622 **Tennessee:** See enactment No. 308.

623 * **Wyoming:** Amending sec. 1199, Revised Statutes, 1899, relating to county teachers' institutes.

Increasing appropriation for instructors thereof from \$100 to \$250 in counties of the first class, \$200 in counties of the second class, and \$150 in counties of the third class.

Chap. 40, Feb. 18, 1909.

H. SCHOOL POPULATION AND ATTENDANCE.

(a) General.

624 **California:** See enactment No. 118.

625 **Delaware:** Amending secs. 5 and 6, chap. 219, Laws, 1899, relative to the provision of graded school facilities for the children of the State.

Raising limit of number of nonresident children admitted to the free graded schools of any county from 150 to 250.

Sec. 1, chap. 86, Feb. 25, 1909.

626 * **Indiana:** Amending sec. 2, chap. 204, Acts, 1901, regulating the transfer of children from one school corporation to another and fixing price of tuition.

Increasing rate of tuition; high schools from \$2 to \$4, grade schools from \$1.50 to \$2. Specifying items to be included in per capita cost.

Chap. 127, Mar. 6, 1909.

(b) School Census.

627 **California:** Amending sec. 1636, Political Code, 1906, relative to school census.

Providing for the signature of parent or guardian to census and providing penalties for those refusing to give correct school census.

Authorizing, under certain conditions, use of former census by superintendents.

Chap. 592, Apr. 14, 1909. (July 1, 1909.)

628 **Tennessee:** Amending subsec. 4, sec. 14, chap. 236, Acts, 1907, creating a county board of education and prescribing its duties.

Authorizing town and city boards of education to take school census.
Chap. 562, May 1, 1909.

629 **Wyoming:** Amending in a minor manner secs. 1 and 4, chap. 91, Laws, 1909, relating to the enumeration of children and duties of children and trustees of school district trustees.

Chap. 41, Feb. 18, 1909.

(c) School Year; Month; Day.

The steps taken to lengthen the legal school year in Maine, Vermont, and Wyoming should be considered in connection with certain of the measures enacted extending the annual period of compulsory attendance; especially Iowa (676), Minnesota (684), Missouri (686), Nevada (688), and Wyoming (708).

630 * **Maine:** Amending sec. 17, chap. 15, Revised Statutes, 1903, relating to public schools.

Increasing length of annual school session from twenty to twenty-six weeks.
Chap. 29, Feb. 26, 1909.

631 **Vermont:** Amending secs. 1016, 1029(?), and 1097(?), Public Statutes, 1906, relating to the number of weeks of school.

Increasing length of annual high school session from thirty-three to thirty-six weeks.
Act 39, Dec. 16, 1908. (Apr. 1, 1909.)

632 **Wyoming:** Amending sec. 609, Revised Statutes, 1899, relating to the definition of school week and school month.

School month equal to twenty days.
Chap. 159, Mar. 2, 1909. (June 1, 1909.)

(d) School Holidays.

[See also days for special observance, enactments 784-794.]

The widespread recognition of October 12 as Columbus Day and February 12 as Lincoln or Flag Day are conspicuous marks of the holiday legislation of the year.

633 **Connecticut:** Making Columbus Day (October 12) a legal holiday.

Chap. 74, June 2, 1909.

634 **Michigan:** Designating the 12th day of October of each year as a public holiday, to be known as "Columbus Day."

Act 258, June 2, 1909.

635 **Missouri:** Designating the 12th day of October in each year as a public holiday, to be known as "Columbus Day."

P. 549, May 11, 1909.

636 **Montana:** Declaring the 12th day of February in each year to be a legal holiday, to be known and designated as "Lincoln's Birthday."

Chap. 11, Feb. 13, 1909.

- 637 **Montana:** Declaring and making the 12th day of October of each and every year a public holiday to be known as "Columbus Day."
Chap. 22, Feb. 17, 1909.
- 638 **New Hampshire:** Amending sec. 1, chap. 11, Laws, 1899, making the 1st day of January a legal holiday.
Chap. 96, Mar. 30, 1909.
- 639 **New Jersey:** Supplementing an act approved April 3, 1876, relating to legal holidays.
Making October 12, "Columbus Day," a legal holiday.
Chap. 261, Apr. 21, 1909.
- 640 **New Mexico:** Amending sec. 3, chap. 48, Laws, 1905, relative to compulsory Flag Day, February 12.
Changing name from "Flag Day" to "Lincoln Day."
Sec. 3, chap. 121, Mar. 18, 1909.
- 641 **New Mexico:** Amending sec. 13, chap. 97, Laws, 1907, relative to Flag Day programme.
Substituting words "Lincoln Day" for "Flag Day."
Sec. 7, chap. 121, Mar. 18, 1909.
- 642 **New York:** Designating the 12th of October of each year, "Columbus Day," as a holiday.
Chap. 112, Mar. 23, 1909.
- 643 **North Dakota:** Amending sec. 6710, Revised Codes, 1905, relating to holidays.
Adding to the list of holidays the first Monday in September as Labor Day.
Chap. 140, Mar. 13, 1909.
- 644 **Ohio:** Making Lincoln Day a holiday.
H. B. 50, p. 3, Jan. 22, 1909 (sp. sess.).
- 645 **Pennsylvania:** Designating the 12th day of October of each year as a legal holiday, to be known as "Columbus Day."
Act 175, Apr. 29, 1909.
- 646 **Utah:** Amending sec. 1145, Compiled Laws, 1907, designating legal holidays.
Adding the 12th of February, the anniversary of the birth of Abraham Lincoln.
Chap. 2, Feb. 5, 1909.
- 647 **Vermont:** Making Lincoln's Birthday, February 12, a legal holiday.
Act 70, Jan. 21, 1909.

(e) **Place of Attendance; Transportation of Pupils; Consolidation of Schools.**

[See also section A, enactments 200-243.]

Those enactments dealing primarily with the consolidation of school units have already been commented upon in connection with the laws relative to general administrative changes. Supplementary to the consolidation legislation is that providing for the transportation of pupils to and from school. Of the measures assembled here, the following appear to be of self-evident importance for the realization of the conditions of educational equality: California (649), Colorado (650), and Minnesota (659), relative to the power of school authorities in the matter of furnishing transportation; Connecticut (651), requiring every town to furnish adequate school accommodations;

and North Dakota (660), providing for the payment of transportation.

The interpretations of the Indiana court (D. 653, D. 654-655, and D. 656) are indicative of the issues raised by the operation of a comprehensive statute governing transportation.

648 **Arizona:** Amending subdiv. 11, par. 2179, Revised Statutes, 1901, relative to the powers of trustees of school districts.

Authorizing segregation of white and colored pupils, when the latter exceed 8 in number.

Chap. 67, Mar. 17, 1909.

649 **California:** See enactment No. 118.

650 **Colorado:** Amending subdiv. 15, sec. 5925, Revised Statutes, 1908, relative to powers of school boards.

Providing for attendance of pupils at most accessible school; special provisions concerning attendance at high schools; tuition.

Chap. 202, Apr. 23, 1909.

651 **Connecticut:** Relating to the schooling of children.

Requiring every town to furnish, by transportation or otherwise, school accommodations for all children over 7 and under 16 years of age. Providing for appeals and penalties for failure to provide schooling as prescribed by sec. 2116, General Statutes, 1902.

Chap. 146, June 24, 1909.

D. 652 **Illinois (1909):** In an action to recover money alleged to have been paid without authority of law for tuition of high school pupils residing in another district, from which they had been transferred, the burden was on plaintiff to show that the law regulating the transfer of pupils had not been complied with.—*People v. Moore*, 88 N. E., 979.

D. 653 **Indiana (1909):** Under Acts, 1899, p. 150, chap. 105, as amended by Acts, 1901, p. 415, chap. 185 (Burns' Ann. Stat., 1908, secs. 9590-9602), the trustee of a school township can not expend any money except as appropriated by the advisory board of the township, and no indebtedness can be created except by such advisory board as specified in such said sections; any contract made in violation of said act is null and void. Acts, 1907, p. 444, chap. 233 (Burns' Ann. Stat., 1908, sec. 6423), makes it the duty of a school township trustee to provide transportation for all the pupils in the township to and from the public school. An alternative writ of mandamus to compel a school township trustee to provide transportation for children to and from the township school alleged that "the defendant at all times had a sufficient sum of money in his possession and now under his control, as such trustee, and appropriated by the township advisory board of said township, out of the special school funds belonging to such township, to pay the necessary expenses of transporting relators' children to and from their respective homes to and from school. * * * Held, that the alternative writ did not show that defendant had money enough to provide transportation for all of the school children, but only those belonging to the relators, and therefore was an insufficient statement of facts, as an alternative writ must show that it is the duty of the officer, and that he has power to perform the act sought to be enforced.—*Waters v. State*, 88 N. E., 67.

D. 654 **Indiana (1909):** Acts, 1907, p. 444; chap. 233, sec. 1 (Burns' Ann. Stat., 1908, sec. 6422), permits the trustees to abandon a school when the average daily attendance during the last preceding school year was 15 or less, and requires such action when the average daily attendance was 12 or less. Section 2, Burns' Ann. Stat., 1908, sec. 6423, requires the trustees to provide transportation to other schools for pupils affected by such discontinuance who live more than 2 miles, and for all pupils between the ages of 6 and 12 who live less than 2 miles and more than 1 mile, from the schools to which they were transferred upon the discontinuance of their own school. Upon the discontinuance of the school which relator's children attended, the driver of the conveyance procured to

carry the children to another school established a uniform route along which he would meet the children at designated points every morning, no child being required to walk more than five-eighths of a mile to the wagon, and relator's child only being required to walk one-half mile, by which means all of the children on the route could be gathered in one wagon and delivered to the schoolhouse in an hour and a quarter and returned in the same length of time, while to drive to each pupil's house and return him there in the evening would require some six hours a day, and necessitate starting at an unreasonably early hour as well as additional expenditures for wagons. *Held*, that the statute did not require that children in an abandoned district be furnished with greater conveniences than others, and the driver was not bound to carry each pupil to and from his home, and the practice of picking them up along the established route, and delivering them there in the evening to walk home, was proper.—*Lyle v. State*, 88 N. E., 850.

D. 655 **Indiana** (1909): Acts, 1907, p. 444, chap. 233, sec. 1 (Burns' Ann. Stat., 1908, sec. 6422), permits the trustees to abandon a school when the average daily attendance during the last preceding school year was 15 or less, and requires such action when the average daily attendance was 12 or less. Section 2 (Burns' Ann. St., 1908, sec. 6423) requires the trustees to provide transportation to other schools for pupils affected by such discontinuance who live more than 2 miles, and for all pupils between the ages of 6 and 12 who live less than 2 miles and more than 1 mile from the schools to which they were transferred upon the discontinuance of their own school. *Held*, that the latter statute, being remedial and administrative in character, should be liberally and reasonably construed, so that the words need not be given strict legal signification if from the context, history, and object of the statute it appears that it should be construed otherwise.—*Lyle v. State*, 88 N. E., 850.

D. 656 **Indiana** (1909): In proceedings to compel a school trustee to furnish transportation for children to school, as required by Laws, 1907, p. 444, chap. 233, providing for the discontinuance of public schools when the attendance drops below a certain number, and the transportation of the pupils thereof to another school, it was a good defence that no estimate of the expense of such transportation had been included in the tax levy and the trustee had no public funds on hand which he could devote to such expenses.—*Dunten v. State*, 87 N. E., 733.

657 **Indiana**: Amending sec. 1, chap. 189, Acts, 1907, relative to the transfer of school children.

Providing for settlements for tuition.

Chap. 134, Mar. 6, 1909.

D. 658 **Kansas** (1908): Where children, entitled to school privileges in a city, if required to attend the school designated by the board of education, would be exposed to daily dangers to life and limb so obvious and so great that, in the exercise of reasonable prudence, their parents should not permit them to incur the hazard necessarily and unavoidably involved in such attendance, they should not be compelled to attend the school so designated.—*Williams v. Board of Education of City of Parsons*, 99 P., 216.

659 **Minnesota**: Amending sec. 4, chap. 445, Laws, 1907, relating to the power of school boards.

Providing, in school districts situated in more than one county, for the furnishing of transportation during the months of October, November, December, January, February, March, and April for pupils residing 2 miles or more from the schoolhouse, and who are not less than 6 years of age nor more than 16 years of age.

Chap. 472, Apr. 23, 1909.

660 **North Dakota**: See enactment No. 696.

661 **Tennessee**: Granting certain school privileges to children residing within one-half mile of the limits of the city of Memphis.

Chap. 335, Apr. 28, 1909. (Sept. 1, 1909.)

* See "Recent decisions," at the close of this bulletin, for complete text of decision.

140 STATE SCHOOL SYSTEMS: LEGISLATION, ETC., 1908-9.

662 Vermont: Amending secs. 1007 and 1008, Public Statutes, 1906, relative to the location of schools, conveyance, and board of pupils.

Modifying conditions for appeal from action of school directors.

Act 38, Jan. 27, 1909.

663 Vermont: Amending secs. 4486 and 4532, Public Statutes, 1906, relative to rates for railroad transportation.

Authorizing special and reduced rates for public agricultural exhibitors and to students.

Act 105, Nov. 6, 1908.

664^a Wisconsin: Creating sec. 435m, Statutes, relative to attendance upon school and powers of district officers.

Permitting children residing more than 2 miles from the schoolhouse of the district to attend school in an adjoining district. Authorizing payment of tuition by district.

Chap. 183, May 26, 1909.

665 Wisconsin: Repealing subsecs. 15, 16, and 20, sec. 430, secs. 430-1 to 430-8, inclusive, Statutes, and creating eight new sections, to be known as sec. 430-1, sec. 430-2, sec. 430-3, sec. 430-4, sec. 430-5, sec. 430-6, sec. 430-7, and sec. 430-8, relative to the transportation of pupils.

Chap. 502, June 16, 1909.

(f) Compulsory Attendance; Child Labor; Truancy.

That the American States are gradually assuming the full obligations of an enlightened social creed finds full demonstration in the number and character of the measures relating to compulsory school attendance and to child labor passed during the year. One may easily read into many of the new laws the declaration that neither parental neglect nor industrial exploitation shall operate to deprive the child of his legitimate rights or his potential social privileges. Every compulsory educational law and every child labor law, however circumscribed and inadequate, adds to the guarantee for his future that every child has a right to claim from the society of the present.

A review and comparison of the enactments relating to compulsory education emphasize the continual development of the tendencies that have characterized legislation in this direction the last half dozen years; (a) to widen the age limitations; (b) to increase the length of the annual school attendance; (c) to require certain degrees of educational advancement as an essential condition for exemption from attendance; (d) to give to school officials far greater authority in the determination as to what constitutes satisfactory compliance with the law; (e) to bring defective children (deaf, dumb, blind, and feeble-minded) within the scope of the operation of the compulsory requirements.

The following States may be said to have made a distinctive progress in the matter of regulating school attendance by means of con-

^a In general, only such measures relating to child labor have been included here as contain some direct reference to school attendance or qualifications.

structive legislation: Arkansas (667, 668), Connecticut (671), Iowa (676), Maine (678), Minnesota (684), Missouri (686), Nevada (688), New Mexico (690), North Carolina (693), Tennessee (701, etc.), Vermont (702), and Wyoming (708).

Child labor regulation has come to be regarded as a necessary complement for effective regulation of school attendance. The year has yielded a number of measures indicative of contemporary tendencies for the protection of children. Specifically may be mentioned the measures in Alabama (666), Maine (680), Michigan (683), North Dakota (697), and Pennsylvania (699).

Illustrative of a typical provision for the regulation of school attendance, the compulsory education section of the New York school code for 1909 is presented in full. On the same basis, the amended child labor law of Pennsylvania is also given.

666 *Alabama: Regulating the employment of child labor in certain mills, factories, and manufacturing establishments; providing for inspection and punishment for violations.

Prohibiting employment of children under 12 years of age in mills. Requiring at least eight weeks (six weeks consecutive) attendance at school annually of children between 12 and 16 years of age. Prescribing other working conditions for minors, and providing for inspectors and penalties. Applies only to establishments engaged in manufacturing cotton, woolen, clothing, tobacco, in printing and binding, glass, or other work injurious to health, carried on indoors.
Act 107, p. 158, Aug. 26, 1909 (sp. sees.).

667 *Arkansas: Regulating and enforcing attendance at the schools of the State.

Requiring school attendance between the ages of 8 and 16 years, and between 16 and 20 years when not regularly and lawfully employed. Exemptions. Providing for attendance officers and defining powers of school boards. Penalties for violations. Prohibiting the employment of children in factories during school sessions. Exempting 44 counties.

Act 234, May 12, 1909.

668 Arkansas: Regulating and enforcing school attendance in certain nine counties.

Act 347, May 31, 1909. (June 1, 1909.)

669 California: Aiding the enforcement of chap. 270, Statutes, 1903, relative to the educational rights of children.

Authorizing the commissioner of the bureau of labor statistics to enforce compulsory attendance requirements where minors are employed illegally.

Chap. 128, Mar. 8, 1909.

670 California: Amending secs. 2, 3, 4, and 6, chap. 18, Statutes, 1905, regulating the employment and hours of labor of children.

Placing additional restrictions on the conditions for the employment of minors under 16 years of age. Providing for reports by county superintendents of schools to the commissioner of the bureau of labor statistics.

Chap. 254, Mar. 15, 1909.

671 Connecticut: Relating to the employment of children.

"No certificate of age under the provisions of sections 4704, 4705, and 4706 of the general statutes and of chapter 75 of the public acts of 1903 shall be given to any child under 16 years of age unless such child shall be able to read with facility, to write legibly simple sentences in the English language, and to perform the operations of the fundamental rules of arithmetic up to and including fractions: Provided, however, that foreign-born children may be given such certificate if over 14 years of age and if they have an equivalent education in their native language."

Chap. 128, June 29, 1909.

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- 672 Delaware: Amending sundry sections, chap. 121, Laws, 1907, relating to compulsory attendance.
Chap. 88, Mar. 18, 1909.
- 673 Delaware: Amending sundry sections of chap. 123, Laws, 1905, relative to the employment of children.
Providing for age and schooling certificates. Excepting children employed in domestic service. Striking out sec. 8, providing that children under 16 years of age might be employed upon certificates from inspector that the child is the means of support and maintenance of a widowed mother.
Chap. 121, Apr. 19, 1909.
- 674 Indiana: Amending sec. 2, chap. 209, Acts, 1901, relative to compulsory education.
Truant officer to take office on the 1st day of August following appointment.
Chap. 142, Mar. 6, 1909.
- 675 Iowa: Amending sec. 2823-a, supplement to the Code, 1907, relative to attendance at the public schools.
Relating to exempting the application of provisions of the compulsory education law in the case of children attending religious services or receiving religious instruction.
Chap. 186, Apr. 8, 1909.
- 676 Iowa: Amending sec. 2823-a, supplement to the Code, 1907, relating to the duties of parents or guardians.
Increasing the maximum annual compulsory period from sixteen to twenty-four consecutive weeks. Permitting cities of the first and second class to require attendance for the entire session.
Chap. 187, Apr. 15, 1909.
- 677 Iowa: Amending sec. 2823-c, supplement to the Code, 1907, relative to truant officers.
Chap. 188, Apr. 8, 1909.
- 678 Maine: Amending sec. 49, chap. 15, Revised Statutes, 1903, relative to compulsory school attendance.
Requiring attendance of children between 15 and 17 years of age who can not read at sight and write legible simple sentences in the English language.
Chap. 57, Mar. 11, 1909.
- 679 Maine: Amending sec. 51, chap. 15, Revised Statutes, 1903, as amended by chap. 48, Laws, 1905, relative to truant officers.
Authorizing truant officers when directed to visit manufacturing establishments to ascertain whether or not minors are employed; report to superintendent of schools.
Chap. 238, Apr. 2, 1909.
- 680 Maine: Amending chap. 40, Revised Statutes, 1903, as amended by chap. 46, Laws, 1907, relating to the employment of minors in manufacturing or mechanical establishments.
Prescribing in greater detail conditions governing the employment of minors. Providing for age and school certificate.
Chap. 257, Apr. 2, 1909.
- 681 Michigan: Amending, in a minor manner, sec. 4, act 200, Public Acts, 1905, providing for the compulsory education of children.
Act 63, May 5, 1909.
- 682 Michigan: Amending sec. 5554, Compiled Laws, 1897, providing for the protection of children.
Act 203, June 1, 1909.

683 **Michigan:** Providing for the creation of a department of labor; prescribing its powers and duties; regulating the employment of labor; making an appropriation for the maintenance of such department, and prescribing penalties for violations.

Providing for factory inspection. Prohibiting the employment of children and providing for permits and school reports. Authorizing factory inspectors to condemn schoolhouses.

Act 285, June 2, 1909.

684 * **Minnesota:** Relating to the education of children, defining the powers and duties of the clerks, school boards, and teachers in certain school districts and of county superintendents of schools and county attorneys in the enforcing of attendance at school (amending secs. 1445, 1446, 1447, Revised Laws, 1905 (?)), also amending secs. 1449, 1450, Revised Laws, 1905, relative to the education of truants and their commitment to the state training school.

Extending the period of compulsory attendance in cities of the first class from eight to sixteen, to eight to eighteen. Modifying conditions for granting excuses. Defining duties of clerks of school districts wherein regular truant officers are not regularly employed. Providing for reports and penalties for non-attendance.

Chap. 400, Apr. 22, 1909.

D. 685 **Missouri (1909):** Parents of school children could not be guilty of violating the compulsory school act (Laws, 1905, p. 146; Ann. Stat., 1906, secs. 9982(1)-9982(9)) in refusing to have their children vaccinated externally in accordance with a rule of the board of school directors, which was a condition precedent to their right to attend school during a smallpox epidemic existing or threatened in the district.—State ex rel. O'Bannon v. Cole, 119 S. W., 424.

686 **Missouri:** Amending act of Apr. 11, 1905 (p. 146, Laws, 1905), relative to compulsory attendance.

Raising minimum compulsory period from one-half to three-fourths of the entire time of school session. Making mandatory (formerly permissive) the appointment of attendance officers in all cities above 1,000 population (formerly 3,000).

P. 847, June 14, 1909.

687 **Nebraska:** Repealing, and re-enacting with amendments, sec. 2, subdivis. 16, chap. 79, Compiled Statutes, 1907 (sec. 11820, Cobbe's Ann. Stat.), relative to the duties of truant officers.

Chap. 130, Mar. 12, 1909.

688 **Nevada:** Providing for compulsory education and other matters properly connected therewith, providing penalties for the violation of any of the provisions thereof, and repealing any and all prior laws on the subject of compulsory education.

Fixing the period of compulsory attendance at 8 to 16 years for entire length of school sessions. Causes for exemption; defining truancy, providing for the appointment of truant officers and for separate rooms for truants. Fixing penalties.

Chap. 130, Mar. 20, 1909.

689 **New Jersey:** Amending sec. 153, Acts, 1903 (sp. sess.) relative to compulsory education.

"Sec. 1. * * *

"153. Every parent, guardian or other person having control of a child between the ages of seven and seventeen years inclusive shall cause such child to regularly attend a day school in which at least the common school branches of reading, writing, arithmetic, spelling, English grammar and geography are taught by a competent teacher, or receive equivalent instruction elsewhere than at school, unless such child is above the age of fifteen years and has completed the grammar school course (prescribed by the State Board of Education), and

in addition thereto is regularly and lawfully employed in some useful occupation or service. Such regular attendance shall be during all the days and hours that the public schools are in session in the school district in which the child resides, unless it shall be shown to the satisfaction of the Board of Education of the school district in which such child resides that the bodily or mental condition of such child is such as to prevent his or her attendance at school. If such child be under the age of seventeen years and has completed the grammar school course and is not regularly and lawfully employed in any useful occupation or service, such child shall attend the high school or manual-training school in said school district in which such child resides, if there is a high school or manual-training school in said district; if there is no high school or manual-training school in said school district, such child shall be transported to a high school or manual-training school as provided in the act to which this is an amendment. Any child above the age of fourteen years who submits satisfactory evidence to the Board of Education of the school district in which such child resides, that it is necessary that such child should be employed in some occupation or service, may be granted by said Board of Education a certificate exempting him or her from the provisions of this section, such exemption to continue so long as said child shall be regularly employed as aforesaid.

Sec. 2. * * *

Chap. 144, Apr. 17, 1909.

690 * **New Mexico:** Amending sec. 1555, Compiled Laws, 1897, as amended by chap. 39, Laws, 1903, relative to compulsory education.

Extending compulsory period from three months in each year to entire time of school session.

Private or denominational school to be equal to district school in its teaching. Exempting children living more than 3 miles from public school.

Sec. 1, chap. 121, Mar. 18, 1909.

691 **New York:** Amending sec. 162, chap. 36, Laws, 1909, relative to employment of children in mercantile establishments.

Chap. 293, May 6, 1909.

692 **New York:** Repealing sec. 530, and amending secs. 531-538, chap. 21, Laws, 1909, relative to compulsory education.

"§ 530. *Required attendance upon instruction.*—Every child between seven and sixteen years of age in proper physical and mental condition to attend school shall regularly attend upon instruction at a school in which at least the six common school branches of reading, spelling, writing, arithmetic, English language and geography are taught in English, or upon equivalent instruction by a competent teacher elsewhere than at a public school as follows:

"1. Every such child between seven and fourteen years of age residing in a city or in a school district having a population of five thousand or more and employing a superintendent of schools shall so attend upon instruction the entire time during which the school attended is in session, which period shall not be less than one hundred and sixty days of actual school.

"2. Every such child between fourteen and sixteen years of age, not regularly and lawfully engaged in any useful employment or service as hereinafter provided, and residing in a city or in a school district having a population of five thousand or more and employing a superintendent of schools and to whom an employment certificate has not been duly issued under the provisions of the labor law shall so attend upon instruction the entire time during which the school attended is in session.

"3. Every such child between eight and fourteen years of age, residing elsewhere than in a city or school district having a population of five thousand or more and employing a superintendent of schools shall so attend upon instruction as many days annually, during the period between the first days of October and the following June, as the public school of the district in which such child resides shall be in session during the same period.

"4. Every such child between fourteen and sixteen years of age, not regularly and lawfully engaged in any useful employment or service, as hereinafter provided, and residing elsewhere than in a city or a school district having a population of five thousand or more and employing a superintendent of schools, shall so attend upon instruction as many days annually during the period

between the first days of October and the following June as the public school of the district in which such child resides shall be in session during the same period.

"5. Every boy between fourteen and sixteen years of age, in a city of the first class or a city of the second class in possession of an employment certificate duly issued under the provisions of the labor law, who has not completed such course of study as is required for graduation from the elementary public schools of such city, and who does not hold either a certificate of graduation from the public elementary school or the preacademic certificate issued by the Regents of the University of the State of New York or the certificate of the completion of an elementary course issued by the education department, shall attend the public evening schools of such city, or other evening schools offering an equivalent course of instruction, for not less than six hours each week, for a period of not less than sixteen weeks or upon a trade school a period of eight hours per week for sixteen weeks in each school year or calendar year.

"6. If any such child shall so attend upon instruction elsewhere than at a public school, such instruction shall be at least substantially equivalent to the instruction given to children of like age at the public school of the city or district in which such child resides; and such attendance shall be for at least as many hours of each day thereof as are required of children of like age at public schools; and no greater total amount of holidays and vacations shall be deducted from such attendance during the period such attendance is required than is allowed in such public school to children of like age. Occasional absences from such attendance, not amounting to irregular attendance in the fair meaning of the term, shall be allowed upon such excuses only as would be allowed in like cases by the general rules and practice of such public school.

"§ 531. *Duties of persons in parental relation to children.*—1. Every person in parental relation to a child between seven and sixteen years of age, in proper physical and mental condition to attend school, shall cause such child to so attend upon instruction in cities and school districts having a population of five thousand or above, as required by section five hundred and thirty of this act unless an employment certificate shall have been duly issued to such child under the provisions of the labor law and he is regularly employed thereunder.

"2. Every person, residing elsewhere than in a city or school district having a population of five thousand or above, in parental relation to a child between eight and sixteen years of age, in proper physical and mental condition to attend school, shall cause such child to so attend upon instruction unless such child shall have received an employment certificate duly issued under the provisions of the labor law and is regularly employed thereunder in a factory or mercantile establishment, business or telegraph office, restaurant, hotel, apartment house or in the distribution or transmission of merchandise or messages, or unless such child shall have received the school record certificate issued under section five hundred and thirty-four of this act and is regularly employed elsewhere than in a factory or mercantile establishment, business or telegraph office, restaurant, hotel, apartment house or in the distribution or transmission of merchandise or messages.

"3. A violation of this section shall be a misdemeanor, punishable for the first offense by a fine not exceeding five dollars, or five days' imprisonment, and for each subsequent offense by a fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days, or by both such fine and imprisonment. Courts of special sessions and police magistrates shall, subject to removal as provided in sections fifty-seven and fifty-eight of the code of criminal procedure, have exclusive jurisdiction in the first instance to hear, try and determine charges of violations of this section within their respective jurisdictions.

"§ 532. *Unlawful employment of children and penalty therefor.*—It shall be unlawful for any person, firm, or corporation

"1. To employ any child under fourteen years of age, in any business or service whatever, during any part of the term during which the public schools of the district or city in which the child resides are in session.

"2. To employ, elsewhere than in a city of the first class or a city of the second class, in a factory or mercantile establishment, business or telegraph office, restaurant, hotel, apartment house or in the distribution or transmission of merchandise or messages, any child between fourteen and sixteen years of age who does not at the time of such employment present an employment certificate duly issued under the provisions of the labor law, or to employ

any such child in any other capacity who does not at the time of such employment present a school record certificate as provided in section five hundred and thirty-four of this chapter.

"3. To employ any child between fourteen and sixteen years of age in a city of the first class or a city of the second class who does not, at the time of such employment, present an employment certificate, duly issued under the provisions of the labor law. Said employer shall keep and shall display in the place where such child is employed, such employment certificate and also an evening school certificate issued by the school authorities of said city or by an authorized representative of such school authorities, certifying that the said boy is regularly in attendance at an evening school of said city, as provided in subdivision three of section five hundred and thirty-four of this chapter.

"§ 533. *Punishment for unlawful employment of children.*—Any person, firm, or corporation, or any officer, manager, superintendent or employee acting therefor, who shall employ any child contrary to the provisions of section five hundred and thirty-two hereof, shall be guilty of a misdemeanor, and the punishment therefor shall be for the first offense a fine of not less than twenty nor more than fifty dollars; for a second, and each subsequent offense, a fine of not less than fifty nor more than two hundred dollars.

"§ 534. *School record and furnishing the same on application.*—1. An accurate record of the attendance of all children between seven and sixteen years of age shall be kept by the teacher of every school, showing each day by the year, month, day of the month and day of the week, such attendance, and the number of hours in each day thereof; and each teacher upon whose instruction any such child shall attend elsewhere than at school, shall keep a like record of such attendance. Such records shall, at all times, be open to the attendance officers or other person duly authorized by the school authorities of the city or district, who may inspect or copy the same; and every such teacher shall fully answer all inquiries lawfully made by such authorities, inspectors or other persons, and a wilful neglect or refusal so to answer any such inquiry shall be a misdemeanor.

"2. Any principal or chief executive officer of a school to whom application shall have been made for a school record required under the provisions of the labor law shall issue such school record to any child who, after due investigation and examination, may be entitled to the same. Such school record shall be issued and signed by the principal or chief executive officer of the school which such child has attended and shall be furnished, to a child entitled thereto or to the board, department or commissioner of health. It shall contain a statement certifying that the child has regularly attended the public schools or schools equivalent thereto or parochial schools, for not less than one hundred and thirty days during the twelve months next preceding his fourteenth birthday or during the twelve months next preceding his application for such school record and is able to read and write simple sentences in the English language, and has received during such period instruction in reading, writing, and spelling, English language and geography and is familiar with the fundamental operations of arithmetic up to and including fractions. Such school record shall also give the date of birth and residence of the child as shown on the records of the school and the name of its parent or guardian or custodian.

"3. The school authorities of a city of the first class or a city of the second class, or officers designated by them, are hereby required to issue to a boy lawfully in attendance at an evening school, an evening school certificate at least once in each month during the months said evening school is in session and at the close of the term of said evening school, provided that said boy has been in attendance upon said evening school for not less than six hours each week for such number of weeks as will, when taken in connection with the number of weeks such evening school shall be in session during the remainder of the current or calendar year, make up a total attendance on the part of said boy in said evening school of not less than six hours per week for a period of not less than sixteen weeks or attendance upon a trade school for at least eight hours per week for not less than sixteen weeks. Such certificate shall state fully the period of time which the boy to whom it is issued was in attendance upon such evening school or trade school.

"§ 535. *Attendance officers.*—1. The school authorities of each city, union free school district, or common school district whose limits include in whole or in part an incorporated village, shall appoint and may remove at pleasure

one or more attendance officers of such city or district, and shall fix their compensation and may prescribe their duties not inconsistent with this article and make rules and regulations for the performance thereof; and the superintendent of schools shall supervise the enforcement of this article within such city or school district.

"2. The town board of each town shall appoint, subject to the written approval of the school commissioner of the district, one or more attendance officers, whose jurisdiction shall extend over all school districts in said town, and which are not by this section otherwise provided for, and shall fix their compensation, which shall be a town charge; and such attendance officers, appointed by said board, shall be removable at the pleasure of the school commissioner in whose commissioner's district such town is situated.

"§ 536. *Arrest of truants.*—1. The attendance officer may arrest without a warrant any child between seven and sixteen years of age and who is a truant from instruction upon which he is lawfully required to attend within the city or district of such attendance officer. He shall forthwith deliver the child so arrested to a teacher from whom such child is then a truant, or, in case of habitual and incorrigible truants, shall bring them before a police magistrate for commitment by him to a truant school as provided for in the next section.

"2. The attendance officer shall promptly report such arrest, and the disposition made by him of such child to the school authorities of the said city, village or district where such child is lawfully required to attend upon instruction or to such person as they may direct.

"3. A truant officer in the performance of his duties may enter, during business hours, any factory, mercantile or other establishment within the city or school district in which he is appointed and shall be entitled to examine employment certificates or registry of children employed therein on demand. Any person interfering with an attendance officer in the lawful discharge of his duties and any person owning or operating a factory, mercantile or other establishment who shall refuse on demand to exhibit to such attendance officer the registry of children employed or the employment certificate of such children shall be guilty of a misdemeanor.

"§ 537. *Truant schools.*—1. The school authorities of any city or school district may establish schools, or set apart separate rooms in public school buildings, for children between seven and sixteen years of age, who are habitual truants from instruction upon which they are lawfully required to attend, or who are insubordinate or disorderly during their attendance upon such instruction, or irregular in such attendance. Such school or room shall be known as a truant school; but no person convicted of crimes or misdemeanors, other than truancy, shall be committed thereto.

"2. Such authorities may provide for the confinement, maintenance and instruction of such children in such schools; and they, or the superintendent of schools in any city or school district, may, after reasonable notice to such child and the persons in parental relation to such child, and an opportunity for them to be heard, and with the consent in writing of the persons in parental relation to such child, order such child to attend such school, or to be confined and maintained therein, under such rules and regulations as such authorities may prescribe, for a period not exceeding two years; but in no case shall a child be so confined after he is sixteen years of age.

"3. Such authorities may order such a child to be confined and maintained during such period in any private school, orphans' home or similar institution controlled by persons of the same religious faith as the persons in parental relation to such child, and which is willing and able to receive, confine and maintain such child, upon such terms as to compensation as may be agreed upon between such authorities and such private school, orphans' home or similar institution.

"4. If the persons in parental relation to such child shall not consent to either such order, said persons shall be proceeded against in court under section five hundred and thirty-one of this chapter by the school authorities or such officer as they may designate. In case the persons in parental relation to such child establish to the satisfaction of the court that such child is beyond their control such child shall be proceeded against as a disorderly person, and upon conviction thereof, if the child was lawfully required to attend a public school, the child shall be sentenced to be confined and maintained in such truant school for a period not exceeding two years; or if such child was lawfully required to attend upon instruction otherwise than at a public school, the child may be sentenced to be confined and maintained for a period not exceeding two years.

in such private school, orphan's home or other similar institution, if there be one, controlled by persons of the same religious faith as the persons in parental relation to such child, which is willing and able to receive, confine and maintain such child for a reasonable compensation. Such confinement shall be conducted with a view to the improvement and to the restoration, as soon as practicable, of such child to the institution elsewhere, upon which he may be lawfully required to attend.

"5. The authorities committing any such child, and in cities and villages the superintendent of schools therein, shall have authority, in their discretion, to parole at any time any truant so committed by them.

"6. Every child suspended from attendance upon instruction by the authorities in charge of furnishing such instruction, for more than one week, shall be required to attend such truant school during the period of such suspension.

"7. The school authorities of any city or school district, not having a truant school, may contract with any other city or district having a truant school, for the confinement, maintenance and instruction therein of children whom such school authorities might require to attend a truant school, if there were one in their own city or district.

"8. Industrial training shall be furnished in every such truant school.

"9. The expense attending the commitment and cost of maintenance of any truant residing in any city, village or district, employing a superintendent of schools shall be a charge against such city, village or district, and in all other cases shall be a county charge.

"§ 538. *Enforcement of law and withholding the state moneys by commissioner of education.*—1. The commissioner of education shall supervise the enforcement of this law and he may withhold one-half of all public school moneys from any city or district, which, in his judgment, wilfully omits and refuses to enforce the provisions of this article, after due notice, so often and so long as such wilful omission and refusal shall, in his judgment, continue.

"2. If the provisions of this article are complied with at any time within one year from the date on which said moneys were withheld, the moneys so withheld shall be paid over by said commissioner of education to such district or city, otherwise forfeited to the state."

Chap. 409, May 20, 1909.

693 *North Carolina: Amending chap. 894, Laws, 1907, relative to compulsory education.

Authorizing application of compulsory attendance law upon petition; also without petition; conditions.

Sec. 9, chap. 525, Mar. 5, 1909.

694 North Carolina: Amending chap. 59, Laws, 1908 (sp. sess.), relative to compulsory attendance of Indians at school.

Chap. 834, Mar. 8, 1909.

695 North Carolina: Amending chap. 213, Laws, 1905, relative to compulsory attendance of Indians at school.

Raising maximum age from 17 to 19.

Chap. 848, Mar. 8, 1909.

696 North Dakota: Amending sec. 894, Revised Codes, 1905 (as amended by chap. 98, Laws, 1907), and sec. 896, Revised Codes, 1905, relating to compulsory education.

Providing for the payment for transportation of children living beyond 3-mile limit; not exceeding 10 cents per mile one way per day for one or two pupils, and 5 cents each per mile one way per day for more than two pupils for each day's attendance at school.

Superintendents, principals, and teachers (formerly clerks and secretaries of the board of education) to inquire into cases of neglect. Authorizing the appointment of truant officers in cities and towns of over 500 population (formerly 5,000).

Chap. 90, Mar. 15, 1909.

697 *North Dakota: Regulating the employment of child labor and prescribing penalties for violations.

Prohibiting employment under 14 years of age, and defining conditions of employment between 14 and 16 years of age. Providing for the issuance of employment certificates. Defining hours of labor for minors and proscribing certain employments. Penalties.

"Sec. 6. The school record required by this act shall be signed by the principal or chief executive officer of the school which such child has attended and shall be furnished, on demand, to a child entitled thereto. It shall contain a statement certifying that the child has regularly attended the public schools or schools equivalent thereto or parochial schools for not less than one hundred and twenty days during the school year previous to his arriving at the age of fourteen years or during the year previous to applying for such school record and is able to read and write simple sentences in the English language, and has received during such period instruction in reading, spelling, writing, English grammar and geography and is familiar with the fundamental operations of arithmetic up to and including fractions. Such school record shall also give the age and residence of the child as shown on the records of the school and the name of its parent, guardian or custodian."

Chap. 153, Mar. 11, 1909.

698 Oklahoma: Carrying into effect secs. 3, 4, and 5, art. 23, constitution, relative to the employment of children; limiting the age when children can be employed and prohibiting their employment in certain occupations; prescribing the duty of parents and others with reference to the employment of children and providing penalties for violations.

Providing for school attendance certificates.

S. B. 11, p. 629, Mar. 2, 1909.

699 Pennsylvania: Providing for the health and safety of minors in certain employments, by regulating the ages at which said minors may be employed, their hours of employment, their protection against injury, and prescribing rules for the obtaining of employment certificates; providing penalties.

"Sec. 1. *Be it enacted, &c.*, That from and after the passage of this act, no minor under the age of eighteen years, except as hereinafter provided, shall be employed, permitted, or suffered to work, in, about, or for any factory, workshop, rolling-mill, sawmill, quarry, laundry, store, mercantile, printing, or binding establishment; dock, wharf; vessel or boat engaged in lake or river navigation or commerce, railroad, in the erection or repair of electric wires, business office, telegraph office, telephone office, stable, garage, hotel, restaurant, bootblack-stand, or the transmission of newspapers, messages, or merchandise.

"Sec. 2. That male minors over the age of eighteen years may be employed in any and all kinds of legal employment, within the Commonwealth; but all minors under the age of eighteen years shall not be employed in or about blast-furnaces, tanneries, docks, wharves, quarries; in the outside erection and repair of electric wires; in the running or management of elevators, lifts, or hoisting machines; in oiling hazardous and dangerous machinery, in motion; at switch-tending, gate-tending, track repairing; as brakemen, firemen, engineers, motormen, conductors, upon railroads; as pilots, fireman, or engineers upon boats or vessels engaged in the transportation of passengers or merchandise; in or about establishments wherein nitro-glycerine, dynamite, dualin, gun-cotton, gunpowder, or other high or dangerous explosive, is manufactured, compounded or stored.

"Sec. 3. That minors over the age of sixteen years may be employed in or about establishments for the manufacture or preparation of white-lead, red-lead, paints, phosphorus, phosphorus matches, poisonous acids, or for the manufacture or stripping of tobacco or cigars; *Provided*, That where it is proved to the satisfaction of the Chief Factory Inspector that the danger or menace to the health or safety of minors employed in any establishment or industry named in this section has been removed, or that employment in some part or parts of said industry is not dangerous, or a menace to the health or safety of minors employed therein, that in such case minors under the age of sixteen years, and not under the age of fourteen years, who can read and write the

employed.

"Sec. 4. That minors over the age of fourteen years, who can read and write the English language intelligently, and are physically qualified, may be employed in or for mercantile establishments, stores; telegraph, telephone, or other business offices; hotels, restaurants; or in any factory, workshop, rolling-mills, or other establishment having proper sanitation; or in any factory, workshop, rolling-mills, or other establishment having proper sanitation and proper ventilation, and in which power machinery is not used, or, if used, that the same, and all other dangerous appliances used, are kept securely and properly safe-guarded; rules and regulations for the same to be prescribed and provided by the Chief Factory Inspector.

"Sec. 5. That no male minors under the age of sixteen years, and no female under the age of eighteen years, shall be employed, permitted, or suffered to work, in or about or for any establishment, place of business, or industry, named in sections three and four of this act, for a longer period than ten hours in any one day, except when a different apportionment of the hours of labor is made for the sole purpose of making a shorter work-day for one day in the week; nor shall a less period than forty-five minutes be allowed for the midday meal; and in no case shall the hours of labor exceed fifty-eight in any one week. No male minor under the age of sixteen years, and no female under the age of eighteen years, shall be employed or permitted to work between the hours of nine post meridian and six ante meridian.

"Sec. 6. That where the usual process of manufacture, or the nature of the business named in section four of this act, is of a kind that customarily necessitates a continuous day and night employment, male minors, not under the age of fourteen years, may be employed day or night, or partly by day and partly by night; but said employment shall not exceed nine hours during any twenty-four hours for minors under the age of sixteen years. A violation of any of the provisions of this section shall be deemed to be in contravention of this act.

"Sec. 7. That no minor under the age of sixteen years shall be employed in or about or for any establishment or industry named in sections three and four of this act, unless the employer of said minor procures and keeps on file, and accessible to the deputy factory inspectors, the employment certificate as hereinafter provided, issued to said minor, and keeps two complete lists of all minors under the age of sixteen years employed in or for his or her establishment; one of said lists to be kept on file in the office of the employer, and one to be conspicuously posted in each of the several departments in or for which minors are employed. Said employment certificate, when issued, shall be the property of the minor named therein, who shall be entitled to a surrender of said certificate to him or her by the employer whenever said minor shall leave the service of any employer holding said certificate.

"Sec. 8. The employment certificate required by the provisions of this act shall be issued as follows:

"In school districts having a district superintendent or supervising principal, by such superintendent or supervising principal; in school districts having no superintendent or supervising principal, but having one or more principals of schools, by such principals, each principal to issue the certificate to minors residing within the territory belonging to the school over which he has supervision; in school districts, or parts of districts, having no district superintendent or principal, by the secretary of the board of school directors for that district: Provided, That any district superintendent, supervising principal, principal of schools, or secretary of the board of school directors, hereby directed to issue such certificates, may authorize and deputize, in writing, such persons as they may see proper to act in their place and stead for the purpose of issuing such certificates. Any of the hereinbefore mentioned officials, authorized to issue employment certificates, before doing so shall demand, and if possible obtain, a birth certificate, or baptismal certificate, or passport, or other official or religious record of the minor's age, or a duly attested transcript thereof; and, in the event that none of these is obtainable, may accept, in lieu thereof, a record of the age as given on the register of a school the minor has attended; or, in the absence of such record, may accept the affidavit of the minor's parent or guardian, or other person, which affidavit he is empowered to administer: Provided, That the powers and duties conferred by this section on the superintendents, supervising principals, principal, or secretary of a board of school directors, be and the same are conferred upon superintendents, supervising

principal, teachers, or secretaries of any private academy, parochial or denominational school, in all cases where the applicant for an employment certificate is, or recently has been, an attendant pupil in a private academy, parochial or denominational school, and is not a pupil in a public school: And provided further, That whenever in any school district an employment certificate is issued by any persons other than the public school official herebefore directed to issue such certificates in said district, said persons shall, on or before the third day of each month, file with the aforementioned public school official, in said district, true copies of all employment certificates so issued.

"Sec. 9. The employment certificate provided by this act for the use of a minor between fourteen and sixteen years of age shall be in the following form:—

"This certifies that (name and residence of minor) is aged years months days; whose complexion is, hair is, and eyes are; is able to read and write the English language intelligently, and may be employed at labor in any of the following establishments, businesses, and industries: The manufacture or the preparation of white-lead, red-lead, paints, phosphorus, phosphorus matches, poisonous acids, tobacco or cigars, in which industries minors between fourteen and sixteen years of age may be employed, only when their labor is performed in such part or parts of such industries as are not dangerous or a menace to their health and safety, and mercantile establishments, stores; telephone, telegraph or other business offices; hotels, restaurants; or in any factory, workshop, or other establishment having proper sanitation and proper ventilation, and in which power machinery is not used, or, if used, that the same, and all other dangerous appliances used, are kept securely and properly safeguarded.

"This certificate is a legal warrant for the employment of the minor named hereon, in any of the above-named establishments, businesses and industries, under the provisions of an act approved one thousand nine hundred and nine.

(Signature of person who issued certificate, official title and official address.)

(Signature of minor to whom issued.)

"Sec. 10. The blank employment certificate shall be prepared by the Superintendent of Public Instruction, in accordance with the form prescribed in this act; the same to be printed in accordance with the laws regulating printing and binding, under the supervision of the Superintendent of Public Printing and Binding. The Superintendent of Public Instruction shall also supply the aforesaid certificates to all persons authorized to issue the same.

"Sec. 11. Any person or persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished, for a first offence, by a fine of not less than ten dollars or more than twenty-five dollars, or ten days imprisonment in the county jail, or either or both, at the discretion of the court; and for a second offence, shall be punished by a fine of not more than fifty dollars, and ninety days imprisonment in a county jail, or either or both, at the discretion of the court. It shall be the duty of the Chief Factory Inspector to carry out the provisions of this act, and prosecutions for violations thereof shall be instituted by the Chief Factory Inspector.

"Sec. 12. All fines imposed and collected for any violation of this act shall be forwarded to the Chief Factory Inspector, who shall pay the same into the office of the State Treasurer, for the use of the Commonwealth."

SEC. 13. * * *

SEC. 14. * * *

Act 182, Apr. 29, 1909. (Jan. 1, 1910.)

700 Pennsylvania: Providing for the health and safety of minors in bituminous coal mines and anthracite collieries or breakers, by regulating the ages at which said minors may be employed, their hours of employment, and prescribing rules for the obtaining of employment certificates; providing penalties.

Prohibiting the employment of minors under 14 years of age in coal mines and collieries. Prescribing conditions and hours of labor and providing for birth and school certificates.

Act 210, May 1, 1909. (Jan. 1, 1910.)

701 **Tennessee:** Providing for and enforcing the education of all children between the ages of 8 and 16 years in counties having a population of not less than 22,738 nor more than 22,750.

Applies to Roane County.

Chap. 183, Apr. 20, 1909. (July 1, 1909.)

(See also, chap. 206, relative to Anderson County; chap. 225, relative to Jefferson County; chap. 234, relative to Johnson and Carter counties; chap. 235, relative to Sevier County; chap. 256, relative to Hancock County; chap. 494, relative to certain 18 counties; chap. 543, relative to Jefferson and Monroe counties; chap. 544, relative to Cumberland County.)

702 ***Vermont:** Repealing sec. 1036 and amending secs. 1030, 1033, and 1037, Public Statutes, 1906, relative to compulsory attendance.

Act 43, Jan. 28, 1909.

703 **Vermont:** Amending secs. 1044 and 1045, Public Statutes, 1906, relative to the employment of children under 16 years of age.

Providing for excuses by district superintendents and chairmen of the prudential committees.

Act 44, Nov. 17, 1908.

704 **Washington:** Relating to crimes and punishments.

Secs. 194 and 195 prohibiting the employment of minors.

Chap. 249, Mar. 22, 1909.

705 **Wisconsin:** Amending sec. 1502, Statutes, relating to the support of poor relatives.

Providing that no child of school age shall be compelled, by provisions of this act, to labor contrary to child labor laws.

Chap. 207, May 27, 1909.

706 **Wisconsin:** Amending secs. 1728a, 1728a-1, 1728b, 1728c, 1728d, 1728e, 1728f, 1728g, 1728h, and 1728i (chap. 523, 1907), Statutes, relative to child labor.

Numerous minor amendments; strengthening.

Chap. 338, June 9, 1909.

707 **Wisconsin:** Creating secs. 1728p to 1728za, inclusive, Statutes, relating to the work of children under 16 years of age in the sale or delivery of newspapers, magazines or periodicals, in the distribution of handbills and circulars and in street trades in cities of the first class.

Chap. 377, June 11, 1909.

708 ***Wyoming:** Amending secs. 1 and 3, Laws, 1907, relating to compulsory education.

Extending annual compulsory period from the first six months of the school session to the entire school session.

Chap. 31, Feb. 17, 1909.

I. SCHOOL DISCIPLINE.

(a) General.

The several court decisions classified under this heading are not unimportant in reemphasizing well-established principles for the government of the schools, and in establishing precedents that are likely to be of further influence. The decision of the Illinois court with reference to the high school fraternity (D. 709) has become a

matter of educational history; that of the Mississippi court (D. 711) imposes a unique though seemingly reasonable restriction upon the authority of school officers; that of the Ohio court (D. 714-716), and also that of the Oklahoma court (D. 717), have an interest not limited by the boundaries of these States.

D. 709 **Illinois** (1909): With respect to a rule adopted in the interest of discipline, courts will not interpose their judgment against that of a board of education unless it is clearly shown that fraud or corruption controlled such board in making, or that oppression or gross injustice naturally follows from the enforcement of, such rules.—(1907) *Wilson v. Board of Education of City of Chicago*, 137 Ill. App., 187, judgment affirmed (1908), 84 N. E., 697; 233 Ill., 464.

710 **Minnesota**:^a Prohibiting persons under 18 years of age or minor pupils of schools from playing pool, billiards, or bowling in public places and providing a penalty for the violation thereof.

Chap. 133, Mar. 31, 1909.

D. 711 **Mississippi** (1909): Code 1906, sec. 4525, empowering the trustees of school districts to prescribe and enforce rules not inconsistent with law for the government of schools, and to suspend and expel pupils for misconduct, and section 4623, authorizing teachers to enforce rules prescribed for schools, and to hold pupils to a strict account for disorderly conduct on the way to and from school, on the playgrounds, etc., do not authorize the adoption of a rule requiring all pupils of the school to remain in their homes and study between designated hours in the evening.—*Hobbs v. Germany*, 49 So., 515.

712 **New Hampshire** Relating to the admission of children to shows and places of amusement.

Prohibiting the admission of children under 14 years of age to licensed shows and places of amusement during the hours when the public schools are in session, unless accompanied by an adult.

Chap. 137, Apr. 9, 1909.

713 **North Dakota**: Prohibiting the manufacture, sale, or use of adulterated cigarettes and prohibiting the use of tobacco by minor persons and by all minor pupils of public schools; providing penalties.

Chap. 52, Feb. 26, 1909.

D. 714 **Ohio** (1909): A rule of a board of education providing for the examination at the end of the school year of pupils jointly by the teacher of the grade and the superintendent of the schools, and for the promotion of pupils to the next higher grade upon recommendation of the teacher and superintendent, the same being based on merit, is reasonable.—*Board of Education of Sycamore v. State*, 88 N. E., 412.

D. 715 **Ohio** (1909): Where, by direction of the parent of a pupil, the pupil without authority of the board of education enters the room of a grade higher than that to which promoted after examination for the purpose of remaining there, it is the right and duty of the superintendent of schools to refuse to allow the pupil to remain, and to direct him to go to the room of the grade to which promoted.—*Board of Education of Sycamore v. State*, 88 N. E., 412.

D. 716 **Ohio** (1909): A pupil who has passed an examination and been given a certificate, authorizing him to enter the next higher grade, is without right, in the absence of authority from the board of education, to omit the grade to which promoted and pass to a higher one.—*Board of Education of Sycamore v. State*, 88 N. E., 412.

^a No attempt has been made to include all of the legislation of this particular kind. The session laws of the year for many States contain prohibitions of this and similar character; a few of the typical enactments are here presented.

D. 717 **Oklahoma** (1909): School authorities may grade scholars and cause them to be taught in branches deemed expedient, prescribe the course of study and text-books, and make reasonable rules, and require prompt attendance, respectful deportment, and diligence in study; but the parent may make a reasonable selection from the prescribed course of study for his child to pursue, and this selection must be respected by the school authorities, as the parent's right in regard thereto is superior to theirs.—School Board Dist. No. 18, Garvin County v. Thompson, 103 P., 578.

718 **Oregon**: Relative to the participation of minor children under the age of 16 years in dramatic and public entertainments.

Prohibiting participation of minors under 16 years of age.

Chap. 129, Feb. 23, 1909.

719 **Rhode Island**: Adding to chap. 277, General Laws, 1896, relative to offenses against the person.

Providing against hazing.

Chap. 431, May 7, 1909.

(b) Corporal Punishment.

(c) Suspension and Expulsion.

D. 720 **Arkansas** (1909): A parent suing for damages for the unlawful suspension of his child from school for a specified time who fails to show facts establishing an unlawful suspension, and that during the specified time he was compelled to expend any amount for the education of his child, or that after the expiration of the time he was compelled to send his son to another school, fails to show that he suffered any financial injury by reason of the suspension, and he can not maintain the action.—Douglas v. Campbell, 116 S. W., 211.

D. 721 **Arkansas** (1909): Unless a parent has sustained some direct pecuniary injury by reason of the unlawful suspension of his child from school, his remedy therefor is mandamus to compel the school authorities to allow the child to attend school, and not an action for damages.—Douglas v. Campbell, 116 S. W., 211.

D. 722 **Arkansas** (1909): Under Kirby's Dig., Sec. 7637, authorizing the directors of any school district at the instance of the teacher to suspend from school any pupil for gross immorality, refractory conduct, or insubordination, a pupil who has been drunk and disorderly in violation of the ordinance of the town may be temporarily suspended from school, though the offense was not committed in or about the school or school grounds.—Douglas v. Campbell, 116 S. W., 211.

(d) Fire Drills.

Montana and Washington followed the 1908 example of Ohio by the passage of laws requiring fire drills in public schools. These two laws form a part of the general movement for the protection of children, pointed out in the comments upon the legislation relative to the inspection of school buildings (see enactments Nos. 471 to 496).

723 * **Montana**: Providing for fire drills in the schools of the State.

"Sec. 1. That in all schools of the state, either public or private, in which thirty or more children are enrolled, it shall be the duty of the teacher or teachers therein employed to instruct the children under their immediate control and charge once each week, during school terms, in a fire drill, as herein provided.

"Sec. 2. A fire alarm shall be given by striking a gong, and immediately upon such alarm, the children shall be required to immediately form in lines and leave the building in an orderly manner, through the exit and exits that

will most expeditiously clear the building. There shall be no certain day of the week or hour of the day, for giving such alarms, and they shall be given without previous warning to the children.

"Sec. 3. It shall be the duty of the trustees or directors, or other persons having the control and management of any school building of the class mentioned in section one of this act, to provide one or more gongs therefor, to be placed in such a manner that any teacher may give an alarm without leaving the room, or that such alarm could be given from the basement. Each member of any board of trustees or directors, or any other person, whose duty it is to install said gongs as herein provided, who fails or refuses so to do shall be guilty of a misdemeanor and upon conviction shall be fined not less than five nor more than fifty dollars.

"Sec. 4. Any teacher who fails or refuses to instruct in said fire drill in the manner provided for in this Act, after the installation of gongs as above provided, shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined not less than five nor more than twenty-five dollars."

Sec. 5. * * *

Sec. 6. * * *

Chap. 31, Feb. 25, 1909. (July 1, 1909.)

724 **Washington:** Providing for fire drills in the schools of the State.

Drills to be held twice each month excepting colleges and universities.

Chap. 106, Mar. 13, 1909.

(e) School Fraternities.

In the review of legislation for the biennium 1906-1908, the decisive stand taken by a number of States (Indiana, Kansas, Minnesota, and Ohio) against the so-called high school fraternity was commented upon as a significant legislative event. The fact that six additional States (California, Iowa, Massachusetts, Nebraska, Oregon, and Vermont) during the year passed similar restrictive measures is indicative that such organizations are regarded as inimical to the interests and government of the American high school. The special and distinctive character of these measures seems to warrant complete presentation.

The decision of the Illinois supreme court (709), already familiar to those who have watched contemporary developments of school administration, is representative of the same decisive attitude.

725 * **California:** Preventing the formation and prohibiting the existence of secret, oath-bound fraternities in the public schools.

"Sec. 1. From and after the passage of this act, it shall be unlawful for any pupil, enrolled as such in any elementary or secondary school of this state, to join or become a member of any secret fraternity, sorority or club, wholly or partly formed from the membership of pupils attending such public schools, or to take part in the organization or formation of any such fraternity, sorority or secret club; *Provided*, That nothing in this section shall be construed to prevent any one subject to the provisions of the section from joining the order of the Native Sons of the Golden West, Native Daughters of the Golden West, Foresters of America or other kindred organizations not directly associated with the public schools of the state.

"Sec. 2. Boards of school trustees, and boards of education shall have full power and authority to enforce the provisions of this act and to make and enforce all rules and regulations needful for the government and discipline of the schools under their charge. They are hereby required to enforce the provisions of this act by suspending, or, if necessary, expelling a pupil in any elementary or secondary school who refuses or neglects to obey any or all such rules or regulations."

Chap. 215, Mar. 13, 1909.

726 **Iowa:** Prohibiting secret fraternities and societies being formed in the public schools of this State, empowering and making it the duty of school directors to adopt rules and regulations relating thereto and to enforce the same, and making it an offense to solicit pupils to join them and prescribing the penalty therefor. (Additional to chapter 14 of Title XIII of the Code, relating to the system of common schools.)

"SECTION 1. *Pupils prohibited from joining or organizing.* That from and after the passage of this act it shall be unlawful for any pupil, registered as such, and attending any public high school, district, primary, or graded school, which is partially or wholly maintained by public funds, to join, become a member of, or to solicit any other pupil of any such school to join or become a member, of any secret fraternity or society wholly or partially formed from the membership of pupils attending any such schools or to take part in the organization or formation of any such fraternity or society, except such societies or associations as are sanctioned by the directors of such schools.

"SEC. 2. *Enforcement—rules and regulations.* The directors of all such schools shall enforce the provisions of section 1 of this act, and shall have full power and authority to make, adopt, and modify all rules and regulations which, in their judgment and discretion, may be necessary for the proper governing of such schools and enforcing all the provisions of section 1 of this act.

"SEC. 3. *Suspension or dismissal.* The directors of such schools shall have full power and authority, pursuant to the adoption of such rules and regulations made and adopted by them, to suspend, or dismiss any pupil or pupils of such schools therefrom, or to prevent them, or any of them, from graduating or participating in school honors when, after investigation, in the judgment of such directors, or a majority of them, such pupil or pupils are guilty of violating any of the provisions of section 1 of this act, or who are guilty of violating any rule, rules, or regulations adopted by such directors for the purpose of governing such schools or enforcing section 1 of this act.

"SEC. 4. *Rushing or soliciting—penalty—jurisdiction.* It is hereby made a misdemeanor for any person, not a pupil of such schools, to be upon the school grounds, or to enter any school building for the purpose of rushing or soliciting, while there, any pupil or pupils of such schools to join any fraternity, society, or association organized outside of said schools. All municipal courts and justice courts in this state shall have jurisdiction of all offenses committed under this section, and all persons found guilty of such offenses shall be fined not less than two dollars nor more than ten dollars, to be paid to the city or village treasurer, when such schools are situated inside of the corporate limits of any city or village, and to the county treasurer, when situated outside of the corporate limits of any such city or village, or upon failure to pay such fine, to be imprisoned for not more than ten days."

Chap. 185, Apr. 12, 1909.

727 **Massachusetts:** Relating to the authority of the school committee of the city of Boston over organizations of school pupils.

"SEC. 1. The school committee of the city of Boston may prescribe such rules concerning the admission of pupils enrolled in the public schools of said city to secret organizations, except religious organizations, composed wholly or in part of public school pupils, and their continuance therein, as it may deem expedient for the welfare of the public schools, and may exclude from the public schools any pupil not required by law to attend school who neglects or refuses to comply with any rule prescribed in accordance with the provisions of this act."

SEC. 2. * * *

Chap. 120, Feb. 27, 1909.

728 **Nebraska:** Prohibiting secret fraternities and societies being formed in the public schools, empowering and making it the duty of school directors to adopt rules and regulations relating thereto and to enforce the same, and making it an offense to solicit pupils to join them and prescribing a penalty therefor.

"SEC. 1. It shall be unlawful for the pupils of any public high schools, or other elementary schools of this state, to participate in, or be members of any secret fraternity or secret organization whatsoever that is in any degree a school organization.

"Sec. 2. All boards of education and boards of trustees of high school districts or of county high schools are hereby authorized and empowered to deny to any student regularly enrolled in such high school or elementary school, who shall violate Section One of this Act any, or all of the privileges of such high school or elementary school, or to expel any such student for failure or refusal to comply with this act.

"Sec. 3. It is hereby made a misdemeanor for any person, whether a pupil of any such school or not, to be upon the school grounds, or to enter any school building for the purpose of rushing or soliciting, while there, any pupil or pupils of such schools to join any fraternity, society, or association organized outside of said schools. All county courts and justice courts in the state shall have jurisdiction of all offences committed under this section, and all persons found guilty of such offences shall be fined not less than two dollars nor more than ten dollars."

Sec. 4. * * *

Chap. 121, Mar. 10, 1909.

- 729 *Oregon: Abolishing and prohibiting secret societies in the public schools of the State, authorizing school authorities to suppress them and for this purpose to suspend or expel pupils; excepting state agricultural college and state university.

Chap. 215, Feb. 24, 1909.

- 730 Vermont: Relating to secret societies in public schools.

Prohibiting pupils from forming such societies. Excepting temperance and religious associations.

Act 41, Jan. 7, 1909.

- 731 *Wisconsin: Relating to student Greek letter fraternal organizations at the university.

"Whereas, Certain students of the university of Wisconsin have banded themselves into fraternal organizations known as Greek letter fraternities and Greek letter sororities,

"Whereas, Such organizations have had a tendency wherever they have existed in this country to form cliques and social classes anti-democratic in tendency,

"Whereas, While we recognize that the university is as democratic as any university in the country, yet evidence is not wanting of a tendency toward a class distinction growing out of the conditions surrounding fraternity life, Therefore, be it

"Resolved by the assembly, the senate concurring, That the university regents be requested to investigate the situation in the fraternities and sororities with reference to remedying the above tendencies and also with reference to the substitution thereof of some better system of student organization and to report the result of such investigations with recommendations to the legislature at their next regular session."

Jt. Res. No. 59, p. 845, —1909.

J. HEALTH REGULATIONS. a.

The volume of legislation seeking to improve and protect the physical welfare of children has had a noteworthy increase during the past half decade. From one point of view, the enactments included under this heading may be said to constitute the most important single group of those presented in this publication, especially the subgroup relating to physical examination and medical inspection. The enactments of California (743), Colorado (744), Indiana (745),

* The recent promulgation of regulations by the state boards of health in Kansas and Wisconsin prohibiting the use of common drinking cups in public schools is of interest in this connection.

Maine (746), and New Jersey (747) are deemed of such value as to justify an opportunity for their detailed study. They are therefore quoted in their entirety.

The inclusion of instruction in physical defects of school children in the course of study of normal schools of California (732), the delegation of authority to the state board of health in Florida (733), and the vaccination legislation in Hawaii (734-735), New Hampshire (737), and decisions in Missouri (739), and Pennsylvania (D. 741) are among the important items of the first group.

(a) General.

732 California: See enactment No. 118.

733 Florida: Authorizing the state board of health to adopt, promulgate, and enforce rules and regulations for the betterment and protection of the public health of the State.

Including schools.

Chap. 5931 (No. 62), May 29, 1909.

734 *Hawaii: Amending sec. 1019, Revised Laws, 1905, relating to the manner of vaccination of children.

Defining in detail conditions and method of vaccination.

Act. 63, Apr. 3, 1909.

735 Hawaii: Repealing sec. 1018, Revised Laws, 1905, relating to the nonadmission to school of children without certificates or other evidences of vaccination.

Act 116, Apr. 26, 1909.

736 Maine: Relating to the welfare of school children.

Providing for the exclusion from school of unclean or diseased pupils. Penalty for parental neglect.

Chap. 31, Feb. 26, 1909.

737 New Hampshire: Amending sec. 2, chap. 93, Public Statutes, 1901, as amended by chap. 19, Laws, 1901, relative to compulsory vaccination of school children.

Providing for exceptions.

Chap. 90, Mar. 30, 1909.

738 New Jersey: Permitting the use of armories for athletic purposes by the school children of the State.

Chap. 93, Apr. 13, 1909.

D. 739 Missouri (1909):^a Rev. Stat., 1899, sec. 9765 (Ann. Stat., 1906, p. 4479), prohibits children affected with a contagious or infectious disease, or one exposed thereto and liable to transmit the same, from attending public schools; and provides that any child may be examined by a physician, and excluded so long as there is danger of transmitting the disease, declaring that the parents' refusal to permit the child to be examined shall justify its exclusion, and, if the parent or guardian persists in sending the child to school, he shall be guilty of a misdemeanor. *Held*, that such section applied to children actually diseased or exposed to contagious or infectious diseases and did not prevent a board of school directors from forbidding attendance of nonvaccinated children during an epidemic, existing or threatened, of smallpox.—State ex rel. O'Bannon v. Cole, 119 S. W., 424.

^a See "Recent decisions," in latter part of this bulletin, for complete text of decision.

- 740 **Pennsylvania:** Repealing secs. 1 to 19, act 124, Laws, 1895, providing for regulations for the control of communicable diseases and the prevention of infection.
Excluding from school any children suffering from communicable diseases.
Conditions of re-admission.

Act 658, May 14, 1909.

- D. 741 **Pennsylvania (1909):** Act of April 11, 1899 (P. L., 38), empowering the school districts of the several townships of the Commonwealth to exercise the powers of a board of health in each township, is not unconstitutional on the ground that it undertakes to divert the school fund to other purposes than the support of the public schools.—Nether Providence School Dist. v. Montgomery, 38 Pa. Super. Ct., 483.

- 742 **South Dakota:** Creating the state health laboratory, and making provision for the support thereof.

Chap. 282, Mar. 9, 1909.

(b) **Physical Examination and Medical Inspection.**

- 743 * **California:** Providing for health and development supervision in the public schools.

"Sec. 1. Boards of school trustees and city boards of education are hereby authorized to establish health and development supervision in the public schools of this state, and to employ an examining staff and other employees necessary to carry on said work and to fix the compensation for the same. Whenever practicable the examining staff for health and development supervision in the public schools of the state shall consist of both educators and physicians.

"Sec. 2. The purposes of health and development supervision in the public schools of the state are hereby defined as follows:

"1. To secure the correction of developmental and acquired defects of both pupils and teachers which interfere with health, growth and efficiency, by complete physical examination. Said examinations shall occur annually or as often as may be determined by the board of school trustees or city board of education.

"2. To adjust school activities to health and growth needs and to development processes and to attend to all matters pertaining to school hygiene.

"3. To bring about a special study of mental retardation and deviation of pupils in the public schools.

"Sec. 3. The requirements for certification of members of the examining staff for health and development supervision in the public schools of the state shall be as follows:

"For educators: A life diploma of California of the high school or grammar school grade and a health and development certificate which shall authorize the holder of such certificate to conduct the work authorized by this act, in those grades specified by the life diploma held.

"For physicians: A California certificate to practice medicine and surgery and a health and development certificate.

"Sec. 4. County or city and county boards of education are hereby authorized to grant health and development certificates to holders of life diplomas of California of the high school or grammar school grade or to holders of California certificates to practice medicine and surgery who shall present with such life diplomas or with such certificates to practice medicine and surgery a recommendation from the state board of education certifying special fitness for the work specified in this act."

Chap. 598, Apr. 15, 1909.

- 744 **Colorado:** Providing for the examination and care of children in the public schools; appropriation.

"Sec. 1. The State Superintendent of Public Instruction shall prepare or cause to be prepared suitable test cards, blanks, record books, and other needful appliances and supplies to be used in testing the sight, hearing and breathing of pupils in the public schools, and the necessary instructions for their use; and shall furnish the same free of expense to every public school in the State. The teacher or principal in every public school, or where there is no principal,

the county superintendent, shall, during the first month of each school year, test the sight, hearing and breathing of all pupils under his charge, such examination to be made by observation, without using drugs or instruments, and without coming in contact with said child; and keep a record of such examinations according to the instructions furnished and make a written report of such examinations to the State Superintendent of Public Instruction as he may require.

"Sec. 2. Every teacher in the public schools shall report the mental, moral and physical defectiveness of any child under his supervision, as soon as such defectiveness is apparent; to the principal or, where there is no principal, to the county superintendent. Such principal or county superintendent shall promptly notify the parents or guardian of each child found to be defective, of the child's defectiveness and shall recommend to such parents or guardian that such child be thoroughly examined as soon as possible by a competent physician or surgeon with special reference to the eyes, ears, nose, throat, teeth and spine. If the parents or guardian of such child shall fail, neglect or refuse to have such examination made and treatment begun within a reasonable time after such notice has been given, the said principal or superintendent shall notify the State Bureau of Child and Animal Protection of the facts; providing, however, that whenever it shall be made to appear to the said principal or superintendent, upon the written statement of the parent or guardian of said child, that such parent or guardian has not the necessary funds wherewith to pay the expenses of such examination and treatment, the said principal or superintendent shall cause such examination and treatment to be made by the county physician of the district wherein said child resides; and it shall be the duty of such county physician to make such examination and treatment, and if he be unable to properly treat such child he shall forthwith report such fact to the county commissioners of the county, with his recommendation.

"Sec. 3. The State Auditor is hereby directed to draw his order for such sums and at such times as the State Superintendent of Public Instruction may require to carry out the provisions of this act. The total expenses under this act shall not exceed one thousand (\$1,000.00) dollars in any biennial period ending November 30."

Chap. 203, Mar. 22, 1909.

745 * **Indiana:** Concerning health in schools in cities of more than 100,000 population.

"Sec. 1. * * * in every city of this state having a population of more than one hundred thousand, according to the last United States census, it shall be the duty of the board of public health and charities of such city, for the protection of public health, to make medical inspection, from time to time, of all persons attending, or employed in or about all public, private and parochial schools in such city. For this purpose such board of health shall appoint, from time to time, competent physicians to make the inspections, and shall prescribe rules and regulations concerning the number and character of inspections and for the doing of the work and for reports to the said board of health concerning the same. Said board of health shall have power to prohibit the presence in or about any such school of any pupil, teacher, other employe, or person whose health is such that his presence would be, in the board's opinion, injurious or dangerous either to the person himself or to others in attendance at such school, and such prohibition shall be effective until revoked by such board of health. Such board of health shall have power to appoint, from time to time, as its judgment may dictate, district nurses with such visitatorial powers as such board may prescribe, to the end that such board may be kept informed of the care and attention that is being received by persons which it shall have so excluded from the schools and may be kept informed of the progress of such persons toward recovery.

"Sec. 2. All expenses necessarily incurred in carrying out the provisions of this act shall be borne by such civil city. It is hereby made the duty of every such civil city annually, beginning in 1909, to levy the sum of one-half (½) cent on each one hundred dollars (\$100.00) of taxables within such city to create a fund, to be known as the school health fund, for carrying out the provisions of this act. Such fund shall under no circumstances be used for any other purpose, but for the purpose aforesaid shall be subject to the warrant of the proper city official without any further appropriation. The duty of making such levy shall be performed regardless of any limit now existing by law in the tax-levying power of any such city."

Chap. 114, Mar. 6, 1909.

746 *Maine: Relative to the appointment of school physicians.

"Sec. 1. The school committee of every city and town shall appoint one or more school physicians and shall assign one to the medical inspection of not over one thousand pupils of the public schools within its city or town, and shall provide them with all proper facilities for the performance of their duties as prescribed in this act, provided, however, the said committee has been so authorized by vote of town at regular town meeting or at a special town meeting called for that purpose.

"Sec. 2. Every school physician shall make a prompt examination and diagnosis of all children referred to him as hereinafter provided, and such further examination of teachers, janitors and school buildings as in his opinion the protection of the health of the pupils may require.

"Sec. 3. The pupils so examined by school physicians when treatment is necessary shall not be referred to the school physicians for such treatment except the school physician be the regular family physician of such pupil, but shall be referred to the regular family physician of such pupil through the parents or guardians.

"Sec. 4. The school committee shall cause to be referred to a school physician for examination and diagnosis every child returning to a school without a certificate from the board of health or family physician after absence on account of illness or from an unknown cause; and every child in the schools under its jurisdiction who shows signs of being in ill health or of suffering from infectious or contagious diseases, unless he is at once excluded from school by the teacher; except that in case of schools in remote and isolated situations, the school committee may make such other arrangements as may best carry out the purposes of this act.

"Sec. 5. The school committee shall cause notice of disease or defects, if any, from which any child is found to be suffering to be sent home to his parents or guardian. Whenever a child shows symptoms of smallpox, scarlet fever, measles, chicken pox, tuberculosis, diphtheria, or influenza, tonsillitis, whooping cough, mumps, scabies or trachoma, he shall be sent home immediately or as soon as safe and proper conveyance can be found, and the board of health and superintendent of schools shall at once be notified.

"Sec. 6. The school committee of every city or town shall cause every child in the public schools to be separately and carefully tested and examined at least once in every school year to ascertain whether he is suffering from defective sight or hearing or from any other disability or defect tending to prevent his receiving the full benefit of his school work, or requiring a modification of the school work in order to prevent injury to the child or to secure the best educational results. Tests of sight and hearing shall be made by the teachers or by the school physicians. The committee shall cause notice of any defect or disability requiring treatment to be sent to the parent or guardian of the child, and shall require a physical record of each child to be kept in such form as the state superintendent of public schools shall prescribe after consultation with the state board of health.

"Sec. 7. The state superintendent of public schools shall prescribe after consultation with the state board of health the directions for tests of sight and hearing, and shall prescribe and furnish to the school committees suitable rules of instruction, test cards, blanks, record books and other useful appliances for carrying out the purposes of this act. The state superintendent of public schools may expend during the year nineteen hundred and nine a sum not greater than five hundred dollars for the purpose of supplying the material required for this act.

"Sec. 8. Expenses which a city or town may incur by virtue of the authority herein vested in the school committee shall not exceed the amount appropriated for that purpose in cities by the city council and in towns by a town meeting. The appropriation shall precede any expenditure of any indebtedness which may be incurred under this act and the sum appropriated shall be deemed sufficient appropriation in the municipality where it is made. Such appropriation need not specify to what section of the act it shall apply and may be voted as a total appropriation to be applied in carrying out the purposes of this act.

"Sec. 9. The provisions of this act shall apply only to cities and towns having a population of less than forty thousand inhabitants."

Chap. 73, Mar. 16, 1909.

- 747 * **New Jersey:** Amending sec. 229, Acts, 1908 (sp. sess.), relative to the appointment of medical inspectors.

Making appointment of medical inspectors obligatory. Further defining duties.

"Sec. 1. * * *

"229. Every board of education shall employ a competent physician to be known as the medical inspector and fix his salary and term of office. Every board of education shall adopt rules for the government of the medical inspector, which rules shall be submitted to the State Board of Education for approval.

"The medical inspector shall examine every pupil to learn whether any physical defect exists, and keep a record from year to year of the growth and development of such pupil, which record shall be the property of the board of education, and shall be delivered by said medical inspector to his successor in office. Said inspector shall lecture before the teachers at such times as may be designated by the board of education, instructing them concerning the methods employed to detect the first signs of communicable disease and the recognized measures for the promotion of health and the prevention of disease. The board of education may appoint more than one medical inspector. A board of education may exclude from school any child whose presence in the school-room shall be certified by the medical inspector as detrimental to the health or cleanliness of the pupils in the school, and shall notify the parent, guardian or other person having control of such child of the reason therefor. If the cause for exclusion is such that it can be remedied, and the parent, guardian or other person having control of the child excluded as aforesaid shall fail or neglect within a reasonable time to have the cause for such exclusion removed, such parent, guardian or other person shall be proceeded against and, upon conviction be punishable as a disorderly person."

SEC. 2. * * *

Chap. 92, Apr. 13, 1909.

- 748 * **Ohio:** Supplementing sec. 4018, Revised Statutes, providing for the health of pupils of public schools.

"Sec. 1. Section 4018 of the Revised Statutes of Ohio be supplemented as follows;

"Sec. 4018-a. Any board of education in a city school district may provide for the medical inspection of pupils attending the public schools and for that purpose may employ competent physicians and nurses and provide for and pay all expenses incident thereto from the public school funds or may by agreement with the board of health or other board or officer performing the functions of a board of health for such city, provide for medical and sanitary supervision and inspection of the schools which are under the control of such board of education and of the pupils attending such schools, by a competent physician selected by the parent or guardian of the child, but in case of failure upon the part of the parent or guardian, then by the district physicians and other employes to be appointed by such board of health, and any board of education in a city school district making such agreement shall have power to provide and pay compensation to the employes of the board of health in addition to that provided by the city."

S. B. 20, p. 12; Mar. 15, 1909 (sp. sess.).

K. TEXT-BOOKS AND SUPPLIES.

The general legislation of the year concerning text-books and supplies contains, with one exception, little justifying special comment. The Illinois law (758), relative to the adoption, use, and price of text-books, attempts to enable the State to exercise a maximum of control over the conditions under which text-books are sold. As might be anticipated, such a measure has aroused much opposition. Nevertheless, it may be safely stated that other measures of this sort,

seeking to diminish the burden and to remove some of the major evils arising from commercial competition and exploitation, will be found in future legislation of many States. The resolution of the Florida legislature (757) is an illustration in point.

Among the items of text-book legislation and judicial interpretations, the following will attract the attention of those following the trend of affairs on this subject: The decision of the Virginia supreme court (753) as to the power of the state board of education to select school furniture for all the public schools of the State; the new provisions in Nevada (756) as to free text-books; the amendment to the Missouri (761) text-book law of 1907; the creation of special state commissions in Utah (762) and West Virginia (763).

(a) General.

- 749 **California:** Providing penalty for refusal of any teacher, employee, or school officer to use the text-books prescribed by the proper authority.
Chap. 265, Mar. 18, 1909. (July 1, 1909.)
- 750 **Maine:** Amending sec. 19, chap. 15, Revised Statutes, 1903, as amended by sec. 4, chap. 48, Laws, 1905, relative to the provision of school books and apparatus by towns for the use of pupils in public schools.
Prohibiting the purchase of second-hand books for schools.
Chap. 131, Mar. 24, 1909.
- 751 **North Carolina:** Assisting poor and indigent children to procure necessary school books.
Applies to Chowan County.
Chap. 837, Mar. 8, 1909. (July 1, 1909.)
- 752 **North Dakota:** Amending sec. 322, Revised Codes, 1905, relative to school equipment.
Permitting furnishing of other dictionaries than Webster's International Dictionary.
Chap. 203, Mar. 13, 1909.
- D. 753 **Virginia (1909):** Const., 1902, sec. 136 (Code, 1904, p. cxxlv), providing that each county, city, town (if a separate school district), and school district, may raise the money by taxation to be expended by the local school authorities for such schools as in their judgment the public welfare requires, does not prohibit the general assembly from conferring on the state board of education power to select school furniture for all public schools in the State.—Commonwealth v. School Board of City of Norfolk, 63 S. E., 1081.

(b) Free Text-Books.

- 754 **Kansas:** Amending sec. 6466, General Statutes, 1901, relative to school districts furnishing text-books.
Majority instead of two-thirds vote.
Chap. 216, Mar. 12, 1909.

755 **Minnesota:** Amending sec. 1, chap. 268, Laws, 1905, empowering boards of education in incorporated cities having over 50,000 inhabitants and constituting special or independent school districts to make rules and regulations for the government and management of schools and for the employment and examination of teachers therein.

Adding provision authorizing—

[Sec. 1.] “* * * contract for and purchase of text books, pencils, tablets and such other school supplies, needful for the schools of the district, and providing for the free use of such text books, pencils, tablets, and other school supplies, by the pupils of such schools, or the sale to them at cost; but no such adoption or contract for text books shall be for less than three nor more than five years, during which time such text books adopted or contracted for shall not be changed.”

Not applicable to cities operating under charter framed according to sec. 36, art. 4, constitution.

Chap. 351, Apr. 21, 1909.

756 ***Nevada:** Providing books, equipment, and materials, and encouraging the economic use thereof by the pupils of the public schools, and fixing penalties.

“Sec. 1. The Board of Trustees of each School District may upon their own motion, and shall upon written demand by a number of qualified voters equal to ten per cent of the average number of children attending the public schools in said district during the preceding full school month, submit to a vote of the people, at the next ensuing general or special school election, the question of providing free text-books for the pupils attending said schools, and of levying a special tax for this purpose at a rate to be named in the demand, if demand be made, and in a notice of such election, which shall be given as required in the case of other special-tax elections.

“Sec. 2. If a majority of those voting at such election vote in favor of providing free text-books and of a special tax for the same, the Board of Trustees shall levy such tax, which shall be collected as other special taxes are collected and from the fund so provided, which shall be called the Book Fund, shall purchase a sufficient number of authorized text-books, as they may be required, and shall loan them upon such terms, and under such rules and regulations, as may be made by said Board, or as may be provided by law, to parents or guardians for the use of the pupils of the schools of said district.

“Sec. 3. All property purchased under this Act for a School District shall be and remain the property of said district, except as otherwise provided by law.

“Sec. 4. Text-books purchased under this Act may be disposed of as follows:

“(a) They may be sold for cash to pupils of the public schools, or to parents or guardians of such pupils.

“(b) If the Board of Trustees so decide, pupils who have completed the last two years of the course of study for the district, may, as a mark of merit, be given the permanent ownership of such four text-books used by them during their last two years of study in the schools of said district, as said pupils may select.

“Sec. 5. The parents and guardians of pupils shall be responsible for all books loaned to the pupils in their charge, and shall pay to the Clerk of the Board of Trustees, for the Book Fund of the district, the full purchase price of every such book destroyed, lost or so damaged as to make it unacceptable to other pupils succeeding to their classes. The Board of Trustees may also make rules for payment for slighter injuries to books.

“Sec. 6. Credits shall be given to pupils in a ratio to be fixed by those having authority to fix ratios of credits, for the economic use and care of books in the hands of pupils, whether such books be the property of the district or otherwise.

“Sec. 7. Equipment and materials for use in manual training, industrial training and the teaching of domestic science, may be supplied to pupils in the same manner, out of the same fund and on the same terms and conditions as books; *provided*, that no private ownership can be acquired in such equipment or material unless sold according to law when such equipment or material shall be no longer used or required for the schools of the district.

“Sec. 8. Authorized supplementary books for the use of the teachers may be purchased under this Act, and shall remain the property of the School District for which purchased unless sold in accordance with law.

“Sec. 9. Each year after the first introduction in any School District of the system provided for in this Act, and on or before the 10th day of January thereof,

the Board of School Trustees of such district shall estimate the amount of money necessary for maintaining or increasing the supply of books, equipment, and material, or any or all of these, and proceed to levy the necessary tax therefor in the manner now provided for by law for levying a special tax not in excess of twenty-five cents on the one hundred dollars.

"Sec. 10. This Act shall not be so construed as to authorize the violation of any valid existing contract, nor to provide a means for the adoption of text-books.

"Sec. 11. Every person violating the provisions of this Act shall be guilty of a misdemeanor, and shall be fined not more than twenty dollars (\$20) or imprisoned not more than ten (10) days, or both so fined and imprisoned."

Chap. 133, Mar. 22, 1909.

(c) Uniformity of Text-Books.

757 Florida: Resolved * * *

"That a committee of three from the house and two from the senate be appointed to collect data from all the Southern States upon the subject and for the purpose of establishing a printing plant to print text-books and to do state printing, and to secure cooperation of the other States, or to secure the publishing of text-books for as many or all of the Southern States as are willing to participate in such enterprise."

Res. No. 19, p. 692, 1909.

758 Illinois: Relating to the adoption, use, and price of public school text-books in the free public schools.

"SEC. 1. * * * The publisher of any text book who desires to offer the same for sale for use in the public schools of this State shall file two official sample copies of said text book in the office of the Superintendent of Public Instruction, together with the list price and the wholesale and retail prices at which the said text book is to be offered for sale in this State. The said publisher shall also file with the Superintendent of Public Instruction a written agreement to furnish said text book at the wholesale price so filed to the directors of any public school district, or to any board of education, or to any merchant, or dealer, and at the retail price so filed to any patron of the public schools; the said written agreement shall contain the further guarantee that all books offered for sale and sold in this State shall correspond to the official sample copies deposited with the Superintendent of Public Instruction, and shall be equal in quality to said official sample copies as regards text, paper, binding, printing, illustration and all other points affecting the educational and commercial value of said text books. For every text book deposited with the Superintendent of Public Instruction, the publisher shall pay to the State treasury a fee of \$10.00, to constitute a fund to be used by the Superintendent of Public Instruction to defray the expenses of printing and distributing lists of accredited text books and information relating thereto, and for other expenses incident to the filing and listing of text books, and the licensing of publishers, as hereinafter provided: *Provided, always,* That the Superintendent of Public Instruction shall not in any case license any publisher, and no directors of any school district or any board of education shall contract with any publisher or publishers for the furnishing of any public school text book or text books which shall be sold at retail prices to patrons, for use in the public schools of this State, at a price or prices above, or in excess of, the following prices, which shall include all charges whatsoever:

Primer.....	fifteen (15) cents.
First reader.....	fifteen (15) cents.
Second reader.....	twenty (20) cents.
Third reader.....	twenty-five (25) cents.
Fourth reader.....	thirty (30) cents.
Fifth reader.....	thirty-five (35) cents.
Spelling book.....	fifteen (15) cents.
Elementary arithmetic.....	thirty (30) cents.
Complete arithmetic.....	forty-five (45) cents.
Elementary geography.....	thirty-five (35) cents.
Complete geography.....	seventy-five (75) cents.

Elementary English grammar.....	twenty-five (25) cents.
Complete English grammar.....	forty (40) cents.
Elementary physiology.....	thirty (30) cents.
Complete physiology.....	fifty (50) cents.
Elementary United States history.....	forty (40) cents.
Complete United States history.....	seventy (70) cents.
Physical geography.....	eighty (80) cents.
Copy book.....	five (5) cents.
Civics book.....	fifty (50) cents.

"Sec. 2. At the time of the filing by the publisher of the official sample copies, prices, agreements and statements provided for in the preceding section, the said publisher shall file at the office of the Superintendent of Public Instruction a sworn statement to the effect that he has no understanding, agreement or arrangement of any kind whatsoever with any other publisher, or any interest in the business of any other publisher, with the effect, design, or intent to control the prices of school text books, or to restrict competition in the adoption or sale thereof in this State. Before having the authority to sell text books in this State the publishers thereof shall file at the office of the Superintendent of Public Instruction a sworn statement showing the ownership of said publishing house, with the interest, names and addresses of all owners or persons interested therein, and specifically stating whether said publisher, or the owner of any interest or share or the recipient of any of the profits of such publishing house is the owner of any interest or share in or the recipient of any profits of any other publishing house, and if so, giving the name and address thereof.

"Sec. 3. When any school text book has been deposited with the Superintendent of Public Instruction, the fee paid, the agreement made, and the other provisions of this Act complied with, said publisher shall file with the Superintendent of Public Instruction a bond in the penal sum of five thousand dollars (\$5,000), guaranteeing a compliance with the agreement filed with said text book, and the payment of any damages which may accrue on the violation thereof, and the Superintendent of Public Instruction shall thereupon cause the said text book to be entered upon the list of public school text books permitted to be used in the public schools of the State, and the Superintendent of Public Instruction shall further issue a license to the said publisher to sell said text book for use in the public schools of this State. If in any case the said publisher shall violate in any particular the agreement so filed with the said text book, or shall furnish books inferior in quality to the sample deposited with the Superintendent of Public Instruction, or shall demand, charge or accept higher prices than the prices agreed upon, said publisher shall be liable for each such act to a penalty in the sum of \$2,000, to be recovered in a suit on said bond brought by the Attorney General in the name of the State.

"Sec. 4. If at any time any publisher of school text books shall enter into any pool, understanding, agreement or combination to control the prices, or restrict competition in the adoption or sale of public school text books in this State, or if the statements required of and made by said publisher are untrue in any matter, or if said publisher, or his agent, or representative shall give, or offer to give directly or indirectly, to any public school officer, or teacher, any money, gift, property, position, remunerative work, or favor of any kind whatsoever to induce the adoption or purchase of the public school text books of said publisher, or to bring about the rejection of the school text books of another publisher, then his license shall be revoked by the Superintendent of Public Instruction, and his school text books omitted from the list of licensed school text books, and all contracts with said publisher may be nullified at the option of the other parties thereto.

"Sec. 5. The Superintendent of Public Instruction shall during the month of February each year furnish each county superintendent of schools and each board of school directors and board of education in the State a list of the publishers who have conformed to the requirements of this Act, with a list and description of the school text books which have been accredited, with the list prices, and the wholesale and retail prices of said books. Before entering into any contract with any board of education or board of directors, the publishers shall furnish the county superintendent of schools and the secretary of the board of education or board of directors in whose jurisdiction the contract is sought with a duplicate printed list of the school text books filed by him with the Superintendent of Public Instruction, together with the list prices and the

lowest wholesale and retail prices shown on the statement filed therewith, with samples of the school text books in said list referred to and said lists and samples shall be preserved as a part of the records of the secretary of the said board of education or board of directors, together with the bid of the publisher, to be delivered by the secretary to his successor, and shall be kept in such safe and convenient manner as to be at all times open to the inspection of school officers, school teachers, and school patrons who may desire to examine the same, or to compare them with others. The board of education or board of directors may require any person or persons with whom they may contract for furnishing text books to enter into a good and sufficient bond, in such sum and under such conditions and sureties as may be required by such board, for the faithful performance of any such contract.

"Sec. 6. Before adopting for use in the public schools under their respective jurisdictions any school text books under the provisions of this Act, it shall be the duty of each board of education or board of directors to advertise for bids by publishing a notice once a week for three consecutive weeks in one or more newspapers of general circulation published in the city or district; said notice shall state the time up to which said bids will be received, the time at which they will be opened, which must be at an open meeting of the board of education or board of directors; said notice shall also state the classes and grades for which the text books are to be bought, and the approximate quantity needed; and the said board shall award the contract for said text books to any responsible bidder or bidders offering suitable licensed text books at the lowest prices, taking into consideration the quality of the material used, illustrations, binding, printing, authorship, and all other things that go to make up a desirable text book: *Provided*, that the said board may reject any and all bids, or any part thereof, and re-advertise therefor, as above provided.

"Sec. 7. It shall be a part of the terms and conditions of every contract made in pursuance of this Act that the State of Illinois or any board of education or directors, shall not be liable to any contractor hereunder for any sum whatever; but all such contractors shall receive their compensation solely and exclusively from the proceeds of the sale of the books, as provided by this Act.

"Sec. 8. Any publisher, merchant, dealer or other person or persons who shall directly or indirectly demand or receive any money for any school text book or books in excess of the prices for such book or books filed with the Superintendent of Public Instruction, as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than twenty-five nor more than five hundred dollars, to which may be added imprisonment in the county jail for a term not exceeding sixty days.

"Sec. 9. Text books shall not be changed more often than once in five years. Text books shall not be changed in the middle of a school year, but all changes shall go into effect at the beginning of the first term of school after the summer vacation.

"Sec. 10. If (in) the adoption of school text books, it shall be the duty of the board of education or the board of directors to take into consideration the text books then in use in the public schools in their respective districts, and in making contracts for a change of books they shall require publishers or contractors to take up in part exchange the books then in use for at least fifty per cent of the original price paid by the pupil for the books."

S. B. No. 272, p. 416, June 16, 1909.

759 **Indiana:** Amending secs. 1 and 3, chap. 50, Acts, 1889, creating a board of commissioners for the purpose of securing for use in the common schools of the State a series of text-books, etc.

Regulating sale price of books.

Chap. 156, Mar. 8, 1909.

D. 760 **Kentucky (1909):** Ky. Stat., 1903, sec. 2957, providing that text-books in public schools once adopted shall not be changed except after certain procedure by the school board, is solely for the benefit of the public, and confers no right upon publishers of discarded books who have no contract to furnish the books to patrons of the school or school board to interfere to compel the board's compliance with the statute.—*Allyn & Bacon v. Louisville School Board*, 115 S. W., 206.

- 761 **Missouri:** Amending p. 437, Laws, 1907, creating a county text-book commission, providing for county uniformity and city adoption, licensing school text-book publishers, regulating prices of school text-books, prohibiting changes of text-books oftener than once in five years, providing for the sale of books to pupils at cost, prohibiting combinations of publishers of school text-books and providing penalties.

Dealers and merchants selling text-books at more than 15 per cent advance over the net contract price guilty of misdemeanor; penalty, fine of not less than \$25 nor more than \$100.

P. 850, Apr. 29, 1909.

- 762 * **Utah:** Amending secs. 1854, 1855, and 1861, Compiled Laws, 1907, creating a state text-book commission and providing for the manner of selecting text-books,

State text-book commission to consist of state superintendent of public instruction, president of the university, president of the agricultural college, principal of state normal school, and five resident citizens, appointed by the governor, three of whom shall be county superintendents of schools.

Chap. 54, Mar. 11, 1909.

- 763 * **West Virginia:** Creating a state school book commission and procuring for use in the public schools of the State a uniform series of text-books; defining duties and powers of said commission; making appropriation, and providing penalties.

"Sec. 1. There is hereby created a state school book commission, which shall consist of the state superintendent of free schools, who shall be *ex officio* secretary, and eight citizens of the state, at least five of whom shall be experienced educators of known character and ability, and who are at the time of their appointment engaged in actual educational work, not more than five of whom shall belong to the same political party, who shall be appointed by the governor on or before the first day of April, one thousand nine hundred and twelve, and every fifth year thereafter; said appointees shall take office thirty days after their appointments and serve for five years, unless removed by the governor for good and sufficient cause. Vacancies on said commission shall be filled by the governor by appointment. Said appointees shall receive five dollars per day for each and every day actually engaged in the work of the commission, not exceeding ten days in any one year, and their actual necessary expenses in connection therewith. Before assuming the duties of office they shall each take an oath or affirmation before some one qualified by law to administer the same, to faithfully and honestly perform their duties as hereinafter prescribed to the best of their ability, and that they are in no way interested in the preparation, manufacture or sale of any text-books that may be submitted to said commission for consideration. Such oath or affirmation shall be filed in the office of the state superintendent of free schools.

"Sec. 2. It shall be the duty of the state superintendent of free schools during the month of April, one thousand nine hundred and eleven, to contract for the period of one year from July first following, with the publishers thereof, for such text-books as are now in use, and for which county contracts will expire June thirtieth, one thousand nine hundred and eleven; said contracts to be made upon the same terms and conditions as are contained in the existing county contracts.

"Sec. 3. The members of the state school book commission shall meet at the office of the state superintendent of free schools on the first Tuesday in May, one thousand nine hundred and twelve, and each fifth year thereafter, at which time they shall ask various publishers of text-books in the United States to submit samples and prices of text-books on all subjects required to be taught in the free schools of the state, viz: spelling, reading, writing, arithmetic, language and grammar, physiology and hygiene, civil government, state history, United States history, general history, book-keeping, geography, elementary algebra, plane geometry, elements of agriculture, literature, drawing and English dictionaries and such other subjects which from time to time in the judgment of the board seems necessary and best to serve the educational interests of the state. The said commission shall select one of its members as chairman, and it shall be his duty to preside at all meetings. All bids or proposals shall be under seal, and submitted to the chairman of said commission to be opened by him in the presence of said commission at an executive

session to be held at the place aforesaid, on the first Tuesday in June following. Each bid or proposal shall be accompanied by a sufficient number of specimen copies of all books offered for adoption, to supply each member of said commission. When said bids and sample copies are submitted to the chairman of said commission, each bidder shall deposit with the state treasurer such sum of money as said commission shall designate; such deposit to be not less than one thousand dollars nor more than three thousand dollars, according to the number of books each bidder may propose to supply. Such deposit of any bidder shall be forfeited to the school fund of the state, if such bidder shall fail or refuse to make and execute such contract and bond as are hereinafter required, in case of the acceptance of such bid on any or all of the books so offered. No bid or proposal is to be considered by said commission until such deposit is made, and until the commission is informed in writing of the name and address of an agent residing in this state upon whom process may be served in any action brought against such bidder.

"Sec. 4. Upon the opening of said bids on the first Tuesday in June the said commission, having adopted rules governing its order of procedure, shall immediately proceed to the consideration of the merits of the books offered, taking into consideration their subject matter, printing, binding, and their general suitability for the purpose intended, as well as the price of said books. Said commission shall select and adopt one book, or one series of books, and only one, on each subject mentioned in section three of this act, for uniform and exclusive use in the free schools of this state, except as hereinafter provided, taking only those which in their best judgment will come the nearest accomplishing the ends desired; provided, that no book inferior in quality, or of a partisan or sectarian nature shall be adopted, nor shall any book be adopted by less than five affirmative votes; nor shall any book or books be changed at the expiration of any five-year contract made by said commission upon fewer than six affirmative votes. When selections and adoptions of books have been properly made, it shall be the duty of the chairman of the state school book commission to execute contracts therefor with the publishers thereof for a period of five years, beginning July first, following. Such contracts shall be prepared by the attorney general in accordance with the terms and provisions of this act, and shall be executed in duplicate, one copy held by the contractors and one by the secretary of said commission. It shall be the duty of said secretary to keep a full and complete record of the proceedings of the said commission, said record to be kept in his office and be open to the inspection of any citizen of the state. Should any successful bidder fail to contract, or, if for any cause any book or books adopted cannot be secured, the commission shall proceed at once to the selection and adoption of other books in lieu thereof.

"Sec. 5. At the time of the execution of the contract aforesaid the contractors shall enter into a bond in the sum of not less than ten thousand dollars, payable to the state of West Virginia, conditioned on the faithful and honest performance of their contract; any guaranty company authorized to do business in the state of West Virginia may become surety on said bond, and it shall be the duty of the attorney general to prepare and the board of public works to approve said bond. After all the contracts have been executed as herein provided, it shall be the duty of the said commission to notify the state treasurer to return all bidders such cash deposits heretofore required as have not been forfeited in accordance with the provisions of this act, receiving therefor receipt in duplicate, one copy of which shall be filed with the state superintendent of free schools. Any deposit forfeited in accordance with the provisions of this act shall be placed to the credit of the school fund.

"Sec. 6. It shall be the duty of the state school book commission at the last meeting aforesaid to fix the prices at which the various books adopted shall be sold to patrons, the excess of which above contract price representing the profit to the retailer; but in no case shall such profit exceed twenty per cent of the contract price. The state superintendent of free schools shall notify each county superintendent of the list of books adopted and the prices at which they are to be sold, and any person selling such books at a higher price than that fixed by the state school book commission shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than ten dollars nor more than fifty dollars. The books furnished during the contract period shall be equal in all respects to the sample copies furnished the said commission; and it shall be the duty of the state superintendent of free schools to carefully preserve in his office as the standard of quality, sample copies of all books contracted for.

"Sec. 7. It shall be the duty of each contractor at his own expense to place with responsible dealers, in no fewer than three magisterial districts in each

county, a sufficient quantity of books to supply the demand. He shall also arrange for the exchange of books at such places, allowing pupils or boards of education not less than fifty per cent of the retail price of new books for the old books of like kind and grade displaced. The exchange privilege shall extend through one entire school year, and the dealer making the exchange shall be allowed by the contractors ten per cent of the cash proceeds of same. Any teacher permitting in his school the use of any unauthorized book shall be deprived of his salary during the period of such violation of this act. Nothing in this act is to be construed as preventing the use of supplementary readers; *provided*, they do not displace the adopted readers, nor the use of more advanced books in such schools as may be ready for the same. Boards of education in cities and independent districts containing thirty-five hundred population or more, may reserve the right to select their own text-books; but should they elect to use any of the books adopted by the state school book commission they shall purchase them upon the same terms as hereinbefore provided, and shall not change them out during the period such books are under contract.

"Sec. 8. Should any contractor furnish the same books contracted for in this state, at lower prices to any other state, city or county in the United States than contract prices in this state, like conditions prevailing, the same reduction shall immediately be made in this state, and the state school book commission is directed to require compliance with this provision on penalty of cancellation of contract with such contractor.

"Sec. 9. It shall be the duty of any contractor to prepare printed lists, showing the exact titles of his books, the prices at which same are to be sold by the dealers, and the prices of same when corresponding old books are given in exchange, and send to each county superintendent a sufficient number to supply every teacher in the county. It shall be the duty of each county superintendent to see that the teachers of his county display such printed list for the inspection of the pupils.

"Sec. 10. Complaint in writing to any board of education of any district, by any citizen, or by any contractor to the effect that a teacher of such district is permitting the use of unauthorized books in his school, shall be deemed sufficient cause for investigation by said board of education, and if such complaint is found to be true, the board shall inflict the penalty provided in section seven of this act. Members of boards of education who fail or refuse to perform the duties required of them in this section shall be guilty of a misdemeanor, and upon conviction thereof before any justice of the peace, shall be fined not less than twenty-five dollars, nor more than fifty dollars.

"Sec. 11. It shall be a part of the terms and conditions of any contract made in pursuance of this act that the state of West Virginia shall not be liable, in any manner, in any sum whatsoever; but all said contractors shall receive their pay solely from the several dealers in each of the counties of the state provided in section seven of this act. Such contract shall also provide that any pupil, parent or teacher may order books direct from the contractors and receive them prepaid at the prices fixed by the state school book commission for their sale by dealers in the several counties. *Provided, however*, that the pay for same shall accompany the order.

"Sec. 12. The sum of one thousand dollars, or so much thereof as may be necessary, for the year one thousand nine hundred and twelve, and each fifth year thereafter is hereby appropriated for the purpose of defraying the expense of the state school book commission, as hereinbefore provided. The bills for such expenses shall be approved by said commission and presented in the usual way for payment out of the state treasury.

"Sec. 13. Any member of the state book commission who shall receive, solicit or accept any gift, present or thing of value to influence him in his vote for the adoption of books, or any person who shall either directly or indirectly give or offer to give any such gift, present, or thing of value to any member of said state school book commission to influence him in voting for the adoption of books shall be guilty of a felony, and upon conviction thereof shall be punished by confinement in the penitentiary of this state not less than one year nor more than three years.

"Sec. 14. All acts or parts of acts inconsistent with this act are hereby repealed; but nothing in this act contained shall be construed as repealing sections thirty-five and thirty-six of chapter twenty-seven of the acts of the legislature of West Virginia of the extra session of one thousand nine hundred and eight."

Chap. 23, Feb. 26, 1909.

L. SUBJECT-MATTER OF INSTRUCTION.

While the general control of the subject-matter of instruction in public schools falls within the legitimate sphere of legislative action, experience in numberless ways has demonstrated the doubtful wisdom of detailed definition. A general recognition of this results in but stray and odd bits of legislation concerned with the regulation of courses of study. Consequently, this section contains items covering a wide range. The resolution of the Nebraska legislature (767), probably in this particular instance merely formal, is fundamentally expressive of deep and widespread popular feeling of the responsibility of state higher education for the conservation and elevation of the political ideal. The North Dakota (768) provision concerning physical education will be considered in connection with the measures dealing with medical inspection and physical examination.

Alabama (769) strove to reach a commendable end; however, through means of doubtful educational value. Michigan (772), Montana (773), North Dakota (774), and Porto Rico (775) took a definite stand as to the utilization of the common school for the protection and conservation of human life. The Illinois (777) humane and moral education act will probably exert little positive influence in the direction intended.

The three measures relating to the teaching of agriculture falling within subgroup (i)—Technical, Manual and Industrial Education—will be rated of importance along with those classified under the Elementary and Industrial and Technical Education (see enactments No. 866 to 893).

The Minnesota law (783) is entitled to special mention.

February 12 received a general recognition for special observance within the public schools as a fitting mark to the centenary of the birth of Lincoln.

(a) General.

764 **California:** Amending sec. 1662, Political Code, 1906, relative to courses of study and conditions of admission to elementary schools.

Courses of study of day elementary schools to embrace eight years of instruction. Including in average daily attendance of day elementary schools, attendance of deaf children above 6 years of age.

Courses of study of evening elementary schools to embrace eight years of instruction. Defining age of admission to evening elementary schools.

Chap. 593, Apr. 14, 1909.

765 **West Virginia:** Amending sec. 215, chap. 27, Acts, 1908 (sp. sess.), relative to the course of study in the Bluefield colored institute.

Chap. 91, Feb. 23, 1909.

(b) History, Civics, and Patriotism.

766 **Maine:** Amending chap. 88, Laws, 1907, encouraging the compiling and teaching of local history and local geography in the public schools.

Chap. 138, Mar. 24, 1909.

767 ***Nebraska:** Requesting the regents of the university to establish a school of citizenship.

"Whereas the study of those subjects which tend to develop an appreciation of the duties and responsibilities of citizenship is of great importance to the people of this commonwealth, therefore,

Be it Resolved by the Legislature of the State of Nebraska:

"Sec. 1. That the Legislature of the State of Nebraska hereby expresses its approval of the action of the Regents of the University of Nebraska during the past few years in liberally supporting the department of Political Science and allied departments, and further requests that the said Board of Regents still further emphasize the work of these departments by the establishment of a School of Citizenship whenever the Board of Regents deem the same advisable."

Jt. Res., Chap. 200, Apr. 2, 1909.

(c) Physical Education.

768 ***North Dakota:** Amending sec. 889, Revised Codes, 1905, relating to physical education.

Prescribing employment of special supervisors in school districts having a population of over 500. Providing for instruction in physical education in summer schools and normal schools.

Chap. 102, Mar. 12, 1909.

(d) Physiology; Hygiene; Alcohol; Narcotics.

769 ***Alabama:** Relative to educating the children of the State on the evils of intemperance.

Providing for the preparation, publication, and distribution to the public schools of the State of placards by the state superintendent of education, "placards printed in large type upon which shall be set forth in attractive style statistics, epigrams and mottoes showing the evils of intemperance especially from the use of intoxicating liquors." Establishing "Temperance Day" in the public schools.

Act 40, p. 27, Aug. 19, 1909 (sp. sess.).

770 **Connecticut:** Appointing a board of directors to establish county homes for the care and treatment of persons suffering from tuberculosis.

Board to provide instruction in public schools and to provide literature for general distribution. (Sec. 13.)

Chap. 120, June 29, 1909.

771 **Idaho:** Providing for the teaching of physiology and hygiene, including special reference to the nature of alcoholic drinks, stimulants, and narcotics and their effects upon the human system, in the common schools of this State; in educational institutions receiving aid from, or support by the State, in teachers' institutes, teachers' training classes, and in state reformatories; providing penalty for violations.

S. B. No. 83, p. 316, Mar. 11, 1909.

772 Michigan: Amending sec. 4796, Compiled Laws, 1897, relative to teaching in the public schools the modes by which the dangerous communicable diseases are spread and the best methods for the restriction and prevention of such diseases.

SEC. 1. "There shall be taught in every year in every public school in Michigan the principal modes by which each of the dangerous communicable diseases are spread and the best methods for the restriction and prevention of each such disease. Such instruction shall be given by the aid of text-books on physiology, supplemented by oral and blackboard instruction. From and after July first, nineteen hundred ten, no text-book on physiology shall be adopted for use in the public schools of this State, unless it shall give at least one-eighth of its space to the causes and prevention of dangerous communicable diseases. Text-books used in giving the foregoing instruction shall, before being adopted for use in the public schools, have that portion given to the instruction in communicable diseases approved by the State Board of Health to the State Board of Education."

Act 141, May 26, 1909.

773 *Montana: Providing for teaching in the public schools the modes by which the dangerous communicable diseases are spread and the methods for the restriction and prevention of such diseases.

"SECTION 1. That there shall be taught in every year in every public school in Montana the principal modes by which each of the dangerous communicable diseases are spread, and the methods for the restriction and prevention of each such disease as small pox, diphtheria, scarlet fever, measles, tuberculosis, chicken pox and such other diseases as may be named, and attention called to same by the Board of Health of this state.

"SEC. 2. That said Board shall annually send to public school superintendents and teachers throughout the state printed data and statements which will enable them to comply with this act.

"SEC. 3. That school boards are hereby required to direct superintendents and teachers to give oral and black board instruction using the data and statements supplied by the State [Board] of Health.

"SEC. 4. That neglect or refusal on the part of any superintendent or teacher to comply with the provisions of this Act shall be considered a sufficient cause for dismissal from the school by the school board.

"SEC. 5. That the member of any school board who shall wilfully neglect or refuse to comply with any provision of this Act shall be deemed guilty of a misdemeanor and shall be subject to punishment by fine not exceeding One Hundred Dollars.

"SEC. 6. That this Act shall apply to all public schools in this state including schools in cities or villages whether incorporated under special charter or under the general law."

Chap. 27, Feb. 25, 1909.

774 North Dakota: Amending sec. 883, Revised Codes, 1905, relative to branches to be taught in common schools.

Adding "simple lessons on the nature, treatment, and prevention of tuberculosis."

Sec. 4, chap. 204, Mar. 15, 1909.

775 *Porto Rico: Amending act, p. 72, Laws, 1909, relating to the continuation of the work of suppression of tropical anemia in Porto Rico.

Providing for the preparation and distribution of bulletins in public schools, relating to tropical anemia and tuberculosis.

P. 78, Mar. 11, 1909.

(e) Moral and Ethical Education.

776 California: Amending sec. 1685, Political Code, 1906, as amended by chap. 52, Statutes, 1907, relative to the course of study in the public schools.

Adding physical culture and morals and manners to the list of required subjects.

Chap. 269, Mar. 18, 1909.

(f) Humane Treatment of Animals.

777 * **Illinois:** Providing for moral and humane education in the public schools and prohibiting certain practices inimical thereto.

"Sec. 1. * * * It shall be the duty of every teacher of a public school in this State to teach to the pupils thereof honesty, kindness, justice and moral courage for the purpose of lessening crime and raising the standard of good citizenship.

"Sec. 2. In every public school within this State not less than one-half hour of each week, during the whole of each term of school, shall be devoted to teaching the pupils thereof kindness and justice to and humane treatment and protection of birds and animals, and the important part they fulfill in the economy of nature. It shall be optional with each teacher whether it shall be a consecutive half-hour or a few minutes daily, or whether such teaching shall be through humane reading, daily incidents, stories, personal example or in connection with nature-study.

"Sec. 3. No experiment upon any living creature for the purpose of demonstration in any study shall be made in any public school of this State. No animal provided by, nor killed in the presence of any pupil of a public school, shall be used for dissection in such school, and in no case shall dogs or cats be killed for such purposes. Dissection of dead animals, or any parts thereof, shall be confined to the class room and shall not be practiced in the presence of any pupil not engaged in the study to be illustrated thereby.

"Sec. 4. The Superintendent of Public Instruction of this State and the committee in charge of preparing the program for each annual meeting of the Illinois State Teachers' Association shall include therein moral and humane education. The superintendent of schools of each county and of each city shall include once each year moral and humane education in the program of the teachers' institute which is held under his or her supervision.

"Sec. 5. The principal or teacher of each public school shall state briefly in each of his or her monthly reports whether the provisions of this act have been complied with in the school under his or her control. No teacher who knowingly violates any provision of sections 1, 2 or 3 of this Act shall be entitled to receive more than 95 per cent of the public school moneys that would otherwise be due for services for the month in which such provision shall be violated. This Act shall apply to common schools only and shall not be construed as requiring religious or sectarian teaching."

U. B. No. 21, p. 415, June 14, 1909.

778 **New Hampshire:** Amending sec. 6, chap. 92, Public Statutes, as amended by chap. 40, Laws, 1895, and chap. 31, Laws, 1903, relative to instruction in the public schools.

Prescribing instruction as to humane treatment of animals.

Chap. 49, Mar. 10, 1909.

(g) Music.

779 **Indiana:** Requiring the state board of education to provide for the singing of the "Star-Spangled Banner" in the schools.

Chap. 149, Mar. 8, 1909.

780 * **South Dakota:** Requiring instruction of vocal music in the state normals and public schools.

Chap. 19, Feb. 13, 1909.

(h) Drawing.

(1) Technical, Manual, and Industrial Education.

781 **Arkansas:** Requiring the teaching of elementary agriculture and horticulture in the public schools.

Act 315, May 31, 1909. (Mar. 31, 1910.)

782 * **Florida:** Providing for and requiring the teaching of the elementary principles of agriculture and the elements of civil government in all the common schools of the State; providing a penalty in case any county board of education fails to provide for the teaching of the same, and requiring all teachers to stand a satisfactory examination upon said subjects.

Chap. 5938 (No. 69), June 7, 1909.

783 * **Minnesota:** Providing for the establishment and maintenance of departments of agriculture, manual training, and domestic economy in state high, graded, and consolidated schools, and authorizing rural schools to become associated with such state graded or high schools; making appropriation.

"SECTION 1. Any state high school, graded or consolidated rural school having satisfactory rooms and equipment and having shown itself fitted by location and otherwise to do agricultural work, may, upon application to the state high school board, be designated to maintain an agricultural department.

"Sec. 2. Each of such schools shall employ trained instructors in agriculture, manual training and domestic science (including cooking and sewing) and have connected therewith a tract of land suitable for a school garden and purposes of experiment and demonstration and containing not less than five acres, and located within two miles of said buildings or within the school district.

"Sec. 3. Instruction in the industrial department herein provided shall be free to all residents of this state. Where necessary to accommodate a reasonable number of boys and girls able to attend only in the winter months, special classes shall be formed for them. Said department shall offer instruction in soils, crops, fertilizers, drainage, farm machinery, farm buildings, breeds of live stock, stock judging, animal diseases, and remedies, production, testing and hauling of milk and cream, the manufacture of butter and cheese, the growth of fruit, berries, management of orchards, market garden and vegetable crops, and insects injurious to the various plants, diseases of plants, animal nutrition, including the use of forage crops, cereal grains, fine seeds, bookkeeping, and farm accounts, and all other matters pertaining to general practice.

"Sec. 4. Each of said schools shall receive state aid equal to two-thirds (2-3) of the amount actually expended upon such departments and vouched for, but in no case to exceed two thousand five hundred dollars (\$2,500) per year. Not more than ten schools shall be aided the first year nor more than ten added to the list every two years thereafter. The special aid provided under this act shall be in lieu of all other aid for industrial training granted by the state to the schools operating hereunder.

"Sec. 5. For carrying out the provisions of this act there is hereby appropriated out of the general revenues of the state:

"For the year ending June 30, 1910, the sum of \$25,000.

"For the year ending June 30, 1911, the sum of \$25,000. *Provided* that no more than one school in any county shall be added to the list of state schools receiving aid under this act in any two years.

"Sec. 6. For the purpose of extending the teaching of agriculture, home economics and manual training to pupils in rural schools, and for the purpose of extending the influence and supervision of state high or graded schools over rural schools, one or more rural schools may become associated with any state high or graded school maintaining a department of agriculture, whether or not such high or graded school has been designated by the state high school board to receive aid under the provisions of this act. Any such state high or graded school shall for the purpose of this act be known as a central school.

"Sec. 7. To effect this, proceedings shall be had by petition and election on the part of the rural school or schools as now provided by law for the consolidation of school districts, and ballots to vote upon this question shall read:

"To associate with Dist. No. _____ for the teaching of agriculture and manual training _____ Yes _____ No _____ The district or districts casting a majority vote upon the approval of such association by a majority of the school board of the central school become so associated and the rural school or schools

together with the central school, shall thereafter be known as the associated schools of ——— for the teaching of agriculture and manual training.

"Sec. 8. The members of the various school boards of the associated schools shall meet on the third Monday in June of each year at the central school building to act as a board of review and to examine into the amount of money expended in each department of work herein provided for and to determine the amount of tax which shall be levied on the associated rural school district or districts for the purpose of maintaining courses of instruction as provided in section 2 of this act, and for the purpose of extending such instruction to the pupils of the associated rural schools. Provided, however, that the tax shall not be less than one mill nor more than four mills in the various rural school districts in the association and such tax shall be in addition to other general and special school taxes in such rural districts. The amount of such tax shall be certified by the chairman of the meeting to the county auditor to be by him levied against property in the respective districts and when collected by the county treasurer, such tax shall be paid to the treasurer of the central school who shall furnish the board of review full and detailed statement of all money received and expended.

"Sec. 9. The school board of each rural school district associated with a central school under the provisions of this act shall designate one of its members by vote to act with the school board of the central school in carrying out the provisions of this act as to the teaching of agriculture, domestic economy, and manual training in such schools and in all matters pertaining to such instruction, both in the central school and in the associated rural schools, such member shall have equal power with the member of the school board of the central school.

"Sec. 10. The principal or superintendent of the central school shall have and exercise the same authority and supervision over the rural schools as over the central school. He shall prepare for the associated rural schools a suitable course of study embodying training and instruction in agriculture and such subjects as are related to farm life and can be successfully taught in rural schools.

"Sec. 11. The relationship and obligations between the associated rural school or schools and the central school may be terminated at any annual school meeting by a majority vote of the associated districts, but not until the central school has had at least one year's notice of the intention to vote on the question."

Sec. 12. * * *

Chap. 247, Apr. 19, 1909.

(J) Days of Special Observances:

[See School Holidays (Enactments Nos. 633 to 647).]

784 **Arizona:** Making the one-hundredth anniversary of Abraham Lincoln's birthday a holiday.

Chap. 1, Jan. 22, 1909.

785 **California:** Establishing Bird and Arbor Day.

March 7, the birthday of Luther Burbank, designated as Bird and Arbor Day. Observance in the public schools.

Chap. 82, Mar. 3, 1909.

786 **California:** Declaring February 12, the birthday of Abraham Lincoln, a legal holiday, and providing for a half-day session in the public schools on such holiday, and for certain exercises in the public schools.

Chap. 527, Apr. 13, 1909.

787 **Georgia:** Providing for the proper observance of "Georgia Day," February 12, by appropriate exercises in the public schools.

Commemorating the landing of the first colonists in Georgia under Oglethorpe.

Act 113, p. 190, Aug. 13, 1909.

SPECIAL TYPES OF SCHOOL

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- 788 **Maine:** Setting apart Lincoln Day, February 12, 1909, as a holiday.
(See also Chap. 3, Feb. 2, 1909.)
Chap. 7, Feb. 11, 1909.
- 789 **Maine:** Amending sec. 88, chap. 15, Revised Statutes, 1903, as amended by sec. 14, chap. 48, Laws, 1905, as amended by chap. 48, Laws, 1907, relative to holidays.
Providing for the observance of February 12, Lincoln's Birthday, in the public schools of the State.
Chap. 190, Apr. 1, 1909.
- 790 **Montana:** Amending secs. 1025, 1028, and 1029, Revised Code, 1907, relative to the designation of "Pioneer Day," filing of essays, and course of exercises.
Chap. 35, Feb. 26, 1909.
- 791 **New Mexico:** Declaring Lincoln centenary to be a legal holiday.
Jt. Res. No. 5, p. 426, Feb. 2, 1909.
- 792 **North Dakota:** Amending sec. 882, Revised Codes, 1905, relating to the school year and holidays.
" * * * *Provided, however,* That on February the twelfth, Lincoln's birthday, February the twenty-second, Washington's birthday, and May the thirtieth, memorial day, all schools in session shall assemble for a portion of the day and devote the same to patriotic exercises consistent with that day, unless such holidays shall fall upon Saturday or Sunday, when such services shall be on the Friday preceding."
Sec. 3, chap. 204, Mar. 15, 1909.
- 793 **West Virginia:** Amending and reenacting sec. 504, chap. 15, Code, 1906, relating to legal holidays.
Adding February 12, Lincoln's Birthday, to the list of legal holidays, and providing for appropriate school exercises.
Chap. 77, Feb. 3, 1909.
- 794 **Wisconsin:** Making February 12, 1909, the centennial of the birth of Abraham Lincoln, a holiday.
Chap. 3, Feb. 9, 1909.

(k) Other Special Subjects.

M. SPECIAL TYPES OF SCHOOL.

Public school extension is a distinctive mark of contemporary educational progress. The breaking away from the confines of the traditional limited activities is indicated by the miscellaneous group of legislative enactments classified under this heading. The authorization of the establishment of cosmopolitan schools in San Francisco (795), of kindergartens in North Dakota (797), of night schools in Missouri (800), of playgrounds in Indiana (803), of the division of agricultural extension and home education in Minnesota (812), Missouri (813), and Ohio (814), are characteristic of the new elements of the democratic common schools.

(a) General.

795 **California:** Adding section 1665a, Political Code, providing for the establishment and maintenance in cities of the first class of one or more public schools called cosmopolitan schools, in which shall be taught the French, Italian, and German languages in connection with the English branches.

"1665a. The board of education in every city of the first class shall establish and maintain in each of said cities of the first class at least one public school in which shall be taught the French, Italian and German languages in conjunction with the studies in the English language prescribed to be taught by section 1665 of the Political Code of the State of California. Such schools shall be designated as cosmopolitan schools, and shall be subject to such rules and regulations as may be prescribed by said boards of education of said cities of the first class wherein said school or schools shall be established and maintained."

Chap. 268, Mar. 18, 1909.

796 **New York:** Amending sec. 160, chap. 10, Laws, 1909, relative to school savings funds.

Chap. 497, May 26, 1909.

(b) Kindergartens.

797 **North Dakota:** Empowering the school board of any district to establish and maintain free kindergartens for the instruction of children between 4 and 6 years of age.

Chap. 103, Mar. 11, 1909.

(c) Evening Schools.

798 **California:** See enactment No. 507.

799 **Connecticut:** Amending secs. 2145, General Statutes, 1902, as amended by chap. 135, Public Acts, 1903, relative to evening high schools.

Petitions of 20 persons for evening instruction may be for instruction in any study (formerly any one study).

Chap. 5, Apr. 14, 1909.

800 **Missouri:** Allowing boards of education in city, town, and village districts to provide for night schools in such districts.

P. 849, June 10, 1909.

801 **Wisconsin:** See enactment No. 44.

(d) Vacation Schools and Play Grounds.

802 **Illinois:** Enabling park commissioners to issue bonds to raise funds for the acquisition and improvement of additional small parks and pleasure grounds, and to provide a tax for the payment of the same.

H. B. No. 593, p. 291, June 10, 1909.

803 **Indiana:** Providing for the establishment, maintenance, and equipment of public playgrounds in cities of the first, second, third, and fourth class, and for the control and management thereof.

"Sec. 1. * * * the board of school trustees or commissioners in cities of the first, second, third and fourth class, in this state, be and the same are hereby authorized to establish, maintain and equip public play ground or play grounds, within their respective cities, to be used by the public during the summer vacation period in such cities. Such boards are authorized to use such of the public school buildings and grounds in such cities as in their judgment

may be required, pursuant to the provisions of this act. To that end such boards are hereby authorized to lease or purchase grounds additional to such school grounds, either adjacent thereto or elsewhere within such city; and such boards are further hereby empowered, pursuant to the laws of eminent domain now or hereafter in force within this state, to condemn ground to be used for the purposes herein expressed and to pay for such ground so condemned out of the school revenues of such city, not otherwise specified.

"Sec. 2. Such boards shall have full control and custody of all such playgrounds, including the policing and preservation of order thereon, and may adopt suitable rules, regulations and by-laws for the control thereof, and the conduct of children and other persons while on and using the same, and may enforce the same by suitable penalties. Such boards are hereby authorized to select and pay for directors and assistants, who, while on duty, and for the purpose of preserving order and the observance of the rules, regulations and by-laws of the said board, shall have all the powers and authority of police officers of the respective cities in and for which they are severally appointed. The compensation for such directors and assistants shall be fixed by such boards and paid for out of the school revenues, not otherwise appropriated.

"Sec. 3. In cities having a board of park commissioners and a board of school commissioners, the duties hereinabove devolving upon boards of school trustees, representing the control of said playgrounds during said summer school vacation period, shall be assumed by a playground commission, consisting of five citizens of such city, two of whom shall be members of the board of school commissioners, or designated by such board, to be selected by said board from time to time, and two shall be members of the board of park commissioners, or designated by such board, selected by said board, and the fifth member shall be appointed by the mayor of such city, and such fifth member shall serve for the term of four years. In such cities such board of park commissioners is hereby authorized to contribute in any sum, determined by said board of park commissioners, toward the expense of establishment, maintenance and equipment of such public playgrounds. All of the other provisions of this act shall likewise apply to playgrounds in cities of the first class."

Chap. 84, Mar. 5, 1909.

804 **Maine:** Amending sec. 19, chap. 57, Revised Statutes, 1897, relative to towns receiving devises and gifts.

Including public parks and playgrounds.

Chap. 183, Apr. 1, 1909.

805 **Maine:** Amending sec. 89, chap. 4, Revised Statutes, 1903, relating to right to take land for parks, squares, and public libraries.

Authorizing cities and larger towns to take land for playgrounds.

Chap. 237, Apr. 2, 1909.

806 **Massachusetts:** Enlarging the powers of the school committee of the city of Waltham in respect to physical education.

"Sec. 1. The school committee of the city of Waltham may, during the summer vacation and such other parts of the year as it may deem proper, organize and conduct physical training and exercises, athletic sports, games and play, and may provide proper apparatus, equipment and facilities for the same in the buildings, yards and playgrounds under the control of said committee, or upon any other land which it may have the right to use, and may employ instructors to have charge of the same.

"Sec. 2. The park commission of the said city may transfer to the school committee for the purposes aforesaid such of the playgrounds, gymnasias or buildings or parts thereof under its control as may be designated by the school committee.

"Sec. 3. The school committee may cause any of the grounds under its control, as aforesaid or otherwise, to be enclosed and reserved for the recreation and physical education of the minors of said city, and shall have the right to make reasonable regulations concerning their use.

"Sec. 4. Appropriations for the above named purposes shall be made in the same manner in which appropriations are made for the support of the public schools."

Chap. 224, Mar. 26, 1909.

807 **Minnesota:** Authorizing cities now or hereafter having a population of over 50,000 inhabitants to issue and sell bonds for acquiring and improving sites for children's public playgrounds.

Authorizing bond issue of \$100,000; not more than \$25,000 to be issued during any one year.

Chap. 357, Apr. 22, 1909.

808 **New Jersey:** Supplementing chap. 117, Acts, 1907, relative to the establishment of public playgrounds in cities.

Authorizing boards of playground commissioners to give exhibitions to raise funds and to charge admission fee. Proviso.

Chap. 54, Apr. 7, 1909.

809 **New Jersey:** Amending sec. 1, chap. 117, Acts, 1907, relative to the establishment of public playgrounds.

Increasing the number of commissioners from 3 to 5.

Chap. 60, Apr. 7, 1909.

810 **New York:** Authorizing city of Buffalo to issue bonds for playgrounds.

One hundred thousand dollars.

Chap. 83, Mar. 9, 1909.

811 **Pennsylvania:** Authorizing towns of the first class and boroughs to acquire private property for the purpose of parks and playgrounds.

Act 226, May 3, 1909.

(e) University Extension; Public Lectures.

812 * **Minnesota:** Creating and maintaining a division of agricultural extension and home education in the department of agriculture of the university, and providing for the publication and distribution of home education bulletins.

Appropriating \$50,000.

Chap. 440, Apr. 22, 1909.

813 **Missouri:** Relative to promoting agriculture and diffusing knowledge pertaining thereto.

Providing for extension courses in agriculture. Appropriating \$12,000.

P. 119, June 14, 1909.

814 * **Ohio:** Providing for agricultural extension work by the college of agriculture and domestic science of the state university.

Appropriating \$20,000.

S. B. 50, p. 11, Mar. 12, 1909 (sp. sess.).

(f) Farmers' Institutes, etc.

815 **California:** Authorizing the regents of the university to hold farmers' institutes.

Appropriating \$20,000.

Chap. 538, Apr. 14, 1909.

816 **Florida:** In favor of the New York educational board for establishing farmers' cooperative demonstration work.

Res. No. 14, p. 687, 1909.

817 **Oklahoma:** Providing for the encouragement of farmers' institutes and authorizing the county clerks to draw warrants under certain conditions.

H. B. 277, p. 5, Mar. 22, 1909.

* In many States provisions general and special are made for farmers' institutes and allied educational activities in general appropriation laws. In consequence but a few typical new measures are represented here.

818 **Utah:** Repealing secs. 2095, 2096, 2097, and 2098, Compiled Laws, 1907, providing for the holding of farmers' and domestic science institutes and schools in the counties of the State.

Chap. 12, Feb. 26, 1909.

(g) Private and Endowed Schools.

N. SECONDARY EDUCATION: HIGH SCHOOLS AND ACADEMIES.

The amount of the legislative attention to secondary education is distinctly one of the features of activity of the year. Three lines of development are distinguishable: (a) Increase of state aid; (b) standardization of organization and centralization of control; (c) development of more equitable secondary school opportunities for rural pupils. The extended application of the principle of state subsidies for this class of institutions has already been pointed out in the review of the financial legislation (see enactments No. 344 to No. 360). The movement for the stimulation of development of the high school system through state organization and inspection appears in the consolidated and amended high school law of California (820); in the measure providing for the improvement of free high schools in Maine (833), in the county high school laws of Nevada (846) and Oregon (855), in the high school inspection act of Ohio (852), in the general education bill (sec. 5) of Tennessee (860), and in the amended Utah law (862). Progress in the provision of high schools for nonurban regions is exemplified in the high school acts of Colorado (821), Idaho (823), and Kansas (828); in the special tuition and transportation provisions of Indiana (826), Maine (834-835), Michigan (838), and Ohio (851). The amendment passed to the Nebraska (843) high school act of 1907 is indicative of some of the difficulties encountered in new situations.

The decision of the Mississippi supreme court (D. 841-D. 842) in the matter of the constitutionality of the agricultural high school act of 1908 is of interest as a factor in the southern educational problem.

819 **Alabama:** Amending sec. 1867, Code, 1907, relative to matriculation fee in county high schools.

Increasing fee from \$1 to \$2.50 per term.

Act 55, p. 43, Aug. 19, 1909 (pp. sess.).

820 **California:** Adding secs. 1720-1751 and secs. 1755-1763, Political Code, relative to the establishment and government of high schools and high school districts, and high school taxes and funds. Repealing secs. 1669, 1670, 1671, 1671a, and 1681, Political Code, and repealing sundry other sections, all relating to high schools.

Consolidating and amending laws relating to high schools.

Chap. 311, Mar. 19, 1909. (July 1, 1909.)

821 **Colorado:** Amending chap. 100, Laws, 1899; chap. 219, Laws, 1907. Repealing secs. 3 and 4, chap. 219, Laws, 1907, providing for the creation of high school districts, and for the establishment and support of high schools therein. (See D. 822, following.)

Dividing the counties of the State into five classes; providing for the organization and government of high school districts.

Chap. 170, Apr. 3, 1909.

D. 822 **Colorado (1909):** The provisions of the laws of 1909 in regard to the selection of a high school committee for a county high school district being practically the same as Laws, 1899, p. 226, chap. 100, and the same as the territorial law, and the power of the legislature in such respect never having been questioned, and many schools having been erected on the assumption of validity, and bonds having been issued under the law of 1909, the court shall be slow to declare the law of 1909 as concerns the selection of the committee violative of Const., art. 9, sec. 15.—*Kyle v. Abernethy*, 102 P., 746.

823 ***Idaho:** Providing for the creation of rural high school districts, and for the establishment, control, and maintenance of rural high schools therein.

"SECTION 1. That when the heads of five or more families in each of two or more regularly organized school districts in this State, not having within their limits an incorporated city, shall petition the Board of County Commissioners of their county to unite them into a rural High School District, for the purpose of maintaining a high school therein, the said Board of County Commissioners shall submit the question to a vote of the qualified electors of the districts so petitioning at a special election called for that purpose, within sixty days from the date of the receipt of such petition.

"Sec. 2. The election provided for by Section 1 of this Act shall be held at the most centrally located school house in the several districts petitioning, which school house shall be designated by the Board of County Commissioners, and notices thereof shall be posted conspicuously on each school house in said several districts, and the election conducted in all respects as provided by law for the election of school trustees, and the ballots shall have printed thereon For Rural High School—Yes and For Rural High School—No.

"Sec. 3. If more votes are cast in favor of such rural high school district than against it the Boards of School Trustees of the districts included in such rural high school district, if there are but two, and if there are more than two districts so included, then the chairman of each Board of Trustees, shall within ten days after such election meet and organize as the Board of Trustees of such rural high school district, by electing one of their number president and electing a clerk or secretary, who may or may not be one of their number. Such Board, when so organized, shall at their first meeting certify to the clerk of the Board of County Commissioners the results of the election so held, and the clerk of the Board of County Commissioners shall designate the said district as Rural High School District No. — of — County, Idaho, and so certify it to the clerk or secretary of the said rural high school district, and also to the Board of County Commissioners at their next meeting. The Boards of Trustees of the two districts, if but two, or the chairmen of the several Boards of Trustees, if more than two, so uniting to form such rural high school district, shall constitute the Board of Trustees of such rural high school district, and they shall meet and organize each year as heretofore provided, within ten days after each annual school election. No further qualifications shall be necessary.

"Sec. 4. The other regular meetings of the Board of Trustees shall be held on the Tuesday following the last Saturday in March, June, September, and December of each year. The Board may, however, hold special or adjourned meetings as they may from time to time determine.

"The Board shall have power:

- "(a) To supervise and visit the school;
- "(b) To admit all children of the district above the eighth grade, and to admit and provide rates of tuition for non-resident pupils, if they so elect;
- "(c) To appoint legally qualified teachers;
- "(d) To fix wages, make general rules and regulations for the control of the school, suspend or expel pupils, fix the time of school which will not be more than ten months nor less than seven months in any one year.
- "(e) To rent or to purchase and hold real estate for such district high school, build and furnish school houses, determine location of grounds and buildings,

which shall be as near the center of the district as practicable, according to sanitary conditions, and to receive and hold bequests and gifts for the benefit of the school, and to dispose of property belonging to the district, subject to the provisions hereinafter named;

"(f) To provide a course of study which shall be approved by the State Superintendent of Public Instruction and by the Dean of the College of Agriculture, and shall not consist of more than four years' work; such course of study may include instruction in manual training, domestic science, nature study, and the elements of agriculture;

"(g) To estimate and vote the amount of tax necessary to support the school at a meeting previous to September first in each year, and report the same to the Board of County Commissioners, which amount may include the cost of transportation of students, and the creation of a sinking fund for the payment of principal and interest of bonds issued, if any, and shall be spread upon the tax roll the same as other district taxes, and in their discretion issue warrants drawing legal interest for current expenses, the amount of which warrants shall not exceed fifty per cent of the tax voted;

"(h) To call special elections or meetings of the district, if necessary, to vote on the amount of money to be raised for the purchase of grounds and erection and equipment of buildings, and for such other purposes as may be necessary within the authority of the provisions of this Act, or of the general school laws.

"Sec. 5. The duties of the officers of the Board shall be the same as is prescribed by law for similar officers of other Boards of School Trustees, and in addition thereto the clerk or the secretary shall certify to the County Superintendent, quarterly, the number of teachers that are regularly employed in said school.

"Sec. 6. A majority of the qualified electors of such rural high school district may vote bonds in any legal amount, the proceeds to be spent in purchasing, building or equipping such high school and grounds. The election held for this purpose shall be conducted in all respects as provided by the laws of Idaho for similar purposes: *Provided*, That the bonds so voted and issued shall not run longer than twenty years, nor draw a rate of interest higher than six per cent per annum.

"Sec. 7. The high schools established under the provisions of this Act shall be under the supervision of the State Superintendent of Schools, and all questions of management, support and control arising under the provisions of this Act, and not expressly provided for herein, shall be subject to the provisions of the general laws of the State."

S. B. No. 74, p. 73, Mar. 11, 1909.

D. 824 **Illinois** (1909): Where a high school maintained by a district was a department of the common or free schools, maintained under the constitution, which declares that the general assembly shall provide a thorough and efficient system of free schools, whereby all the children of the State may receive a good common school education, the children of the district and of other districts of school age sustained no different relation to the high school from that sustained to any of the grades or other departments of the schools, but the entire system of schools altogether constituted the "common schools" of the district.—*People v. Moore*, 88 N. E., 979.

D. 825 **Illinois** (1909): Under school law, art. 5, sec. 35 (Hurd's Rev. Stat., 1908, chap. 122, sec. 155), providing for transfer of pupils from the common schools of one district to those of another, whether in the same or another township, the directors of a district maintaining no high school were entitled to authorize certain of its pupils to attend high school in another district at the expense of the district where they resided.—*People v. Moore*, 88 N. E., 979.

826 ***Indiana**: Amending sec. 1, chap. 204, Acts, 1901, regulating the transfer of children from one school corporation to another.

Prescribing conditions of transfer. Providing for the transfer of pupils to attend commissioned or accredited high schools.

Chap. 72, Mar. 5, 1909.

D. 827 **Kansas** (1908): That the board of county commissioners, sitting as a board of canvassers, declared the proposition of establishing county high schools carried did not make the matter *res judicata*, or estop the board from thereafter claiming that it had not carried.—*Board of Education of City of Humboldt v. Klein*, 99 P., 222.

828 *Kansas: Concerning high schools.

"SECTION 1. That in all counties of this state in which high schools have been established and maintained for one year, and which said high schools have been established and maintained under the provisions of chapter 397 of the Laws of 1905, as amended by chapter 333 of the Laws of 1907 and chapter 69 of the Laws of 1908, by a majority of all the votes cast on said proposition, said chapter 397 of the Laws of 1905, as amended by chapter 333 of the Laws of 1907 and by chapter 69 of the Laws of 1908, shall be in full force and effect from and after the publication of this act in all such counties without again submitting the question to a vote of the electors; provided, however, this act shall not apply to counties where the proposition was resubmitted under chapter 69 of the Session Laws of 1908 and rejected."

Sec. 2. * * *

Chap. 210, Feb. 19, 1909.

829 Kansas: Repealing and amending secs. 6436 and 6437, General Statutes, 1901, relative to county high schools.

Chap. 211, Mar. 12, 1909.

D. 830 Kentucky (1909): Act of March 24, 1908 (Acts, 1908, p. 133, chap. 56; Ky. Stat., 1909, sec. 4426a), for the governing and regulation of the common schools of the State, and providing that within two years after its passage there should be established by the county board of education of each county one or more county high schools, provided there was not already existing in the county a high school, which in that event might be considered as meeting the purposes of the act, was not unconstitutional for failure to require a separate high school for whites and blacks, and that, if a high school was established for whites, there would be a discrimination against the blacks, since the act did not contemplate any such discrimination, but required an efficient system of separate schools for both races.—*Prowse v. Board of Education for Christian County*, 120 S. W., 307.

831 Maine: Amending in a minor manner sec. 65, chap. 15, Revised Statutes, 1903, relating to free high schools.

Chap. 28, Feb. 26, 1909.

832 Maine: Extending the privileges of secondary instruction to youths resident in unorganized townships.

Chap. 62, Mar. 11, 1909.

833 *Maine: Providing for the improvement of free high schools.

Providing for three classes of high schools. State aid equal to two-thirds of the amount paid for instruction in each school; maximum aid, \$500. Providing for the inspection of high schools under the direction of the state superintendent of public schools.

Chap. 71, Mar. 15, 1909.

834 Maine: Amending sec. 63, chap. 15, Revised Statutes, 1903, relating to the payment of tuition in secondary schools.

Tuition to be paid "so long as such youth maintains good standing in such school."

Chap. 116, Mar. 20, 1909.

835 Maine: Amending sec. 56, chap. 15, Revised Statutes, 1903, relative to the conveyance of pupils in secondary schools.

Authorizing provision for conveyance of pupils and payment therefor.

Chap. 148, Mar. 26, 1909.

836 Maine: Adding to chap. 71, Laws, 1909, providing for the improvement of free high schools.

State aid to be paid annually in December.

Chap. 196, Apr. 1, 1909.

837 Massachusetts: Providing for a high school of commerce and school administration building in the city of Boston.

Chap. 446, May 26, 1909.

838 *Michigan: Repealing act 190, Public Acts, 1903, and providing for the payment of tuition in and transportation to another district of children who have completed the eighth grade in any school district.

Act 65, May 6, 1909.

839 Michigan: Amending act 144, Public Acts, 1901, as amended by act 126, Public Acts, 1907, providing for the establishment and maintenance of rural high schools.

Minor amendment concerning elections.

Act 97, May 18, 1909.

840 Minnesota: Amending sec. 1391, Revised Laws, 1905, relative to the duties of the state high-school board, and providing for state high-school board examinations for private schools and academies under certain conditions.

Chap. 188, Apr. 14, 1909.

D. 841 Mississippi (1909): Laws, 1908, p. 92, chap. 102, authorizing a county to establish an agricultural high school for its white youth, to be supported by tax on all taxable property, held to abridge the privileges or immunities of a certain class of citizens and thus to contravene Const. U. S., Amend. 14, sec. 1.—*McFarland v. Goins*, 50 So., 493.

D. 842 Mississippi (1909): Laws, 1908, p. 92, chap. 102, authorizing a county to establish an agricultural high school for its white youth, to be supported by tax on all taxable property, held to deny a certain class of citizens the equal protection of the laws, and thus to contravene Const. U. S., Amend. 14, sec. 1.—*McFarland v. Goins*, 50 So., 493.

843 Nebraska: Repealing, and re-enacting with amendments, sec. 11618, *Cobbey's Ann. Stat.*, 1907, relative to the payment of non-resident pupil's tuition, by their home districts.

Relates to payment of non-resident high school tuition.

* * * "Provided however, that if such school district in which the parent or guardian of such non-resident pupil maintains his legal residence is not able to maintain nine months of school out of his (its) own resources after levying the full amount of taxes it is permitted by law to levy for school purposes together with its apportionment from the State School Fund, then and in that case, said district shall not be liable for such tuition."

Chap. 122, Apr. 5, 1909.

D. 844 Nebraska (1909)^a: In passing on the validity of *Comp. Stat.*, 1907, secs. 5494-5497b, *Sess. Laws*, 1907, p. 402, chap. 121, providing a four years' course of free high-school instruction of pupils residing in districts where that privilege is denied, and permitting them to attend properly equipped schools in other districts, and making the home district liable for the payment of tuition at the rate of 75 cents a week for each pupil, it will not be assumed without pleading or proof that the tuition fixed by the legislature will fall below or exceed the cost of educating a nonresident pupil.—*Wilkinson v. Lord*, 122 N. W., 699.

845 Nevada: Amending sec. 1, chap. 31, *Laws*, 1895, as amended by chap. 86, *Laws*, 1907, relative to the establishment of county high schools.

Emergency amendment for the benefit of Humboldt County. Relating to election and procedure for location of school.

Chap. 39, Feb. 26, 1909.

846 Nevada: Permitting the establishment of county high schools in the various counties, and providing for the construction, maintenance, management, and supervision of the same, and repealing all acts in conflict herewith.

Chap. 171, Mar. 24, 1909.

^aSee Recent Decisions, in latter part of this bulletin, for complete text of decision.

847 Nevada: Authorizing boards of county commissioners to establish district high schools.

Restricting application of act to counties polling not more than 960 votes and having more than \$3,600,000 of taxable property.

Chap. 178, Mar. 24, 1909.

848 New Hampshire: Amending chap. 96, Laws, 1901, as amended by chap. 90, Laws, 1905, enabling certain school districts to make contracts with certain high schools or academies out of the State for furnishing instruction to pupils of high-school grade.

Chap. 100, Mar. 30, 1909.

849 North Carolina: Encouraging high-school instruction for the counties of Graham and Clay.

Authorizing the establishment of a central high school in Cherokee, Clay, and Graham counties. Providing for normal department.

Chap. 328, Feb. 26, 1909.

850 North Carolina: Relating to the sale of refreshments at all state high schools in Alamance County.

Chap. 524, Mar. 5, 1909.

851 * Ohio: Amending sec. 4029-3 relative to the tuition of pupils holding diplomas.

Requiring boards of education of second and third grade high schools to pay tuition in first grade high schools. Proviso.

Providing for transportation of high school pupils in centralized townships.
H. B. 17, p. 74, Mar. 23, 1909 (sp. sess.).

852 * Ohio: Amending and supplementing section 4029-4, Revised Statutes, regarding what shall constitute a school and providing for the appointment of two high school inspectors.

Sec. 1. * * *

Sec. 4029-4. * * *

"Sec. 4029-4a. To aid in the recognition and classification of high schools, established or seeking recognition in accordance with the provisions of this act, the state commissioner of common schools shall appoint two competent inspectors. Under the orders and supervision of the commissioner of schools such inspectors shall make examinations of any public schools in the state, visit teachers' institutes, confer with the various school authorities and assist the state commissioner of common schools in such other ways as he may direct; provided, however, that the inspection herein authorized shall not be a substitute for, or take the place of, the inspection made by the Ohio State University for university purposes. In making the first appointment one of the inspectors shall be named for one year and one for two years and thereafter the appointment shall be for two years. Said inspectors shall be paid an annual salary of two thousand dollars.

"Sec. 4029-4b. The visitors or field agents of any institution of higher learning, supported wholly or in part by the state of Ohio, shall furnish the state commissioner of common schools with a report of all inspection of public high schools made by them. The reports shall be in such form as the commissioner may prescribe."

Sec. 2. * * *

H. B. 58, p. 92, Mar. 25, 1909 (sp. sess.).

853 Oklahoma: Repealing secs. 1 and 2, p. 187, Laws, 1901, authorizing the establishment and maintenance of county high schools.

Schools established or already voted for not to be affected.

S. B. 4, p. 557, Feb. 26, 1909.

854 * Oklahoma: Creating and locating the Eastern University Preparatory School at Claremore.

H. B. 362, p. 559, Mar. 25, 1909.

855 *Oregon: Providing for a county high school fund; for the distribution of the same; prescribing standards for high schools, and the qualifications of teachers therein.

"SECTION 1. The county court, at any general election to be held in any county after the passage of this act, upon the presentation of a petition signed by ten per cent or more qualified school electors of said county, must submit the question of creating a county high school fund to the qualified electors thereof. Such election shall be conducted in the manner provided by law for conducting elections. The county clerk shall give thirty days' notice that the question will be submitted to the legal voters of the county. The ballots for such election shall contain the words, 'For county high school fund—yes;' 'For county high school fund—no;' and the voter shall indicate his choice as provided in the Australian ballot law.

"SEC. 2. Whenever it has been decided by any county, at any election, to create a county high school fund, in accordance with Section 1 of this act, such fund shall be under the control of a county high school board, consisting of the county judge and the two commissioners, the county treasurer, and the county school superintendent, who shall act in their official capacity as such board, the county judge to be ex-officio chairman, and the county school superintendent ex-officio secretary. The members of the board shall serve without compensation.

"SEC. 3. It shall be the duty of the county high school board, within thirty days after returns have been canvassed by the regular canvassing board in said county, if a county high school fund has been provided for in accordance with Section 2 of this act to contract with all districts that maintain a high school, in accordance with the requirements of Section 7 of this act, to teach all high school pupils of said county that may attend a high school in the district.

"SEC. 4. The county high school board shall also make an estimate of the amount of money needed to pay the tuition of all high school pupils for the next twelve months, and submit such estimate to the county court, whose duty it shall be thereupon to levy a special tax upon all the assessable property of the county sufficient to raise the money estimated, as necessary for paying said tuition. Said tax shall be computed, entered upon the tax roll, and collected in the same manner as other taxes, and designated as the 'County High School Fund,' and shall be deposited in the county treasury.

"SEC. 5. For the purpose of paying tuition of said high school pupils, the county high school board shall draw an order on the county treasurer, which shall be signed by the president and secretary of such board, whereupon the county treasurer shall pay such warrant and charge the same to the county high school fund; provided, that the total amount of such warrants shall not exceed the amount of money actually in the hands of the treasurer to the credit of the county high school fund.

"SEC. 6. The basis of the distribution of the county high school fund shall be upon the average daily attendance during the school year. The total amount of money paid to any district during the school year shall not be less than \$40 per pupil for the first 20 of such average daily attendance, and \$30 for the second 20; nor more than \$12.50 per pupil for all the remaining pupils. But the total paid any district shall not exceed the amount paid by the district to the teachers employed therein.

"SEC. 7. It shall be the duty of the State Board of Education to prescribe rules and regulations specifying the standard that must be maintained by all high schools relative to number of months taught, number of teachers employed, number of recitation periods daily, and course of study, before any high school shall be entitled to receive tuition for any high school pupil from the county high school fund.

"SEC. 8. No high school shall be entitled to receive tuition for any pupil from the county high school fund, nor shall any warrant on said fund be drawn in favor of any district until the county superintendent has certified to the county high school board that the district has complied with the rules and regulations provided for in Section 7 of this act.

"SEC. 9. No high school shall be entitled to receive tuition for any high school pupil from the county high school fund, unless such pupil holds an eighth grade diploma from some county in this State, or its equivalent from some other state; provided, that this section shall not apply to any pupil now enrolled in any high school. All questions at issue arising under the provisions of this

section shall be determined by the county school superintendent whose decision in the matter shall be final.

"Sec. 10. No tuition shall be paid for a high school pupil to any district, except to the district in which his parent or guardian shall actually reside, during the time of said pupil's attendance in such district; *provided*, that tuition may be paid for a high school pupil to a district other than his residence district if the high school is not in session in the residence district of such pupil; or if such pupil has completed the course of study offered in his residence district; or if he has obtained the consent of the county high school board to attend school in a district other than his residence district.

"Sec. 11. All teachers employed in high schools in this State shall be graduates of the State Normal School of this State, graduates of some institution of collegiate or university grades, or shall be the holder of a state certificate or a state diploma. Graduates of such institutions, upon registering their degree or diploma with the county superintendent, shall be entitled to teach in high schools without any further examination.

"Sec. 12. All the provisions of this act shall also apply to any county that has heretofore, in substantially the same manner as provided for in this act, established a county high school fund and provided for the distribution of the same." Chap. 115, Feb. 23, 1909.

856 **Pennsylvania:** Authorizing township school districts, which entirely surround a city or borough, to acquire, in such city or borough, lands, and to erect thereon buildings for high-school purposes, and exempting property, so acquired, from taxation by such city, borough, or school district thereof; and authorizing such township school directors to enter upon and occupy sufficient ground for such high school purposes, and providing for the determination of damages done and suffered by the owners of the land by reason of the taking thereof for such high school purposes.

Act 259, May 6, 1909.

857 **South Dakota:** Amending sec. 147, chap. 135, Laws, 1907, relating to tuition for eighth grade graduates.

Tuition charges in excess of \$2 per month to be paid by parent or guardian. Chap. 150, Mar. 3, 1909.

D. 858 **South Dakota (1909):** Under Laws, 1903, p. 148, chap. 132, authorizing a pupil having completed the eighth grade to attend school in a neighboring district affording a higher course of study not afforded by her home district at the expense of the latter, it was no defense to an action against a resident district to recover tuition for instruction furnished to a pupil under such circumstances that there was no contractual relation between plaintiff and defendant district, defendant being liable for such tuition under quasi contract.—Board of Education of City of Yankton v. School Dist. No. 19, of Yankton County, 122 N. W., 411.

D. 859 **South Dakota (1909):** Laws, 1903, p. 148, chap. 132, declares that any pupil who shall successfully complete the work of the eighth grade may continue his work up to and including the twelfth grade by attending any neighboring graded school, and the tuition shall be paid by the board of his home district, provided the home district does not provide instruction in such higher grade. *Held*, that where a pupil completed her eighth grade in her resident district, which did not afford higher instruction, the fact that such district had never authorized instruction in higher grades was sufficient reason why she should not attend school in her home district, and authorized her attendance at a neighboring high school to continue work up to the twelfth grade at the expense of her resident district.—Board of Education of City of Yankton v. School Dist. No. 19, of Yankton County, 122 N. W., 411.

860 **Tennessee:** See enactment No. 308.

861 **Tennessee:** Authorizing the issuance of bonds to erect, maintain, and equip a public school building at Covington, to be used as a county high school, and to purchase the necessary real estate.

Chap. 114, Feb. 20, 1909.

- 862 *Utah: Amending secs. 1830 and 1832, Compiled Laws, 1907, relative to high schools.

Authorizing establishment of high schools in districts having a population of over 500 (formerly 1,000); prescribing the selection of text-books.

Chap. 71, Mar. 11, 1909.

- 863 Wisconsin: Creating sec. 490, Statutes, relative to free high school districts.

Chap. 144, May 18, 1909.

- 864 Wisconsin: Amending sec. 490, Statutes, relative to the establishment of free high schools.

Chap. 217, May 28, 1909.

- 865 *Wisconsin: Creating secs. 495-1 to 495-19, inclusive, Statutes, relative to free high school districts.

Relating to free high school districts; providing for union free high schools; providing for the establishment, maintenance, and government of union free high schools in areas not less than 36 square miles.

Chap. 493, June 16, 1909.

O. TECHNICAL AND INDUSTRIAL EDUCATION: ELEMENTARY AND SECONDARY.^a

The efforts to adapt the modern state systems of education to the industrial and vocational needs of a democratic civilization continue to increase in number and variety. From a legislative and constructive point of view, it is a trying-out period. Almost without exception, all of the items of this group are significant of the new directions of progress. Aside from the authorization of new schools or the increased support of those already in existence in Arkansas (866), California (867), Connecticut (868), Georgia (869), Idaho (871), Michigan (876), New Jersey (880), Ohio (881), Oklahoma (882-886), Texas (889), and Wisconsin (891), the establishment of investigating commissions in Maine (873) and Michigan (877), and the consolidation of the commission on industrial education with the new state board of education in Massachusetts (874) may be noted. From what is already known of the educational needs of the day, it may be said that we are passing the stage of investigation and entering the stage of definite organization of plan of elementary technical and industrial education.

- 866 *Arkansas: Providing for the establishment and maintenance of public schools of agriculture.

Dividing the State into four districts for agricultural schools; establishing a state agricultural school in each district. Providing for boards of trustees; powers and duties. Prescribing conditions for course of study and faculty. Appropriating \$160,000.

Act 100, Apr. 1, 1909.

^a See Elliott, Edward C., *Industrial Education—Summary of Legislation*, Legislative Summary No. 1, American Association for Labor Legislation, December, 1909, for a complete survey of the existing legislation on this subject.

867 * **California:** Authorizing the establishment of the California State Trades and Training School for dependent orphans, half orphans, abandoned children, and children committed by court and placed under guardianship of the board of trustees.

"SECTION 1. There is hereby established in this state a school to be known as the California State Trades and Training School. The purpose of this school is to furnish to the dependent orphans, half orphans, abandoned children and children ordered committed by court, of both sexes, mental and manual training in the arts, sciences and trades, including agriculture, mechanics, engineering, business methods, domestic economy and such other branches as will fit the students for the different occupations of life.

"SEC. 2. The California State Trades and Training School shall be located at such place as may be selected by the governor, attorney general, secretary of state, one member of the senate and one member of the assembly appointed by the governor, who are hereby named as a commission to select a proper site for the aforesaid school, the same to be as near as possible centrally located in the state, with a view to making it the most useful, convenient and economical in its conduct.

"SEC. 3. Within thirty days after this act goes into effect, the governor shall appoint four persons who, in connection with the secretary of the state board of examiners, shall constitute a board of trustees of said school.

"SEC. 4. The term of office of the trustees shall be four years, except that in the appointment of the four persons mentioned in section 3, the governor, in the first appointment of trustees shall appoint two for a term of two years and two for four years, and the acting secretary of the state board of examiners shall constitute the other member of said board who will act during his term of office.

"SEC. 5. The sum of \$125,000.00 is hereby appropriated out of any moneys belonging to the state, not otherwise appropriated, for the purchase of a site and the preparation of the necessary plans and specifications for grounds and buildings; provided, that if any or all of the money is not expended as provided above then it shall immediately become available for the purchase of material and employment of labor for erection of the buildings needed for the school.

"SEC. 6. The children who are eligible for admission to the California State Trades and Training School must be dependent orphans, abandoned children and half orphans whose surviving parent is unable to support such children, and such other children as may be ordered committed by court and placed under guardianship of the board of trustees of the California State Trades and Training School who have been taken from parents for their protection and education.

"SEC. 7. Children admitted to the California State Trades and Training School must be at least fourteen years of age and not over eighteen years, and must be of sound mind, free from contagious or other diseases that would unfit them for admission, and must be acceptable to the board of trustees in other ways, and any such children on arriving at the age of eighteen years shall be discharged and the trustees of said school be relieved from further guardianship.

"SEC. 8. All children admitted either from orphan-homes, juvenile or other courts, or any other source, must first be placed under guardianship of the board of trustees of the California State Trades and Training School by a competent order of court, and any and all other control of such child be absolutely relinquished to such board of trustees, who will have power to make any disposition of such child as may be deemed best for its future welfare.

"SEC. 9. Any estate, moneys or other property that may belong to any child in the school shall be held in trust for such inmate, and upon approval of court may be invested for his benefit, and if of the value of over five hundred dollars such amount in excess of said five hundred dollars may be used by the board of trustees to pay the expense of support of such child to an amount not exceeding fifteen dollars per month while in the said school.

"SEC. 10. The system of education shall be such as not to conflict with that provided for the public schools of the state and such other branches as may be deemed advisable by the board of trustees.

"SEC. 11. The board of trustees shall receive their necessary traveling expenses while in the discharge of their official duties incidental to the management of the school.

"SEC. 12. The expenditures of all moneys necessary for the expense of purchase, management and control of the above mentioned school shall be paid out of the funds provided by law and in the same manner as other state institutions.

"Sec. 13. This statute is to be construed liberally by the board of trustees and the courts of the state in order that the greatest good may be accomplished. Satisfactory proof of the needs of all children for state support must be furnished the board of trustees before their admission and at any time during their presence at the school when deemed necessary by the board of trustees. Only children of bona fide citizens and residents of the state, who were such prior to their death, are to be admitted.

"The principal object of this statute and the establishment of the California State Trades and Training School hereunder, is to provide education and training for such dependent children who have been cared for in the different orphan homes in this state and by county boards of supervisors, and who no longer are entitled to draw state aid because of the age limit of fourteen years, and for children ordered committed by court, and in this way assist them until they are eighteen years of age by giving them a practical training and education in order that they may be self-supporting.

"Sec. 14. The board of trustees are hereunder given authority to adopt such rules and regulations for the management of the institution as may seem best when not in conflict with the direction and approval of the state board of examiners."

Chap. 572, Apr. 14, 1909.

868 * **Connecticut:** Relating to the establishment of trade schools.^a

"Sec. 1. The state board of education is hereby authorized and directed to establish in each of the two towns in the state which may seem to said board best adapted for the purpose, a free public day and evening school, for instruction in the arts and practices of trades, and said board may make regulations covering the admittance of scholars, but no person shall be admitted to schools established under the provisions of this act under fourteen years of age; provided, however, that, during vacations, said board may admit children under fourteen years of age.

"Sec. 2. The state board of education shall expend the funds provided for the support of trade schools, appoint and remove their teachers, make rules for their management, and shall file semi-annually with the comptroller, to be audited by him, a statement of expenses on account of such schools, and shall annually make to the governor a report of the condition of such schools and the doings of said board in connection therewith: Said board may enter into arrangements with manufacturing and mechanical establishments in which pupils of such trade schools may have opportunity to obtain half-time practice, and may also enter into and make arrangements with schools already established for instruction in trades approved by said board under the provisions of this act.

"Sec. 3. When such schools are established under the provisions of this act, the state board of education may construct buildings, or hire, temporarily, rooms in which such schools shall be housed, and said board shall be authorized to expend not more than fifty thousand dollars, annually, for the purpose of erecting buildings and maintaining such schools.

"Sec. 4. Any town in which a trade school is established under the provisions of this act may contribute any sum properly voted therefor to the enlargement of such school, and for the improvement of its efficiency.

"Sec. 5. Chapter 250 of the public acts of 1907 is hereby repealed."

Chap. 85, June 23, 1909.

869 **Georgia:** Providing for additional funds for the maintenance, support, and equipment of the agricultural and industrial schools established in pursuance of act of August 8, 1906, relative to the establishment of such schools in each of the congressional districts of the State.

Adding \$2,000 to the annual appropriation to each of the district agricultural schools. Total annual appropriation to each school not to exceed \$10,000.

Act 200, p. 33, Aug. 14, 1909.

870 **Hawaii:** Repealing act 131, Laws, 1907, and reenacting substitute relative to the disposition of the proceeds arising from agricultural and industrial pursuits in certain schools.

Act 65, Apr. 6, 1909.

^a Appropriating \$100,000. See chap. 471, p. 1109, Special Acts, 1909.

871 **Idaho:** Establishing agricultural secondary schools with branch experiment stations at the option of the regents; encouraging secondary education in agricultural industries and economics; accepting the federal appropriation and provisions of the act of Congress granting aid for such schools.

"SECTION 1. To carry out the intent and purpose of this Act the State shall be divided into districts as follows:

"Agricultural Secondary School District No. 1, composed of the counties of Kootenai, Latah, Nez Perce, Shoshone, Idaho, Washington, Lemhi, Custer and Bonner.

"Agricultural Secondary School District No. 2, composed of the counties of Canyon, Owyhee, Ada, Boise, Elmore, Twin Falls, Cassia, Lincoln, Blaine, Fremont, Bingham, Bannock, Oneida, and Bear Lake.

"Sec. 2. In each of the districts numbered One and Two, as defined in Section 1 of this Act, there shall be established by the Regents of the University of Idaho an institution devoted to Secondary Education in Agriculture, and if the said regents shall deem it for the best interests of the State, also a branch Agricultural Experiment Station; both located at the same point in said district: *Provided*, That said Agricultural Secondary School or Branch Experiment Station shall be established under such regulations, terms and conditions and under such provisions for a governing board, as to the said Regents may seem most advantageous to the State.

"Sec. 3. The Regents of the University of Idaho shall immediately upon the passage of the Act of Congress granting federal aid for such schools, and subject to the provisions herein contained, establish in each of the two districts described in section two of this Act, an Agricultural School of Secondary grade. The said Regents of the University of Idaho shall provide for each agricultural school a secondary course of study, which shall have for its major function vocational education in agricultural and in farm home making, not neglecting subjects of broadly educational value and shall articulate such studies with agricultural and Home Economic courses of the State College of Agriculture above, and the consolidated rural schools below: *Provided*, That the Regents of the University of Idaho may, at its discretion, require that students in any given district may attend the Agricultural Secondary School of that District only.

"Sec. 4. The Regents of the University of Idaho may also establish, (provided in the judgment of the Regents it shall be for the best interests of the State,) at each Agricultural Secondary School a branch agricultural experiment station, which shall be under the direction and control of the State Agricultural Experiment Stations established by Act of Congress, Approved March 2, 1887, and the work of the branch Agricultural Experiment Stations shall be especially directed to the solution and demonstration of the agricultural problems of the respective Districts in which the stations are severally located.

"Sec. 5. That any sums which shall be received by the State of Idaho by virtue of the Act of Congress for the aid and promotion of Secondary Schools of Agriculture are hereby accepted, and shall be appropriated to the use of said schools for the purposes for which said sum is appropriated."

Sec. 6. * * *

H. B. No. 306, p. 339, Mar. 13, 1909.

872 **Maine:** Repealing chap. 78, Laws, 1907, relative to state aid to academies.

Encouraging the teaching of manual training, domestic science, and agriculture in academies. Providing for additional state aid not to exceed two hundred and fifty dollars for each course.

Chap. 102, Mar. 18, 1909.

873 ***Maine:** Relating to an investigation of industrial education.

Res., chap. 136, p. 1287; Mar. 12, 1909.

874 **Massachusetts:** See enactment, No. 56.

875 **Massachusetts:** Amending chap. 505, Acts, 1906, relative to industrial schools.

State aid to be one-half the sum raised by local taxation; formerly based on graduated scale.

Chap. 540, June 19, 1909.

876 *Michigan: Amending act 35, Public Acts, 1907, relative to the establishment of county schools of agriculture, manual training, and domestic economy.

Providing for state aid equal to two-thirds of the amount expended for maintenance. Maximum aid to any one school, \$4,000.

Act 219, June 2, 1909.

877 Michigan: Providing for a state commission on industrial education including elementary training in agriculture.

"SEC. 1. The Governor of the State of Michigan, by and with the consent of the senate, is hereby empowered to appoint a commission of not less than five, nor more than seven members, to be known as the Michigan commission on industrial and agricultural education.

"SEC. 2. This commission, immediately after appointment, shall organize by choosing from its own membership a chairman and secretary.

"SEC. 3. It shall be the duty of this commission to make a careful study of the conditions of elementary, industrial and agricultural education in the State of Michigan, whether under public school or other auspices, including the study of conditions of labor as they affect children between the ages of fourteen and eighteen, and it shall further be the duty of this commission to present a report showing these conditions, with recommendations for such a plan of elementary, industrial and agricultural training in connection with the public schools of the State as shall, in their judgment, best meet the conditions shown to exist; this report to be rendered in triplicate to the Governor, the State Superintendent of Public Instruction and the State Commissioner of Labor on or before January one, nineteen hundred eleven.

"SEC. 4. The members of this commission shall serve without pay, and the commission shall maintain its organization until July one, nineteen hundred eleven, when said commission shall expire by limitation, unless renewed by subsequent act of the legislature."

Act 228, June 2, 1909.

878 Minnesota: Accepting the Indian school, at Morris, from the United States for an agricultural school.

Chap. 184, Apr. 14, 1909.

879 New Jersey: Continuing the commission on industrial education.

Jt. Res. No. 7, p. 550, Apr. 19, 1909.

880 *New Jersey: Amending chap. 164, Acts, 1881, providing for the establishment of schools for industrial education.

Annual state appropriation increased from \$5,000 to \$10,000. Additional condition that cities shall acquire \$100,000 for lands and buildings.

Chap. 78, Apr. 12, 1909.

881 *Ohio: Amending act of March 16, 1887, as amended April 25, 1904, relating to tax levies for manual training and commercial departments and kindergartens.

Extending application of same so as to include agricultural, industrial, vocational, and trades schools.

S. B. 11, p. 17, Mar. 16, 1909.

882 Oklahoma: Dividing the fifth judicial district into two agricultural districts, and providing for the establishment of a district agricultural school of secondary grade.

H. B. 368, p. 16, Mar. 11, 1909.

883 Oklahoma: Appropriating funds for the erection and maintenance of district agricultural schools in the third, fourth, and fifth supreme court judicial districts of the State, and providing for the time and manner in which they shall be located.

S. B. 152, p. 82, Feb. 24, 1909.

194 STATE SCHOOL SYSTEMS: LEGISLATION, ETC., 1908-9.

- 884 **Oklahoma:** Providing for an appropriation for maintenance and support of the district agricultural schools located at Tishomingo and Warner.
H. B. 348, p. 83, Mar. 3, 1909.
- 885 **Oklahoma:** Establishing a state training school, making appropriations for the construction of buildings and equipment of the same, and providing for its support, maintenance, and control.
S. B. 173, p. 477, Mar. 11, 1909.
- 886 **Oklahoma:** Locating the "Oklahoma Industrial Institute and College for Girls" at Chickasha and making appropriation therefor.
H. B. No. 87, p. 560, Mar. 27, 1909.
- 887 **Oklahoma:** Relating to a fund provided for in House Res. No. 26737, by Davis, pending in Congress, for aid to agricultural and industrial education.
Sen. Jt. Res. 11, p. 644.
- 888 **South Carolina:** Amending sec. 1295, Code, 1902, relating to the Colored Normal, Industrial, Agricultural, and Mechanical College.
Act 132, Feb. 23, 1909.
- 889 ***Texas:** Providing for the teaching of agriculture, manual training, and domestic science in various state institutions.
Appropriating \$18,000 annually for two years to state normal schools (3); appropriating \$3,000 annually for two years to sundry state institutions for instituting and maintaining summer courses in elementary agriculture for teachers. Providing for state aid to public high schools giving instruction in agriculture, manual training, and domestic economy. State aid equal to local expenditure; minimum, \$500; maximum, \$2,000. Appropriating \$32,000 annually for two years; state aid extended not more than twice to any school.
Chap. 113, p. 221, Mar. 25, 1909.
- 890 **Wisconsin:** Amending secs. 926-22 and 926-26 (chap. 122, Laws, 1907), Statutes, providing for the establishment of trade schools in the State of Wisconsin.
Practical instruction in useful trades to be given to "young men having attained the age of 16 years and young women having attained the age of 14 years," instead of "to persons having attained the age of 16 years." See chap. 401, Laws, 1909.
Chap. 155, May 19, 1909.
- 891 **Wisconsin:** Amending sec. 553 c and 553 l, Statutes, relative to county schools of agriculture and domestic science.
Increased number of state-aided schools from 8 to 10. Approval of location, Chap. 313, June 9, 1909.
- 892 **Wisconsin:** Creating sec. 392 v, 392 w, 392 x, 392 y, and 392 z, Statutes, relative to the maintenance of the Wisconsin Mining Trade School or any mining trade school; appropriation.
Appropriating \$16,000 for biennium ending June 30, 1911. Authorizing appropriations by city wherein is located a mining trade school; providing for return by State of two-thirds of such appropriation.
Chap. 362, June 10, 1909.
- 893 **Wisconsin:** Amending sec. 926-22, Statutes, providing for the establishment of trade schools in the State of Wisconsin.
(See chap. 155, Laws, 1909.)
Chap. 401, June 15, 1909.

P. HIGHER EDUCATIONAL INSTITUTIONS.

(a) General.

The creation of "The Board of Higher Curricula" in Oregon (899) is but one of a number of measures passed during the year directed toward a better correlation and a more unified administration of state higher educational institutions. The general administrative measures are commented upon in connection with college and university legislation.

894 **Arizona**: Providing for the appointment of committees to visit the territorial public institutions.

Including the northern normal school and university.

Jt. Res. 1, Jan. 23, 1909.

D. 895 **Louisiana** (1909): Notwithstanding the agreement of the university to educate 5 boys without cost, to be appointed annually by the mayor of a city, in consideration of the cancellation of taxes due, it may charge a free student a laboratory fee to cover material actually used and destroyed by him in laboratory courses.—*City of New Orleans v. Board of Administrators of Tulane Educational Fund*, 49 So., 171.

D. 896 **Louisiana** (1909): A university agreeing to educate 5 boys without cost, to be appointed annually by the mayor of a city, in consideration of a cancellation of taxes due, can not charge a matriculation or registry fee of a free student.—*City of New Orleans v. Board of Administrators of Tulane Educational Fund*, 49 So., 171.

897 **Minnesota**: Requiring the Northern Pacific Railway Company to cover its tracks through the campus of the university.

Chap. 302, Apr. 21, 1909.

898 **North Dakota**: Authorizing the board of trustees or directors of the various state educational institutions to lease portions of their campuses to societies and organizations of students and graduates thereof.

Chap. 107, Feb. 19, 1909.

899 * **Oregon**: Determining and defining the courses of study and departments to be offered and conducted in the higher educational institutions of the State by a board appointed by the governor, called "The Board of Higher Curricula," and prescribing the duties of such board.

"Sec. 1. The Governor of the State of Oregon shall, on or before the last Monday in March, 1909, nominate and appoint, by and with the consent of the Senate, for the purpose of eliminating duplications in courses of study or departments, if any, in the higher educational institutions of the State of Oregon, a board of five members called, The Board of Higher Curricula. The term of office of the members, commencing with the last Monday in March in which appointed, shall be five years and until the appointment and qualification of their respective successors; except that the members first appointed under this act shall be divided into five classes of one each, and the term of office of said classes so first appointed shall be respectively one, two, three, four and five years, and until their successors are appointed and qualified, and their successors in office shall continue so divided into five classes of one each, so that the term of office of one member shall expire each year; *provided*, that no member of the board, alumni, or faculty of any of the higher educational institutions shall be appointed as a member of such board. The Governor shall fill the vacancies by appointment, the appointment shall be for the residue of the term only.

"Sec. 2. The board shall choose from one of their number a chairman, and also a secretary.

"Sec. 3. The said board shall hold its first meeting at the Capitol on the first Monday in April, 1909, at 2 o'clock P. M., and annually thereafter, and shall continue in session at its pleasure, or may adjourn to a day certain. Special meetings shall be called by the chairman of the board on a petition signed for that purpose by any three members. A majority of the board shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time.

"Sec. 4. No member of the board shall receive any salary or fee for his services, with the exception of actual expenses incurred in attending meetings of the board or in the discharge of the duties of his office, which shall be paid out of the general fund of the State as all other claims against the State are paid.

"Sec. 5. The Secretary of State shall provide room, stationery, stamps, etc., and shall audit all claims authorized by said board, certified to by the secretary and chairman of the board, and draw his warrant on the State Treasurer for the amount due thereon in favor of the person entitled thereto.

"Sec. 6. The exclusive purpose and object of the Board of Higher Curricula shall be to determine what courses of studies or departments, if any, shall not be duplicated in the higher educational institutions of Oregon, and to determine and define the courses of study and departments to be offered and conducted by each such institution; *provided*, that no decision eliminating any course of study or department, in any institution or institutions, shall be made unless at least 20 days' notice shall have been given to the secretaries of the several boards of educational institutions affected, that such subject is to be considered in hearings granted to all institutions concerned.

"Sec. 7. It is hereby made the duty of the Board of Higher Curricula to visit the higher educational institutions, for the purpose of inquiring as to the work offered and conducted at such institutions, whenever and as often as it may deem necessary, and to specifically determine from time to time as occasion may require what courses or departments, if any, shall not, in their judgment, be duplicated in the several higher educational institutions and may direct the elimination of duplicated work from any institution, and to determine and define the courses of study and departments to be offered and conducted by each institution. The secretary of the Board of Higher Curricula shall keep a record of such determination in a book provided by the Secretary of State for that purpose and it shall also be the duty of the secretary of said board to notify the Governor and the secretaries of the several boards of higher educational institutions of such determination; and it shall be the duty of such institution to conform thereto; *provided*, that if any changes are made in the curricula of any institution or institutions the same shall become effective at the beginning of the school year following such determination and the governing board of the institution or institutions affected shall be notified of such change on or before May 1st preceding the date it becomes effective.

"Sec. 8. It is hereby made the duty of each board of the higher educational institutions of Oregon to place before the Board of Higher Curricula any data said board may require covering all subjects taught in their respective institutions.

"Sec. 9. It shall be the duty of the secretary of the Board of Higher Curricula to notify at least twenty days before the regular or special meetings of such board the secretaries of each of the boards of higher educational institutions of the date and place of each meeting of the Board of Higher Curricula.

"Sec. 10. Each board of the higher educational institutions or any person or persons are hereby authorized to appear before the Board of Higher Curricula at any regular or special meeting for the purpose of laying before said board any data or arguments for the maintaining or elimination of any duplicated course or department.

"Sec. 11. Whenever the words 'higher educational institutions' occur in this act such words shall be interpreted to mean the University of Oregon and the State Agricultural College.

"Sec. 12. Inasmuch as the usual catalogues and announcements of the University of Oregon, the State Agricultural College and other educational institutions are issued during the months of May and June of each year, and inasmuch as all unnecessary duplication of courses should be eliminated before announcement for the college year 1909-10 are made, and inasmuch as continued unnecessary duplication of courses imposes an additional tax burden upon the people of the State of Oregon, and disorganizes the educational system of the State; therefore, in order to eliminate the difficulties which have heretofore

existed and do now exist in the above mentioned respects, it is hereby adjudged and declared that the provisions of this act are necessary for the immediate preservation of the public peace, health and safety, and an emergency is hereby declared to exist and this act shall be in full force and effect from and after its approval by the Governor."

Sec. 13.

(Chap. 4, p. 514, Mar. 17, 1909 (sp. sess.).

- 900 **Oregon:** Determining and defining the courses of study and departments to be offered and conducted in the higher educational institutions of the State by a board appointed by the governor, called "The Board of Higher Curricula," and prescribing the duties of such board.

(Chap. 195, Feb. 23, 1909.

- 901 **South Carolina:** Releasing beneficiary students attending state colleges from the obligation to teach school if appointed to naval or military academy of the United States, or to position in the army or government service of the United States.

Act 94, Feb. 15, 1909.

- 902 **Utah:** Authorizing the university to erect a central building at a cost not exceeding two hundred and fifty thousand dollars; authorizing partial conversion of the university permanent land fund into cash, the loan thereof and method of repaying the same.

(Chap. 124, Mar. 22, 1909.

- 903 **West Virginia:** See enactment No. 39.

(b) Finance; Lands; Support.

The items presented in this subgroup do not, by far, represent the whole situation. While these special measures are indicative of a certain policy of increased liberality of the States toward their higher educational institutions, a careful comparative study of the general appropriation bills of the year would be necessary fully to reveal the extent of development and the lines of special endeavor. As a typical illustration of the attitude of a progressive State, the appropriation bill for the University of Wisconsin is given in its entirety (913).

- 904 **California:** Repealing chap. 3, Statutes, 1887, and chap. 48, Statutes, 1897, relative to the permanent support and maintenance of the university, and enacting a substitute.

Increasing ad valorem tax for support of the university from 2 to 3 cents upon each \$100 of taxable property.

Chap. 329, Mar. 20, 1909.

- 905 **California:** Appropriating \$101,314 for the university to replace and restore income lost through disaster and fire. Exemption from provisions of sec. 672, Political Code.

Chap. 528, Apr. 14, 1909.

- 906 **Iowa:** Amending sec. 1, chap. 183, Laws, 1905, relative to the levy of a millage tax for the state university and providing for expenditure thereof.

Chap. 234, Apr. 12, 1909.

907 **Maine:** "Resolved, That there be and is hereby appropriated for the University of Maine for all purposes, including maintenance and new buildings, the sum of one hundred thousand dollars for the year nineteen hundred and nine, and a like sum for each of the years nineteen hundred and ten, nineteen hundred and eleven and nineteen hundred and twelve.

"Provided, however, That during the time covered by this appropriation no new departments shall be established at the university.

"Provided, further, That all students hereafter entering the engineering courses at the university from outside the state of Maine, shall pay tuition at the rate of one hundred dollars per year."

Res., Chap. 269, p. 1338, Apr. 2, 1909.

908 **Minnesota:** Amending chap. 359, Laws, 1907, authorizing the board of regents of the university to acquire property and erect buildings for certain uses, to issue certificates of indebtedness, and to levy a tax to pay for the same, so that such taxes may be levied for two additional years.

Extending tax levy for cost of engineering building from three to five years.
Chap. 480, Apr. 23, 1909.

D. 909 **Nebraska (1909):** By act of Cong., July 2, 1862, chap. 130, 12 Stat., 503, granting public lands to the State for the use of university and agricultural colleges, and, by the acceptance of the grants by the State, and the pledges contained in the state constitution and statutes with reference thereto, the State became the trustee of the funds derived from such grants, for the sole purpose of applying them to the object of the grants, and with no power to divert the same to other purposes, or to render them general funds of the State.—State v. Brian, 120 N. W., 916.

910 **Nebraska:** Appropriating for the use of the State University 95 per cent of the 1 mill university tax levy for the years 1909 and 1910, and a portion of the delinquent taxes collected under university levies prior to the year 1909.

Chap. 192, Mar. 11, 1909.

911 **Oregon:** Governing the expenditures of funds of the university.

Chap. 164, Feb. 23, 1909.

912 **West Virginia:** See enactment No. 38.

913 **Wisconsin:** Amending sec. 390, Statutes, as amended by sec. 1, chap. 170, Laws, 1899, sec. 1, chap. 322, Laws, 1901, sec. 1, chap. 344, Laws, 1903, and sec. 1, chap. 320, Laws, 1905, and amending sec. 1, chap. 14, Laws, 1905 sp. sess.), as amended by sec. 2, chap. 428, Laws, 1907, and amending sec. 2, chap. 320, Laws, 1905, as amended by sec. 3, chap. 428, Laws, 1907, and repealing sec. 391n, Statutes (sec. 4, chap. 428, Laws, 1907), and amending sec. 1494j, Statutes, and creating sec. 1494-12m, Statutes, relative to the university; appropriation.

"SECTION 390. There shall be levied and collected annually a state tax of two-sevenths of one mill for each dollar of the assessed valuation of the taxable general property of the state as ascertained and fixed by the state board of assessment for apportionment of the state tax to the several counties, which amount, when so levied and collected, is appropriated to the university fund income to be used for current and administration expenditures and for the increase and improvement of the facilities of the university; provided that upon any apportionment of the funds in the treasury under section 1069a of the statutes, such fund shall be applied to the tax hereinbefore levied. The commissioners of public lands may direct the state treasurer, from time to time, to set apart such sums by way of loan to the fund known as the university fund income for the university uses from uninvested moneys in the trust fund for the period when so uninvested, as in their judgment shall be prudent, such loans to be repaid to the trust fund from the tax hereinbefore appropriated with interest at the rate then required to school districts.

"Sec. 2. There is hereby appropriated annually for the fiscal years ending June 30, 1910, and ending June 30, 1911, out of any moneys in the state treasury not otherwise appropriated, the sum of one hundred thousand dollars to the university fund income of the University of Wisconsin, for the purposes specified in section 1 of this act.

"Sec. 3. There is hereby appropriated annually for the fiscal years ending June 30, 1910, and ending June 30, 1911, out of any moneys in the state treasury not otherwise appropriated, the sum of fifty thousand dollars to the university fund income of the University of Wisconsin, for the purchase of books, apparatus, furniture, and equipment.

"Sec. 4. Section 1, of chapter 14, laws of 1905, special session, as amended by section 2, of chapter 428, laws of 1907, is amended to read: Section 1. The secretary of state, if in his judgment the conditions of the general fund will warrant it, with the approval of the governor, is authorized to transfer, after the beginning of each fiscal year until * * * 1911, and before the collection of the tax provided for the support of the university for such fiscal year, from the general fund to the university fund income, such sum or sums from the general fund to the current expenses of the university, provided that such sum, or sums shall not exceed two hundred * * * thousand dollars for any fiscal year, but immediately upon the collection of such tax for any fiscal year for the support of the university, the secretary of state shall transfer the amount so loaned from the university fund income to the general fund by a proper transfer.

"Sec. 5. Section 2 of chapter 320 of the laws of 1905, as amended by section 3, chapter 428, laws of 1907, is amended to read: Section 2. There is annually appropriated for the * * * period of seven years from July 1st, 1905, the sum of two hundred thousand dollars to the university fund income from the general fund of the state out of any moneys not otherwise appropriated to be used for the construction and equipment, in the order of the greatest need thereof, of such additional buildings * * * and the enlargement and repairs of buildings * * * as in the judgment of the regents shall be absolutely required, and as shall be approved by the governor, and can be completed within the appropriation herein made; * * * provided that from this appropriation there shall be constructed and equipped a women's dormitory and provided that no plan or plans for any building shall be finally adopted, and no contract or contracts shall be entered into by the regents for the construction of any building until such plans and contracts, with complete estimates of the total cost thereof, shall have been submitted to, and in writing approved by the governor of the state, who shall withhold such approval until he shall satisfy himself by a personal examination or by such other means as he may in his discretion adopt, that such building is required for the purposes proposed, and it can and will be erected and fully completed according to such plans or contracts for the sum proposed for the same by the regents out of the appropriation herein made.

"Sec. 6. Section 391n of the statutes (being section 4 of chapter 428, laws of 1907), is hereby repealed, provided any balance up to \$200,000.00 remaining in the state treasury unexpended on June 30, 1909, to the credit of the university fund income under said section shall remain part of the university fund income and be expended for the construction and equipment of the women's building now under construction.

"Sec. 7. Section 1494j of the statutes is amended to read: Section 1494j. 1. The board of regents of the university are * * * directed to carry on educational extension and correspondence teaching.

"2. There is * * * appropriated for the fiscal year ending June 30, 1910, the sum of * * * fifty thousand dollars, and for the fiscal year ending June 30, 1911, the sum of seventy-five thousand dollars, for carrying out the purposes of this * * * section.

"Sec. 8. There is added to the statutes a new section to read: Section 1494—12m. 1. The regents of the university are directed to carry on, under the supervision of the dean of the college of agriculture, demonstrations and such other experiments and investigations as they may deem advisable for the improvement of agricultural knowledge and to conduct traveling schools of agriculture which may be held in conjunction with the county agricultural schools.

"2. There is annually appropriated for the fiscal years ending June 30, 1910, and ending June 30, 1911, out of any moneys in the state treasury not otherwise appropriated, the sum of thirty thousand dollars for the purpose of carrying out the provisions of this section."

Sec. 9. * * *

Chap. 306, June 9, 1909.

913a Wyoming: Amending sec. 1833, Revised Statutes, 1899, relative to taxation for the support of the university.

Increasing state tax from one-fourth to one-half mill. Taxes for 1909 and 1910 not to exceed \$33,000 for each year.

Chap. 147, Mar. 1, 1909.

(c) State Universities and Colleges.*

The measures centralizing the administration of higher education in Iowa (925), Montana (930); and West Virginia (38), constitute the most important movement of the year. The creation of the commission to consider the status of Delaware College (919), the resolution of the legislature of Illinois in favor of the university (923), the investigation in regard to the establishment of a college in Massachusetts (927), the reorganization of the board of trustees of the University of Tennessee (935), and the measure relating to coeducation in the University of Wisconsin (938), may be singled out for mention.

914 **Arkansas:** Providing for the support, necessary buildings, maintenance, and improvement of the university.

Providing in sec. 3 for the abolition of the subfreshman class at the end of the academic year 1911.

Act 228, May 6, 1909.

915. **Arkansas:** Repealing sec. 4296, Kirby's Digest, 1904, relative to leaves of absence of the faculty of the university. Making special appropriations for departments of the college of agriculture.

Act 283, May 31, 1909.

916 **California:** Amending secs. 353, 1425, and 1427, Political Code, relating to the regents of the university.

Making the president of the university and the president of the alumni association of the university ex officio regents.

Chap. 650, Apr. 17, 1909.

917 **Colorado:** Proposing amendment to sec. 5, art. 8, constitution, 1876.

Providing for the establishment, and maintenance at Denver of all but the first two years of the departments of medicine, dentistry, and pharmacy of the university.

Chap. 150, Mar. 22, 1909.

918 **Delaware:** Reincorporating the trustees of Delaware College.

Chap. 108, Feb. 9, 1909.

919 **Delaware:** Creating a commission to consider the present status of Delaware College and to report on a permanent charter therefor.

Chap. 109, Mar. 26, 1909.

920 **Florida:** Changing the name of the Florida Female College.

Name changed to Florida State College for Women.

Chap. 5924 (No. 55), May 22, 1909.

921 **Florida:** Changing the name of the University of the State of Florida.

Name changed to University of Florida.

Chap. 5926 (No. 57), May 22, 1909.

922 **Florida:** Providing for the admission of graduates of law departments of chartered universities and chartered law schools to the practice of law in the courts.

Chap. 5949 (No. 80), June 4, 1909.

* While not a matter of general legislation, it seems pertinent at this point to make mention of the act of the 1908 Ohio legislature authorizing the city of Cincinnati to issue bonds for buildings and equipment for the University of Cincinnati. This would appear to be the forerunner of a significant movement leading to the development of municipal universities.

923 **Illinois:** "Whereas, It is the evident will of the people of this Commonwealth that the University of Illinois shall be made so complete in its organization and equipment that no son or daughter of this State shall be obliged to seek in other States or other countries those advantages of higher education which are necessary to the greatest efficiency of social service either in public or private stations; and

"Whereas, The State of Illinois has imposed upon this institution, in its agricultural and engineering experiment stations, and in its graduate school, the duty of carrying on extensive and important investigations of vital interest to the agricultural industry and education of the State, and the conduct of these investigations calls for the very highest ability and the most thorough training on the part of those entrusted with their supervision; and

"Whereas, The great progress of this institution in the last five years has attracted the attention of the whole country and made other institutions desirous of drawing away the members of the faculties in said university; and

"Whereas, The present schedule of salaries is not sufficient to enable the institution to compete on equal grounds with other state and private universities in the United States; therefore, be it

Resolved; by the Senate, the House of Representatives concurring herein, That it is the sense of this general assembly that the board of trustees of the University of Illinois should adopt such a policy as will in their judgment attract to, and retain in, the service of the university and the State the best available ability of this and other countries."

Sen. Jt. Res. No. 12, p. 496, Mar. 31, 1909.

924 **Indiana:** Amending sec. 1, chap. 97, Acts, 1895, relative to the appointment of trustees of Purdue University.

Providing for one representative from the Purdue Alumni Association.

Chap. 150, Mar. 8, 1909.

925 **Iowa:** Repealing secs. 2617, 2618, 2619, 2620, 2635, 2636, 2642, 2647, 2651, 2652, 2653, 2668, 2669, 2670, 2681, Code, 1897, and secs. 2646, 2650, 2727-a53, 2727-a54, 2727-a55, 2727-a56, supplement to the Code, 1907, and creating a state board of education for the state university, the college of agriculture and mechanic arts, and the normal school, and prescribing its duties and providing for the management and control of the state university, the college of agriculture and mechanic arts, and the normal school; appropriation.

"SECTION 1. *State board of education.* The state university, the college of agriculture and mechanic arts, including the agricultural experiment station, and the normal school at Cedar Falls shall be governed by a state board of education consisting of nine members and not more than five of the members shall be of the same political party. Not more than three alumni of the above institutions and but one alumnus from each institution may be members of this board at one time.

"SEC. 2. *Appointment—approval—terms—removal.* The governor shall, prior to the adjournment of the thirty-third general assembly, nominate, and, with the consent of two-thirds of the members of the senate in executive session, appoint nine persons from the state at large, and they shall be selected solely with regard to their qualifications and fitness to discharge the duties of their position. No nominations shall be considered by the senate until the same shall have been referred to a committee of five, not more than three of whom shall belong to the same political party, to be appointed by the president of the senate without the formality of a motion, which committee shall report to the senate in executive session, which report shall be made at any time when called for by the senate. The consideration of nominations, by the senate, shall not be had on the same legislative day that the nominations are so referred. Three of the members of said board of education shall hold office as designated by the governor for two years, three for four years and three for six years. Subsequent appointments shall be made as above provided, and, except to fill vacancies, shall be for a period of six years. The governor may, by and with the consent of a majority of the senate, during a session of the general assembly, remove any member of the board for malfeasance in office, or for any cause that renders him ineligible to appointment, or incapable or unfit to discharge the duties of his office, and his removal, when so made, shall be final. When the general assembly is not in session, the governor may suspend any member so

disqualified and shall appoint another to fill the vacancy, thus created, subject, however, to the approval or disapproval of the senate when next in session. All vacancies on said board that may occur while the general assembly is not in session shall be filled by appointment by the governor, which appointment shall expire at the end of thirty days from the time the general assembly next convenes, and vacancies occurring during a session of the general assembly shall be filled as regular appointments are made and before the end of said session.

"Sec. 3. *Meetings.* The board shall meet four times a year. Special meetings may be called by the board, by the president of the board, or they may be called by the secretary of the board, upon the written request of any five members thereof.

"Sec. 4. *Powers and duties—organization.* The state board of education shall have power to elect a president from their number; a president and treasurer for each of said educational institutions, and professors, instructors, officers, and employes; to fix the compensation to be paid to such officers and employes; to make rules and regulations for the government of said schools, not inconsistent with the laws of the state; to manage and control the property, both real and personal, belonging to said educational institutions; to execute trusts or other obligations now or hereafter committed to the institutions; to direct the expenditure of all appropriations the general assembly shall, from time to time, make to said institutions, and the expenditure of any other moneys; and to do such other acts as are necessary and proper for the execution of the powers and duties conferred upon them by law. Within ten days after the appointment and qualification of the members of the board, it shall organize and prepare to assume the duties to be vested in said board, but shall not exercise control of said institutions until the first day of July, A. D. one thousand nine hundred nine (1909).

"Sec. 5. *Board of regents and boards of trustees abolished.* The board of regents and the boards of trustees now charged with the government of the state university, the college of agriculture and mechanic arts, and the normal school, shall cease to exist on the first day of July, A. D. 1909, and, on the same date, full power to manage said institutions, as herein provided, shall vest in the said state board of education. Nothing herein contained shall limit the general supervision or examining powers vested in the governor by the laws or constitution of the state.

"Sec. 6. *Finance committee—officers—duties—term.* The said board of education shall appoint a finance committee of three from outside of its membership, and shall designate one of such committee as president and one as secretary. The secretary of this committee shall also act as secretary of the board of education and shall keep a record of the proceedings of the board and of the committee and carefully preserve all their books and papers. All acts of the board relating to the management, purchase, disposition, or use of lands or other property of said educational institutions shall be entered of record, and shall show who are present and how each member voted upon each proposition when a roll call is demanded. He shall do and perform such other duties as may be required of him by law or the rules and regulations of said board. Not more than two members of this committee shall be of the same political party, and its members shall hold office for a term of three years unless sooner removed by a vote of two-thirds of the members of the state board of education.

"Sec. 7. *Qualification.* Each member of the board and each member of the finance committee shall take oath and qualify, as required by section one hundred seventy-nine (179) of the code. The members of the finance committee, before entering upon their official duties, shall each give an official bond in the sum of twenty-five thousand dollars (\$25,000), conditioned as provided by law, signed by sureties approved by the governor and, when so given, said bonds shall be filed in the office of the secretary of state.

"Sec. 8. *Offices and supplies.* The board and the finance committee shall be provided by the executive council with suitably furnished offices, at the seat of government, and shall be also furnished with all necessary books, blanks, stationery, printing, postage, stamps and such other office supplies as are furnished other state officers.

"Sec. 9. *Business office—employes—monthly visitation.* A business office shall also be maintained at each of the three educational institutions, and the board may hire such employes as may be necessary to assist the said finance committee in the performance of its duties, and shall present to each general assembly an

itemized account of the expenditures of said committee. The members of the finance committee shall, once each month, attend each of the institutions named for the purpose of familiarizing themselves with the work being done, and transacting any business that may properly be brought before them as a committee.

"Sec. 10. *Appropriation.* There is hereby appropriated from any funds in the state treasury not otherwise appropriated, sufficient thereof to pay the salaries and expenses of the board and finance committee, including the salaries and expenses of their assistants.

"Sec. 11. *Compensation—expenses.* Each member of the board shall be allowed seven dollars for each day that he is actually and necessarily engaged in the performance of official duties, not exceeding sixty days in any one year, and mileage at the rate of two cents per mile, by the nearest traveled and practicable route, in going from his home, to the different institutions, or to other places, and in returning to his home when on official business. Members of the finance committee shall devote their entire time to the work of said institutions and shall each receive a salary of three thousand five hundred dollars, (\$3,500), a year. The members of the finance committee and other employees shall be entitled to the necessary traveling expenses by the nearest traveled and practicable route, incurred in visiting the different institutions, or other places in the state, and returning therefrom when on official business.

"Sec. 12. *Claims itemized—mileage.* All claims of members of the said board of education for attendance upon meetings of the board for time actually and necessarily spent in official duties, shall be itemized, showing the date of such service and the nature thereof and shall be sworn to by such member and certified by the secretary of the board. It shall then be filed with the auditor of state, who shall compute the mileage due such claimant by the nearest traveled and practicable route from his home to the place of meeting and return, and shall enter such mileage on the claim; and, if it be in due form of law, the auditor shall draw his warrant upon the treasurer of state for the amount of said attendance and mileage. No compensation shall be allowed any member of such board except as provided herein.

"Sec. 13. *Secretary of executive council to furnish blanks.* The secretary of the executive council shall, upon request, furnish proper blanks prepared in accordance with the preceding section for the purpose of making claims by the members of such board.

"Sec. 14. *Itemized statements of expenditures.* Before any expenses of the members of the finance committee, or other person employed to assist such committee in the performance of its duties, under the direction of the board, shall be paid, a minutely itemized statement of every item of expenditure, duly verified and sworn to by the claimant and certified to by the secretary of the board, shall be filed with the auditor of state. The verification shall show that the expense bill is just, accurate, and true, and is claimed for cash expenditures or cash disbursements, truly and actually made and paid to the parties named, as shown by said statement. Unless the statement is so verified, and duly audited, payment thereof shall not be made.

"Sec. 15. *List of expenditures included in auditor's report.* The auditor shall include in his report to the governor the amount paid for such services, expenses, and mileage, and to whom paid.

"Sec. 16. *Office of financial agent abolished.* The office of the financial agent of the college of agriculture and mechanic arts shall cease to exist on the first day of July, A. D. one thousand nine hundred and nine (1909); and, on said date, the said financial agent shall deliver to the finance committee of the board of education all books, papers, and other property belonging to the state and then in his hands.

"Sec. 17. *Finance committee to loan funds—conditions.* The finance committee may loan said funds upon approved real estate security, subject to the following regulations:

"1. Each loan shall be for a term not exceeding ten years, at a rate of interest to be fixed by said board, payable annually, and the borrower shall have the privilege of paying one hundred dollars (\$100) or any multiple thereof on any interest pay day.

"2. Each loan shall be secured by a mortgage paramount to all other liens upon approved farm lands in this state, the loan not to exceed fifty per cent of the cash value thereof, exclusive of buildings.

"3. A register containing a complete abstract of each loan and showing its actual condition shall be kept by the secretary of said board and be at all times open to inspection.

"Sec. 18. *Foreclosures of mortgages—lands bid in.* The finance committee of the board shall negotiate loans in accordance with the provisions of the preceding sections and shall take charge of the foreclosure of mortgages and collections from delinquent debtors to said fund. The foreclosure of any mortgage belonging to the state university or to the college of agriculture and mechanic arts shall be made in the name of the state board of education for the use and benefit of the institution to which it belongs; and, in case of a sale upon execution under foreclosure, the premises may be bid off in the name of the board of education for the benefit of the institution to which it belongs; and, if a deed therefor is executed, the premises shall be held for the benefit of such institution, and such lands shall be subject to lease or sale, the same as its other lands.

"Sec. 19. *Biennial report.* The board shall make reports to the governor and legislature of its observations and conclusions respecting each and every one of the institutions named, including the regular biennial report to the legislature covering the biennial period ending June 30th, preceding the regular session of the general assembly. Said biennial report shall be made not later than October 1st in the year preceding the meeting of the general assembly, and shall also contain the reports which the executive officers of the several institutions are now or may be by the board required to make, including, for the use of the legislature, biennial estimates of appropriations necessary and proper to be made for the support of the said several institutions and for the extraordinary and special expenditures for buildings, betterments and other improvements."

Sec. 20. * * *

Sec. 21. * * *

Chap. 170, Mar. 29, 1909.

D. 926 **Kentucky** (1908): Neither the change of name of the "Agricultural and Mechanical College of Kentucky" to "State University, Lexington, Kentucky," by Act March 15, 1908 (Acts, 1908, p. 22), nor transfer by such act of its normal work proper to the state normal schools, the collegiate department of pedagogy being retained, destroyed its identity as a public corporation and state institution as respects the matter of appropriations therefor.—*James v. State University*, 114 S. W., 767; *Same v. Board of Regents for Eastern Kentucky State Normal School*, *Id.*; *Same v. Board of Regents for Western Kentucky State Normal School*, *Id.*

927 **Massachusetts**: Providing for an investigation by the board of education in regard to the establishment of a proposed college.

Res., chap. 112, p. 909, May 26, 1909.

D. 928 **Minnesota** (1909): The University of Minnesota Athletic Association is a branch or department of the University of Minnesota, and is not a proper party defendant in an action of tort brought by a spectator injured by the collapse of the platform at a football game.—*George v. University of Minnesota Athletic Ass'n*, 120 N. W., 750.

929 ***Missouri**: Amending and revising chap. 171, Revised Statutes, 1899, relating to the state university.

Major modifications: Giving to the university right of eminent domain and authorizing tuition fees in all (formerly law and medicine) professional schools.
H. B. 870, p. 884, June 14, 1909.

930 **Montana**: *See enactment No. 62.*

931 **Nebraska**: Repealing, and reenacting with amendments, sec. 6, chap. 87, Compiled Statutes, 1907 (sec. 11751, Cobbe's Ann. Stat., 1907), relating to departments in the university.

Including graduate college and teachers' college.

Chap. 141, Mar 11, 1909.

932 **New York**: Amending subdivis. 1, sec. 1121, chap. 21, Laws, 1909, relative to the board of trustees of Cornell University.

Chap. 404, May 20, 1909.

- 933 **Oregon:** Amending sec. 3513, chap. 6, Bellinger and Cotton's Annotated Codes and Statutes, relative to the meetings of the board of regents of the university; repealing secs. 3524, 3525, 3526, and 3527, chap. 6, Bellinger and Cotton's Annotated Codes and Statutes, relative to county scholarships at the university.
Chap. 121, Feb. 23, 1909.
- 934 **Tennessee:** *See enactment No. 308.*
- 935 ***Tennessee:** Amending chap. 78, Acts, 1807, chap. 98, Acts, 1840, and chap. 75, Acts, 1879, and acts amendatory thereto, relative to the charter of the University of Tennessee.
Providing for the reorganization of the board of trustees and defining powers and duties.
Chap. 48, Feb. 12, 1909.
- 936 **Vermont:** Amending secs. 1178, 1179, and 1180, Public Statutes, 1906, relating to appropriations for the university, the state agricultural college, and Middlebury college.
Increasing appropriations of the several institutions.
Act 50, Nov. 29, 1908.
- 937 **Wisconsin:** Amending sec. 385, Statutes, relative to the various colleges of the state university.
Changing the name of college of medicine and college of law to medical school and law school.
Chap. 36, April 10, 1909.
- 938 ***Wisconsin:** Amending sec. 387, Statutes, relative to the admission of both sexes to the different schools and colleges of the state university.
Making all schools and colleges of the university open without distinction to students of both sexes.
Chap. 66, April 27, 1909.
- 939 **Wisconsin:** Proposing amendment to sec. 31, art. 4, constitution, relative to special legislation.
Empowering the legislature to enact special legislation with reference to the city at which is located the seat of government and the state university.
Jt. Res. No. 12, p. 809, —, 1909.
- 940 **Wisconsin:** Creating sec. 373am, Statutes, relative to the school of library science.
The school of library science created by chapter 377, Laws, 1905, to be known hereafter as school of library science of the university. Duties of the board of regents.
Chap. 416, June 15, 1909.
- 941 **Wisconsin:** Amending sec. 378, Statutes, relative to the board of regents of the University of Wisconsin.
Providing that two (formerly one) members of the board of regents shall be women.
Chap. 529, June 17, 1909.

(d) **Carnegie Fund.**

The list of States in which legislative approval was given to the admission of higher educational institutions to the privileges of the Carnegie Foundation for the Advancement of Teaching is presented here as indicative of the probable extent of the future influence of a nongovernmental agency in the unification of higher education in the country.

206 STATE SCHOOL SYSTEMS: LEGISLATION, ETC., 1908-9.

- 942 **Arizona**: Approving the application of the university for admission to the privileges of the Carnegie Foundation for the Advancement of Teaching.
Jt. Res. 4, Mar. 13, 1909.
- 943 **California** (*Ditto*): University.
Chap. 3, p. 1136, Jan. 20, 1909.
- 944 **Colorado** (*Ditto*): University.
Sen. Con. Res. No. 7, p. 526, Mar. 13, 1909.
- 945 **Colorado** (*Ditto*): School of Mines.
Sen. Con. Res. No. 8, p. 527, Mar. 13, 1909.
- 946 **Colorado** (*Ditto*): State Normal School.
Sen. Con. Res. No. 12, p. 530, Mar. 13, 1909.
- 947 **Colorado** (*Ditto*): Agricultural College.
Sen. Con. Res. No. 11, p. 529, Mar. 13, 1909.
- 948 **Georgia** (*Ditto*): University; Colleges and Technical Schools.
Jt. Res. 35, p. 1034, July 22, 1908 (sp. sess.).
- 949 **Idaho** (*Ditto*): University.
H. Con. Res. No. 5, p. 445, Mar. 5, 1909.
- 950 **Illinois** (*Ditto*): University.
S. J. R. No. 10, p. 496, Feb. 16, 1909.
- 951 **Iowa** (*Ditto*): University; State College of Agriculture and Mechanic Arts; State Teachers' College.
H. Jt. Res. 2, p. 284, Apr. 6, 1909.
- 952 **Maine** (*Ditto*): University.
Res., Chap. 24, p. 1252, Feb. 9, 1909.
- 953 **Michigan** (*Ditto*): University.
Con. Res. No. 1, p. 803, Feb. 11, 1909.
- 954 **Michigan** (*Ditto*): Agricultural College.
Con. Res. No. 2, p. 808, May 12, 1909.
- 955 **Michigan** (*Ditto*): State Normal College.
Con. Res. No. 3, p. 804, May 19, 1909.
- 956 **Minnesota** (*Ditto*): University.
J. R. No. 4, p. 108, Feb. 10, 1909.
- 957 **Missouri** (*Ditto*): University.
Jt. Res., p. 916, Apr. 15, 1909.
- 958 **Montana** (*Ditto*): Higher institutions.
H. Con. Res. No. 2, p. 385, Mar. 3, 1909.
- 959 **Nevada** (*Ditto*): University.
Con. Res. No. 2, p. 339, Mar. 3, 1909.
- 960 **New Hampshire** (*Ditto*): College of Agriculture and Mechanic Arts.
Chap. 13, Feb. 19, 1909.
- 961 **New Mexico** (*Ditto*): Higher institutions.
Jt. Res. No. 16, p. 433, Mar. 15, 1909.
- 962 **North Carolina** (*Ditto*): University.
Jt. Res., p. 1342, Jan. 27, 1909.
- 963 **Ohio** (*Ditto*): Ohio University; Miami University; Ohio State University.
Amended by S. Jt. Res. 9, p. 116. Wilberforce University included.
S. Jt. Res. 9, p. 112, Feb. 16, 1909 (sp. sess.).

- 964 **Oregon** (*Ditto*): University. S. Jt. Res. No. 12, p. 480, Feb. 13, 1909.
- 965 **Rhode Island** (*Ditto*): College of Agriculture and Mechanic Arts. Res. No. 11, p. 486, Apr. 7, 1909.
- 966 **South Carolina** (*Ditto*): State institutions. Act 241, Mar. 1, 1909.
- 967 **Tennessee** (*Ditto*): University. Sen. Jt. Res. No. 10, p. 2228, Feb. 1, 1909.
- 968 **Utah** (*Ditto*): University. H. Jt. Res. No. 2, p. 348, Feb. 26, 1909.
- 969 **Vermont** (*Ditto*): University and State Agricultural College. Jt. Res. 427, p. 576, Jan. 15, 1909.
- 970 **West Virginia** (*Ditto*): University. H. Jt. Res. No. 2, p. 641, Jan. 21, 1909.
- 971 **Wisconsin** (*Ditto*): University. Jt. Res. No. 10, p. 808, ———, 1909.
- 972 **Wyoming** (*Ditto*): University. H. Jt. Res. No. 5, p. 251, Feb. 20, 1909.

Q. PROFESSIONAL AND HIGHER TECHNICAL EDUCATION.^a

[See enactments under Section O. "Technical and Industrial Education—Elementary and Secondary."]

In so far as general legislation is concerned, this group presents no new feature. The appropriation measure of the College of Agriculture of the University of Illinois (979) is given as illustrative of varied and widely extended activities of such institutions. The provisions incorporated in the general education bill of Tennessee (308) for the support of agricultural and industrial education are entitled to special comment in the review of the year's constructive legislation.

(a) Teachers' Colleges and Normal Schools.

[See enactments Nos. 565-623.]

- 973 **Arkansas**: Amending sec. 17, act 317, Acts, 1907, relative to state normal school diplomas. Authorizing degree of licentiate of instruction. Act 271, May 24, 1909.
- 974 **Tennessee**: Repealing chap. 19, Acts, 1907, and assenting to and accepting the proposal of the Peabody education fund relative to the establishment in Nashville of a college for the higher education of teachers for the Southern States. (See chap. 211, Acts, 1905.) Appropriating \$250,000 to meet conditions of proposal. Chap. 20, Feb. 5, 1909.

^a Laws regulating examinations and prescribing conditions for admission to the practice of the several professions have not been included.

975 **Tennessee:** Providing for the organization of corporations for the higher education of teachers.

Chap. 52, Feb. 12, 1909:

976 **Wyoming:** Authorizing the construction of a building upon the state university grounds at Laramie, to be used as a normal school for the training of public and high school teachers. Making appropriation, and authorizing levy of a tax to provide necessary funds.

Chap. 82, Feb. 24, 1909.

(b) **Agricultural Colleges.**

977 **Florida:** Changing the name of the Colored Normal School.
Name changed to Florida Agricultural and Mechanical College for Negroes.
Chap. 5925 (No. 56), May 22, 1909.

978 **Idaho:** Approving and confirming the action of the regents of the university in establishing and maintaining a college of agriculture in connection with the university at Moscow.

H. B. No. 192, p. 38, Mar. 6, 1909.

979 **Illinois:** Extending the equipment and increasing the instruction in the college of agriculture of the university and providing for the extension of the agricultural experiment station; appropriation.

"SEC. 1. * * * It shall be the duty of the College of Agriculture to give thorough and reliable instruction in the economic production of crops; the treatment of the different soils of the State in such manner as to secure the largest returns from each and without impairing its fertility; the principles of breeding and management of live stock, including animal diseases and a thorough knowledge of the various breeds and market classes; the economic and sanitary production of dairy goods, and the best methods of meeting existing market demands and of extending and developing trade in the agricultural productions of the State. That it shall be the further duty of said college to provide and maintain such live stock specimens, laboratories, apparatus and other material equipment, together with teachers of such experience and skill as shall make such instruction effective. That to carry out the provisions of this section there be, and hereby is, appropriated the sum of fifty thousand dollars (\$50,000.00) annually for the years 1909 and 1910: *Provided*, that the disposition of the funds, from time to time, to carry out the intent of this Act shall be along lines agreed upon by the dean of the College of Agriculture and an advisory committee consisting of the presidents of the following State agricultural organizations, to-wit: The Illinois Farmers' Institute, the Illinois Live Stock Breeders' Association, the Illinois State Horticultural Society, the Illinois Corn Growers' Association, the Illinois State Dairymen's Association and the Illinois State Florists' Association.

"SEC. 2. That it shall be the duty of the Agricultural Experiment Station to conduct investigations calculated to develop the beef, pork, mutton, wool and horse producing interests of the State, and especially to devise and conduct feeding experiments intended to determine the most successful combination of stock foods, particularly in Illinois grains and forage crops, and to discover the most economical and successful methods of maintaining animals and fitting them for the market; to investigate live stock conditions, both at home and abroad, in so far as they affect market values, and to publish the results of such experiments and investigations. That to carry out the provisions of this section there be, and hereby is, appropriated the sum of twenty-five thousand dollars (\$25,000.00) annually, for the years 1909 and 1910: *Provided*, that the work undertaken and outlined in this section shall be carried out on lines to be agreed upon by the director of the Agricultural Experiment Station and an advisory committee of five, to be appointed by the Illinois Live Stock Breeders' Association.

"SEC. 3. That it shall be the duty of the Agricultural Experiment Station to conduct experiments in the several sections of the State, in order to discover the best methods of producing corn, wheat, oats, clover and other farm crops on

the different soils and under the various climatic conditions of the State, and for the purpose of improving the varieties grown for special purposes; and that, to carry out the provisions of this section, there be, and hereby is, appropriated the sum of fifteen thousand dollars (\$15,000.00) annually for the years 1909 and 1910: *Provided*, that the work outlined in this section shall be carried out on lines to be agreed upon by the director of the Agricultural Experiment Station and an advisory committee of five, to be appointed as follows: Two by the Illinois Corn Growers' Association, one by the Illinois Seed Corn Breeders' Association, and one by the Illinois Grain Dealers' Association and one by the Farmers' Grain Dealers' Association.

"Sec. 4. That it shall be the duty of the Agricultural Experiment Station to make chemical and physical examination of the various soils of the State, in order to identify the several types and determine their character; to make and publish an accurate survey with colored maps, in order to establish the location, extent and boundaries of each; to ascertain by direct experiment in laboratory and field what crops and treatment are best suited to each; whether the present methods are tending to best results and whether to the preservation or reduction of fertility, and what rotations and treatment will be most effective in increasing and retaining the productive capacity of Illinois lands; and that, to carry out the provisions of this section, there be, and hereby is, appropriated the sum of sixty thousand dollars (\$60,000.00) annually for the years 1909 and 1910: *Provided*, that the work outlined in this section shall be carried out on lines to be agreed upon by the director of the Agricultural Experiment Station and an advisory committee of five, to be appointed by the Illinois Farmers' Institute.

"Sec. 5. That it shall be the duty of the Agricultural Experiment Station to discover and demonstrate the best methods of orchard treatment, the culture and marketing of fruits and vegetables, and the most effective remedies for insect and fungous enemies to fruits and vegetables; to make a systematic study of plant breeding, and to develop, by means of crossing and selection, new and improved varieties of fruits and vegetables, and that, to carry out the provisions of this section there be, and hereby is, appropriated the sum of fifteen thousand dollars (\$15,000.00) annually for the years 1909 and 1910: *Provided*, that the work undertaken and outlined in this section shall be carried out on lines to be agreed upon by the director of the Agricultural Experiment Station and an advisory committee of five, to be appointed by the Illinois State Horticultural Society.

"Sec. 6. That it shall be the duty of the Agricultural Experiment Station to investigate the dairy conditions of the State; to discover and demonstrate improved methods of producing and marketing wholesale milk and other dairy products, and to promote the dairy interests of the State by such field assistance in the dairy sections upon farms and in the creameries and factories as shall tend to better methods and more uniform products; and that to carry out the provisions of this section there be, and hereby is, appropriated the sum of fifteen thousand dollars (\$15,000.00) annually for the years 1909 and 1910: *Provided*, that the work undertaken and outlined in this section shall be carried out on lines to be agreed upon by the director of the Agricultural Experiment Station and an advisory committee of five, to be appointed by the Illinois State Dairy-men's Association.

"Sec. 7. That it shall be the duty of the Agricultural Experiment Station to discover and demonstrate the best methods of producing plants, cut flowers and vegetables under glass, and the most effective remedies for disease and insect enemies of the same, to investigate and demonstrate the best varieties and methods of producing ornamental trees, shrubs and plants suitable for public and private ground in the various soils and climatic conditions of the State, and to disseminate information concerning the same; and that to carry out the provisions of this section there be, and hereby is, appropriated the sum of eight thousand dollars (\$8,000.00) annually for the years 1909 and 1910: *Provided*, that the work undertaken and outlined in this section shall be carried out on lines to be agreed upon by the director of the Agricultural Experiment Station and an advisory committee of five, to be appointed by the Illinois State Florists' Association.

"Sec. 8. That it shall be the duty of the College of Agriculture through its department of Household Science, to make such investigations and give such instructions and demonstrations as are calculated to advance the Art of Practical Housekeeping in the State with special reference to supply practical instructions to those desiring to take special courses in the science relating to and in the art of practical housekeeping, and that to carry out the provisions of this Act there be, and hereby is, appropriated two thousand five hundred [dollars] (\$2,500.00) per annum, for the years 1909 and 1910.

"SEC. 9. That the committees representing the several associations herein named shall meet at such times and places as may be designated by the dean of said college, or the director of the Agricultural Experiment Station, or upon request of a majority of the committee; that they shall serve without compensation, except for expenses to be paid out of the respective funds, and that said committee shall make to their respective associations, at their annual meetings, full reports of the work in progress under the provisions of this Act.

"SEC. 10. That the Auditor of Public Accounts is hereby authorized and directed to draw his warrant on the State Treasurer for the sums herein appropriated, upon the order of the chairman of the board of trustees of the University of Illinois, countersigned by its secretary, and with the corporate seal of said university, and no installment subsequent to the first shall be paid by the treasurer, nor warrant drawn therefor, until detailed accounts showing expenditures of the preceding installment, have been filed with the Auditor of Public Accounts: *Provided*, that no part of the funds herein appropriated, except in section 1, shall be used for salaries of teachers: *And, provided, further*, that any revenue arising from the operations of the several sections of this Act shall revert to the respective funds from which obtained for further extension of the work outlined. Nothing herein contained shall be deemed to take away from the board of trustees of the University of Illinois the usual authority conferred by law over the expenditure of moneys appropriated to said university. The recommendations of the committee herein provided for shall be advisory, but the use of the moneys herein appropriated shall rest in the discretion of said board for the purpose herein set forth, and said board shall account therefor."

H. B. No. 136, p. 19, June 9, 1909.

- 980 **Iowa:** Amending sec. 1, chap. 184, Laws, 1905, relative to the levy of a millage tax for the state college of agriculture and mechanic arts and providing for the expenditure thereof.
Chap. 235, Apr. 12, 1909.
- 981 **Kansas:** Repealing chap. 405, Laws, 1907, and establishing at the state agricultural college a division of forestry under the direction of the board of regents of that institution; appropriating funds for the support of same.
Chap. 49, Mar. 12, 1909.
- 982 **Massachusetts:** Repealing chap. 460, Acts, 1908, and enacting a substitute relative to free scholarships to the Massachusetts Agricultural College.
Chap. 436, May 24, 1909.
- 983 **Michigan:** Revising the laws relating to the state agricultural college and prescribing the powers and duties of the state board of agriculture.
Act 269, June 2, 1909.
- 984 **Minnesota:** Providing for the acquirement by gift or purchase of certain tracts of land in Carlton County for a demonstration and experiment forest for the university, and providing for its care and maintenance.
Chap. 131, Mar. 31, 1909.
- 985 **Montana:** See enactment No. 62.
- 986 **New Jersey:** Amending sec. 2, chap. 108, Acts, 1890, providing for additional free scholarships at the state agricultural college.
Chap. 26, Mar. 24, 1909.
- 987 **New Mexico:** Relative to the establishment of the Museum of New Mexico. Providing for government, buildings, and support.
Chap. 4, Feb. 19, 1909.
- 988 **North Carolina:** Providing that the state printer shall publish the farm bulletins of the agricultural experiment station.
Chap. 634, Mar. 6, 1909.

989 **Oregon:** Amending sec. 3541, chap. 6, Bellinger and Cotton's Annotated Codes and Statutes, as amended by sec. 1, chap. 233, Laws, 1907, relating to the continuing fund provided for the annual support and benefit of the state agricultural college.

Chap. 205, Feb. 23, 1909.

990 **Oregon:** Appropriating money for the support and maintenance of the Eastern Oregon Agricultural Experiment Station.

Chap. 235, Feb. 25, 1909.

991 **Porto Rico:** Assisting from funds of the insular treasury the agricultural institute of arts and trades at Lajas.

P. 70, Mar. 11, 1909.

992 ***Rhode Island:** Amending sec. 3, chap. 66, General Laws, 1896, as amended by sec. 11, chap. 809, Laws, 1901, relating to the term of office and appointment of the board of managers of the college of agriculture and mechanic arts.

Board to include state commissioner of common schools and one member of state board of agriculture.

Chap. 383, Apr. 7, 1909.

993 **Rhode Island:** Amending sec. 1, chap. 66, General Laws, 1896, relative to the incorporation and objects of the college of agriculture and mechanic arts.

(In conformity to chap. 383, Laws, 1909.)

Chap. 417, May 4, 1909.

994 **Tennessee:** See enactment No. 308.

995 **Texas:** Providing for the establishment and maintenance of agricultural, horticultural, and feeding experimental stations in different parts of the state, and making appropriations therefor.

Chap. 24, p. 332, Apr. 21, 1909.

D. 996 **Washington (1909):** The State College of Washington is a "state institution."—State v. Clausen, 99 P., 743.

(c) **United States Grant.**

997 **Arkansas:** Accepting grants of money authorized by an act of the Federal Congress providing for an increased appropriation for agricultural experiment stations, approved March 16, 1909.

Acts 133, Apr. 12, 1909.

998 **California:** Assenting to the provisions of the act of Congress of March 16, 1906, providing for an increased annual appropriation for agricultural experiment stations.

Chap. 19, p. 1282, Mar. 5, 1909.

999 **Hawaii:** Amending sec. 3, act 24, Laws, 1907, relating to the board of regents of the College of Agriculture and Mechanic Arts.

Authorizing the appointment of a treasurer and other officers. Assenting to the grants authorized by the act of Congress approved August 30, 1890.

Act 127, Apr. 27, 1909.

1000 **Illinois:** Appropriating to the university the money granted in an act of Congress approved August 30, 1890, entitled "An act to apply a portion of the proceeds of the public lands to the more perfect endowment and support of the colleges for the benefit of agriculture and the mechanic arts," established under the provisions of an act of Congress approved July 2, 1862. And the money granted by an act of Congress approved March 4, 1907, entitled, "An act making appropriations for the department of agriculture for the fiscal year ending June 30, 1908."

H. B. No. 405, p. 42, June 9, 1909.

- 1001 **Michigan:** Granting legislative assent to the grant of money from the United States by the act of Congress, March 16, 1906, providing for an increased annual appropriation for agricultural experiment stations.
Act 20, Mar. 31, 1909.
- 1002 **New Hampshire:** Authorizing the acceptance by the State, in favor of the New Hampshire College of Agriculture and the Mechanic Arts, of federal appropriations made under the terms of the "Adams Act."
Chap. 203, Apr. 9, 1909.
- 1003 **Oregon:** Assenting to the provisions of the act of Congress of March 16, 1906, providing for an increased annual appropriation for agricultural experiment stations.
Chap. 192, Feb. 23, 1909.
- 1004 **Texas:** Assenting to the provisions of the act of Congress of March 16, 1906, providing for an increased annual appropriation for agricultural experiment stations.
H. Con. Res. No. 2, p. 380, —, 1909.
- 1005 **West Virginia:** Assenting to the provisions of the act of Congress of March 16, 1906, providing for an increased annual appropriation for agricultural experiment stations.
S. Jt. Res. No. 18, p. 637, Feb. 23, 1909.
- 1006 **Wisconsin:** Assenting to the provisions of the act of Congress of March 16, 1906, providing for an increased annual appropriation for agricultural experiment stations.
Jt. Res. No. 9, p. 807, —, 1909.

(d) **Mining Schools.**

- 1007 **Colorado:** Amending sec. 6023, chap. 125, Revised Statutes, 1908, relative to vacancies in the board of trustees of the school of mines.
Providing that at least one member of the board of trustees shall be a graduate of the school of mines of not less than ten years standing.
Chap. 206, Apr. 26, 1909.
- 1008 **Illinois:** Authorizing and directing the establishment of a department of mining engineering in the college of engineering at the university, and providing for its support.
H. B. No. 537, p. 43, June 8, 1909.
- 1009 **Utah:** Providing for the establishment of an engineering experiment station in connection with the state school of mines.
Chap. 46, Mar. 11, 1909.

(e) **Military Schools.**

- 1010 **Missouri:** Repealing sundry acts and providing for the organization, armament, equipment, and discipline and government of the state militia.
Providing for the organization of cadets of military schools (sec. 59).
P. 673, May 21, 1909.
- 1011 **Missouri:** Constituting the department of military science and tactics of Drury College a military college, and appointing Drury College a post of the national guard.
P. 693, Apr. 19, 1909.
- 1012 **North Dakota:** Providing for instruction in military science at the normal industrial school at Ellendale.
Chap. 167, Mar. 11, 1909.

1013 **West Virginia:** Amending and reenacting chap. 27, sec. 173, Acts, 1908 (sp. sess.), relating to the appointment and term of service of cadets in the university.
Chap. 21, Feb. 15, 1909.

1014 **Wisconsin:** Creating secs. 649-35, 649-36, and 649-37, Statutes, encouraging military instruction in a military school of the State that has been recognized and approved by the United States Government.
Chap. 294, June 5, 1909.

(f) **Miscellaneous Technical.**

1015 **Colorado:** Authorizing students of law schools maintaining legal aid dispensaries to appear in court and represent litigants.
Chap. 183, Apr. 23, 1909.

1016 **Georgia:** Declaring the name of the state technological school. To be designated as the State School of Technology.
Res. 57, p. 1035, Aug. 17, 1908 (sp. sess.).

1017 **Indiana:** Authorizing the trustees of the university to conduct a medical school in Marion County; to receive gifts of real estate and other property on behalf of the State, for the maintenance of medical education in said county.
Chap. 40, Mar. 2, 1909.

1018 **Maine:** Providing for the purchase of a farm on which to conduct scientific investigations in orcharding.
Chap. 15, Feb. 23, 1909.

1019 **Minnesota:** Relating to the equipment and maintenance of a grain and flour testing laboratory at the college of agriculture; prescribing the duties thereof. Providing for the publication of bulletins. Appropriating \$1,000.
Chap. 199, Apr. 17, 1909.

1020 **New Jersey:** Enabling cities to appropriate annually money for the support of an art, science, and industrial museum therein.
Chap. 222, Apr. 20, 1909.

1021 **Pennsylvania:** Making an appropriation to the Academy of Natural Sciences, of Philadelphia.
Act 645, May 13, 1909. (Approved in part.)

1022 **Texas:** Adding to the Agricultural and Mechanical College a department of instruction in the theory and practical art of grading, classing, and determining the spinnable value of cotton.
Chap. 112, p. 220, Mar. 25, 1909.

R. PRIVATE AND ENDOWED HIGHER INSTITUTIONS: STATE CONTROL.

1023 **California:** Amending sec. 649, Civil Code, 1906, relative to the incorporation of colleges and seminaries of learning.
Chap. 35, Feb. 20, 1909.

1024 **California:** Amending sec. 652, Civil Code, 1906, relative to the consolidation of colleges and institutions of higher education.
Chap. 253, Mar. 15, 1909.

1025 **California:** Amending sec. 650, Civil Code, 1906, relative to the powers of boards of trustees of colleges and seminaries of learning.
Chap. 357, Mar. 20, 1909.

1026 **Indiana:** Authorizing universities, colleges, or other institutions of learning to provide for the election of directors or trustees by the board of directors or trustees from time to time instead of by stockholders or subscribers to its funds; and providing for the transfer of its capital stock to the board of directors or trustees with authority to hold and vote the same for its benefit and to cancel such stock.

Chap. 52, Mar. 3, 1909.

1027 **Massachusetts:** Incorporating the trustees of Foxchow College.

Chap. 142, Mar. 5, 1909.

1028 **New Jersey:** Enabling seminaries, or schools of theology having a collegiate course preparatory to the theological course, to grant and confer academic and honorary degrees.

Chap. 46, Apr. 5, 1909.

1029 **Pennsylvania:** Amending sec. 6, act 244, Laws, 1895, relative to the incorporation of educational institutions with power to grant degrees.

Empowering institutions devoted to a specific subject in art, archeology, literature, or science (medical and law schools excepted), to work with a faculty of but three regular professors and two instructors or fellows, without prejudice to their right to confer degrees.

Act 141, Apr. 27, 1909.

S. LIBRARIES.

That the public library is an educational institution of first rank and that the library is an essential part of the equipment and activities of the effective public school become increasingly evident each year. The establishment of the county library system in California (1030), the creation of library commissions in Illinois (1037), North Carolina (1041), Tennessee (1043), and Texas (1044), are representative of the general library movement. The general tendency to give larger support for school libraries is observable in practically every progressive State.

(a) General.

1030 * **California:** Providing for county library systems.

Authorizing establishment, providing for elections for, control, support, etc.
Chap. 479, Apr. 12, 1909.

1031 **California:** Providing for the equipment and maintenance of public libraries in unincorporated towns and villages; providing for the formation, government, and operation of library districts; the acquisition of property thereby; the calling and holding of elections in such districts; the assessment, collection, custody, and disbursement of taxes therein; and creating boards of library trustees.

Chap. 480, Mar. 12, 1909.

1032 **Connecticut:** Amending in a minor manner chap. 98, Public Acts, 1905, relative to free public libraries.

Chap. 100, June 23, 1909.

1033 **Delaware:** Amending secs. 1 and 2, chap. 734, Laws, 1893, relating to a free library and the increasing of the usefulness of the public schools of Wilmington.

Increasing appropriation for the support of library.

Chap. 105, Apr. 7, 1909.

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- 1034 **Delaware:** Amending chap. 136, Laws, 1901, as amended by chap. 361, Laws, 1903, relative to the establishment and maintenance of free public libraries.
Increasing authorized appropriation for support of libraries.
Chap. 106, Apr. 15, 1909.
- 1035 **Delaware:** Amending sec. 2, chap. 362, Laws, 1903, relative to the establishment and maintenance of free public libraries.
Increasing appropriation therefor.
Chap. 107, Apr. 15, 1909.
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- 1036 **Hawaii:** Providing for the establishment and maintenance of the library of Hawaii.
Act 83, Apr. 15, 1909.
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- 1037 **Illinois:** Amending an act entitled, "An act to revise the law in relation to the state library," approved February 25, 1874, in force July 1, 1874 (chap. 128, p. 1005, Revised Statutes, 1874), by adding three new sections, to be known as sections 10, 11, and 12.
Providing for appointment and expenses of library extension commission. Stating duties of commission and requiring appointment of a library organizer. Traveling libraries; clearing houses.
S. B. No. 375, p. 274, June 14, 1909.
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- 1038 **Illinois:** Amending sec. 1 of an act approved March 7, 1872, authorizing cities, incorporated towns, and townships to establish and maintain free public libraries and reading rooms.
H. B. No. 75, p. 274, June 14, 1909.
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- 1039 **Maine:** Amending sec. 10, chap. 57, Revised Statutes, 1903, relative to the establishment and support of free public libraries.
Increasing maximum appropriation for foundation from \$1 to \$2 for each ratable poll.
Chap. 84, Mar. 16, 1909.
- 1040 **New Hampshire:** Amending sec. 9, chap. 118, Laws, 1895, relating to public libraries.
Providing for the issuance and distribution of a library bulletin.
Chap. 41, Mar. 10, 1909.
- 1041 **North Carolina:** Establishing a library commission.
"Sec. 4. Every public library in the State shall make an annual report to the commission, in such form as may be prescribed by the commission. The term public library shall, for the purpose of this act, include free public libraries, subscription libraries, school, college, and university libraries, young men's Christian association, legal association, medical association, Supreme Court and State libraries."
Chap. 873, Mar. 9, 1909.
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- 1042 **Pennsylvania:** Amending act 189, Laws, 1901, relative to the cooperation of cities of the third class, school districts thereof, and incorporated library associations therein, for the erection and maintenance of free public libraries.
Establishing a maximum and minimum rate of taxation for maintenance of such libraries.
Act 157, Apr. 27, 1909.
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- 1043 **Tennessee:** Promoting the establishment, organization, and efficiency of free public libraries, school libraries, traveling libraries, and other libraries, and for that purpose creating a free library commission and defining its powers and duties.
Chap. 177, Mar. 6, 1909.

1044 **Texas:** Repealing art. 2805, and amending art. 2806, Revised Civil Statutes, and creating a library and historical commission.

Chap. 70, Mar. 19, 1909.

1045 **Washington:** Relating to public libraries and museums.

Authorizing cities, villages, towns, and school districts to establish and maintain public libraries. Providing for the government and maintenance thereof. Repealing sundry acts.

Chap. 116, Mar. 13, 1909.

1046 **Wisconsin:** Amending secs. 697-12, 697-13, and 697-15, Statutes, relative to county traveling libraries.

Chap. 185, May 26, 1909.

(b) Public-School Libraries.

1047 **California:** Amending secs. 1715 and 1716, Political Code, 1906, as amended by chap. 6, Statutes, 1907, relative to district school libraries.

Authorizing district libraries to become branches of county libraries. Authorizing appointment of librarian.

Chap. 143, Mar. 10, 1909.

1048 **Iowa:** Amending sec. 2823-p, supplement to the Code, 1907, relative to furnishing a list of books suitable for use in school district libraries.

Chap. 189, Apr. 15, 1909.

1049 **Minnesota:** Appropriating money for deficiency aid to public libraries for the fiscal year ending July 31, 1909, and amending sec. 1426, Revised Laws, 1905, relating to standing appropriations for school libraries and text-books.

Making deficiency appropriation of \$8,000. Prohibiting expenditures beyond annual appropriation.

Chap. 144, Apr. 6, 1909.

1050 **North Carolina:** Amending sec. 4179, Revisal, 1905, relative to state funds for school libraries.

Surplus to be used for establishing new libraries.

Sec. 7, chap. 525, Mar. 5, 1909.

1051 **Ohio:** Amending sec. 3998-2, Revised Statutes, relative to libraries.

Authorizing boards of education to appropriate land for library purposes and to sell real estate.

S. B. 94, p. 16, Mar. 15, 1909 (sp. sess.).

1052 **Pennsylvania:** Amending act 291, Laws, 1895, providing for the establishment of free public libraries in school districts, except in cities of the first and second class.

Increasing the maximum rate of taxation from 1 mill to 1½ mills, and establishing a minimum rate of 1 mill.

Act 189, Apr. 29, 1909.

1053 **Tennessee:** See enactment No. 308.

1054 ***Utah:** Amending sec. 1815, Compiled Laws, 1907, relative to school funds and providing for school libraries.

SECTION 1. * * * "It shall have the power to establish and maintain school libraries, which in districts that have no free library or reading room may be opened to the public under such regulations as the Board may provide. For the purpose of purchasing books and magazines for these school libraries, the Board shall set aside annually from the tax herein provided an amount equal to fifteen cents per capita for each child in the district between the ages of six and eighteen years, inclusive, the computation being based on the school census at the time when the tax is levied; provided, that the library fund

thus created shall be expended under the direction of the State Board of Education for such books and magazines as they shall recommend and under such regulations as they may prescribe; provided, further, that this Act shall apply to all school districts outside of cities of the first and second class."

Chap. 44, Mar. 11, 1909.

1055 **Utah:** Establishing a state library-gymnasium commission, defining its powers, prescribing its duties, and providing for its maintenance.

"SECTION 1. Commission created. A State Library-Gymnasium Commission, consisting of five members to be appointed by the State Board of Education, to serve without compensation, and to be under its general supervision, is hereby created.

"SEC. 2. Terms. Oath. Of the members of the first commission, one shall be appointed for one year, one for two years, one for three years, one for four years and one for five years. As the term of each member of the commission expires, his successor shall be appointed for a term of five years. Members of the commission shall qualify by taking oath of office as prescribed by law; provided that the term of office of the first commission shall date from July 1, 1909.

"SEC. 3. Shall organize. The commission shall organize immediately after the appointment and qualification of its members by electing from its members a President and a Vice-President. The commission shall also appoint a Secretary and Treasurer.

"SEC. 4. Purposes. The purposes for which the commission is established are to increase and improve educational advantages of the State by establishing and maintaining free libraries and gymnasiums. In order to carry out its purposes the commission may receive and hold property, both real and personal, make contracts, sue and be sued, receive gifts, donations and bequests; it may enact by-laws and rules for the regulation of its work and do such other things as may be necessary to promote its purposes.

"It shall publish such lists of books, and circulars relating to its work as it may deem advisable. It shall make an annual report to the State Board of Education in which it shall itemize the receipts and expenditures of all money handled by it. Such reports must contain a full inventory of all books and other property belonging to the commission, together with the location of the same.

"SEC. 5. Appropriation. For the purpose of carrying on the work of the commission, there is hereby appropriated out of the revenues of the State, not otherwise appropriated, the sum of \$2,000.00, or as much thereof as may be necessary; provided, that all bills drawn against this fund shall be approved by the State Board of Education and authorized by the Board of Examiners."

(Chap. 57, Mar. 11, 1909.

1056 **Wisconsin:** Amending sec. 486a, Statutes, relative to township libraries.

Defining more accurately the status of towns, villages, and cities of the fourth class, and joint districts.

Chap. 104, May 19, 1909.

T. EDUCATION OF SPECIAL CLASSES.

The development of the spirit of humanitarianism, with its resulting influence upon the public-school system so as to provide for the educational welfare of special classes of children, is among the interesting phenomena of present day social and educational activity. The following enactments, relating to the education of the deaf and dumb, blind, crippled and deformed, and feeble-minded are evidence of the continued intent of certain States to leave no child without the scope of the influences of the public school, and are consequently of a broadly significant character. Compulsory attendance and the designation of special institutions so as to indicate their distinctly educational purpose are leading characteristics.

(a) General.

1057 **Colorado:** Establishing and maintaining a state home and training school for mental defectives; appropriation.

Chap. 71, May 5, 1909.

1058 **Montana:** See enactment No. 62.

1059 **Vermont:** Adding to chap. 60, Public Statutes, 1906, relating to the instruction of deaf, dumb, and other defective classes.

Authorizing governor to provide for instruction of defectives in schools outside the State.

Act 49, Jan. 7, 1909.

(b) Deaf and Dumb.

1060 **Arkansas:** Amending sec. 4149, Kirby's Digest, 1904, relative to the admission of deaf-mutes to the school for the deaf.

Act 56, Mar. 5, 1909.

1061 **Arkansas:** Providing for the support and maintenance of the Arkansas Deaf-Mute Institute.

Providing for the employment of special teachers only (sec. 3); prohibiting nepotism.

Act 280, May 31, 1909. (Apr. 1, 1909.)

1062 **Colorado:** Declaring the school for the deaf and the blind to be one of the educational institutions of the State.

Chap. 155, Apr. 26, 1909.

1063 **Florida:** Changing the name of the Institute for the Blind, Deaf, and Dumb.

Name changed to Florida School for the Deaf and Blind.

Chap. 5927 (No. 58), May 22, 1909.

1064 **Idaho:** Providing for the establishment, building, and equipment of a state school for the deaf and the blind; providing for the management thereof by the state board of education and for the issuance, sale, and redemption of bonds to raise money for the purchase of a site and for the building and equipping of said school.

H. B. No. 194, p. 379, Mar. 16, 1909.

1065 ***Indiana:** Amending sec. 1, chap. 209, Acts, 1901; relative to compulsory education.

Providing for the compulsory attendance of blind and deaf children between the ages of 8 and 14 years.

Chap. 146, Mar. 6, 1909.

1066 **Iowa:** Providing for the education of deaf and blind children at the school for the deaf and the college for the blind. (Additional to chapters 9 and 11 of the code, relative to the college for the blind and school for the deaf.)

Providing for compulsory attendance of deaf and blind children between 12 and 19 years of age. Penalties. Exemptions.

Chap. 175, Apr. 6, 1909.

1067 **Iowa:** Amending sec. 2727-a, supplement to the Code, 1907, relative to the support of the Iowa school for the deaf at Council Bluffs.

Sec. 1. * * *

"Provided the residence of indigent or homeless pupils may, by order of the board of control of state institutions, be continued during vacation months and for such purposes the provisions of this section shall apply for twelve (12) months."

Sec. 2. * * *

Chap. 176, Mar. 28, 1909.

1068 **Minnesota:** Amending sec. 1, chap. 407, Laws, 1907, relative to the attendance upon school of deaf and dumb children and youth.

Chap. 386, Apr. 22, 1909.

1069 **Montana:** Amending sec. 1171, Revised Codes, 1907, relative to the admission, care, and retention of persons and children in the school for the deaf, blind, and feeble-minded at Boulder.

Chap. 137, Mar. 10, 1909.

1070 **Nebraska:** Changing the name of the institute for the deaf and dumb.

Changing name to Nebraska School for the Deaf.

Chap. 42, Apr. 3, 1909.

1071 **Oklahoma:** Locating and establishing an institute of the deaf, blind, and orphan home for the colored youth and making appropriation therefor.

S. B. 166, p. 546, Mar. 27, 1909.

1072 **Oregon:** Providing for the removal of the school for deaf-mutes to a more favorable location, for the utilization of the present buildings, and for the purchase of land and the construction of buildings; making appropriation.

Chap. 167, Feb. 23, 1909.

1073 **South Dakota:** Changing the name of the school for deaf-mutes, located at Sioux Falls.

Name changed to South Dakota School for the Deaf.

Chap. 37, Feb. 17, 1909.

1074 **Wisconsin:** Amending subsec. 2, sec. 573 (chap. 128, Laws, 1907), Statutes, relative to schools for deaf pupils, and making an appropriation therefor.

Providing for additional state aid of \$100 for each deaf pupil not residing in the school district where the day school for the deaf is located, but residing in the State, who can not pay board and transportation.

Chap. 537, June 17, 1909.

(c) **Blind.**

1075 **Delaware:** Repealing chap. 142, Laws, 1907, providing for the education and training of indigent adult blind persons. Establishing the Delaware commission for the blind, defining its powers and duties, and providing for an appropriation.

"SEC. 5. It shall be the duty of every parent, guardian or other person having custody or control of a blind child or blind children between the ages of seven and eighteen years residing in this State, to cause said blind child or children to receive instruction and training adapted for blind persons, for at least six months in each year until said child or children have attained the age of eighteen years. Any blind child may be excused by said commission from receiving said instruction and training upon the presentation to said Commission of satisfactory evidence that said child is not in proper physical or mental condition to receive said instruction and training. Said parent, guardian or other person having custody or control of any blind child or blind children shall make application to said Commission for instruction and training for said child or children, upon receipt of a notice from said Commission to that effect. Said Commission may recommend to the Governor of this State that said applicant be placed in an institution for the instruction and training of blind persons. The Governor may grant or refuse such application in his discretion, and he is hereby vested with all the powers and discretion in regard to such application and recommendation as he, by law now has, in cases where application for instruction of indigent blind children is made through the Judges of the Superior Court of this State."

Chap. 78, Mar. 31, 1909.

1076 Minnesota: * * *

"Whereas, There are a number of blind persons in the United States, who, with proper opportunities for an education, would become some of the best citizens of the country, and who, by reason of their blindness would devote their whole power and energy to the up-building of the country and its institutions, and would become some of the leaders in the councils of the nation and the state, and

"Whereas, The nation is "committed to the promotion of the common welfare" of the whole people, and the number of blind persons would be comparatively few, and but one college would be necessary, and

"Whereas, It is the duty of every nation to look to and provide for the welfare of all citizens, and particularly those who have met with misfortune, either at birth or afterwards; therefore,

"Be it Resolved, By the state senate of the state of Minnesota, the house concurring, that congress be respectfully requested to provide for a national college for the blind where they may be properly educated in the higher branches of learning, and

"Be it further Resolved, That a copy of this resolution be sent to each of our representatives and senators in congress, and that said representatives and senators be requested to support the same in congress."

Jt. Res. No. 6, p. 709, Mar. 3, 1909.

1077 New Jersey: Constituting a commission for ameliorating the condition of the blind, and defining its powers and duties.

Chap. 136, Apr. 16, 1909.

1078 * North Carolina: Relating to the higher education of the blind. * * *

"That whereas the nation has committed itself to the policy of special educational aid to those who, through misfortune, are not able to avail themselves of the ordinary facilities for higher education, by the establishment and maintenance for over forty years of a college for the deaf at Washington, District of Columbia, which is open to all eligible applicants throughout the United States, free of charge; and whereas there are a number of blind persons in the United States who, with similar opportunities for higher education, would become valuable citizens of the country, useful and productive members of society and in some cases leaders in their communities and in the nation at large; and whereas, at present, although it is fully recognized that it is by the brain rather than by the hand that the blind are most sure to succeed, and that to none does a successfully pursued college course promise more than to the blind, yet only a very small number of blind persons, being such as are possessed of exceptional force of character and of independent financial resources, are able to obtain such benefits of higher education: therefore be it

"Resolved, That the Congress of the United States be respectfully requested to establish a national college for the blind, which shall provide for the higher general and musical education of that class, upon the same terms and conditions as now prevail in case of the deaf.

"Be it further resolved, That a copy of this resolution be sent to each of the Senators and Representatives in Congress from this State and that they be requested to support the same."

Res., p. 1366, Mar. 9, 1909.

1079 * Wisconsin: Amending sec. 579o chap. 128, Laws, 1907), Statutes, relative to city and village schools for the blind, state aid, and inspection.

Providing for the establishment of state aid and inspection for day schools for the blind in similar manner for existing day schools for the deaf. Annual state aid of \$200 per pupil.

Chap. 199, May 26, 1909.

(d) Crippled and Deformed.

1080 Minnesota: Appropriating money for the purpose of constructing and equipping a sanitarium and school building or buildings for the indigent, crippled, and deformed children of the State, and for the care and education of such indigent, crippled persons as may be admitted to such institution by the state board of control.

Chap. 130, Mar. 31, 1909.

(c) Feeble-minded.

- 1081 **Michigan:** Revising the law relative to the care of the feeble-minded and epileptic.
Act 101, May 18, 1909.
- 1082 **Minnesota:** Amending sec. 1914, Revised Laws, 1905, relating to admission to the school for the feeble-minded, etc., by providing a department for incurables in connection therewith.
Chap. 80, Mar. 18, 1909.
- 1083 **New Hampshire:** Amending secs. 5 and 7, chap. 102, Laws, 1901, relating to the care and education of feeble-minded children.
Chap. 47, Mar. 10, 1909.
- 1084 **North Dakota:** Amending sec. 1165, Revised Codes, 1905, as amended by chap. 237, Laws, 1907, relating to the inmates of the institution for feeble-minded.
Defining certain conditions for the removal of inmates; only upon written request.
Chap. 213, Mar. 15, 1909.
- 1085 **Oklahoma:** Establishing an institution for the care, training, and custody of feeble-minded, idiotic, and imbecile children; and the care and custody of feeble-minded, idiotic, and imbecile female adults; providing for the control of said institution and making an appropriation for the construction and equipment of suitable buildings.
S. B. 30, p. 534, Mar. 27, 1909.

U. EDUCATION OF DEPENDENTS AND DELINQUENTS.^a

Properly speaking, the enactments of this group do not belong within a classification of strictly educational legislation. They are included here, however, as evidences of the widespread legislative endeavors to meet the social and educational needs of those children who, under other circumstances, not only have the meagerest educational opportunity, but who are most likely to become, without control and education, members of a nonsocial class. Particular attention and emphasis should be placed upon the several enactments creating or modifying the juvenile court, which is generally recognized as a most valuable educational instrumentality.

(a) General.

- 1086 **Arizona:** Amending secs. 1, 4, 6, 8, and 10, chap. 78, Laws, 1907, adding to the powers of the district courts with reference to dependent, neglected, incorrigible, and delinquent children.
Minor amendments.
Chap. 57, Mar. 16, 1909.

^a The particular purpose of this group has been to select typical enactments rather than to make a complete and comprehensive presentation of all the legislation bearing directly or indirectly upon the question of the state control of dependents and delinquents.

1087 **Georgia:** Providing for the establishment of children's courts as branches of the superior courts; officers; their powers, duties, and compensation.

Act 1, p. 1107, Sept. 4, 1908 (sp. sess.).

1088 **Hawaii:** Defining and regulating the treatment of dependent and delinquent children.

Act 22, Mar. 13, 1909.

1089 **Michigan:** Amending secs. 1, 5, 9, 11, and 13, act 6, Public Acts, 1907 (extra sess.), relative to dependent, neglected, and delinquent children, to the jurisdiction of probate court and to the appointment of county agents and probation officers.

Act 310, June 2, 1909.

1090 **Minnesota:** Relating to the appointment of guardians for dependent, neglected, and delinquent children, and for the proceeding against persons at fault for such dependency, neglect, or delinquency.

"SECTION 1. This act shall apply only to children under the age of seventeen (17) years. For the purpose of this act the words 'dependent child' and 'neglected child' shall mean any child who for any reason is destitute or homeless or abandoned; or dependent upon the public for support; or has not proper parental care or guardianship; or who habitually begs or receives alms; or who is found living in any house of ill-fame, or with any vicious or disreputable persons, or whose home, by reason of neglect, cruelty or depravity on the part of its parents, guardian or other person in whose care it may be, is an unfit place for such child; and any child under the age of ten (10) years who is found begging, peddling or selling any article or singing or playing any musical instrument upon the street, or giving any public entertainment, or who accompanies or is used in aid of any person so doing. The words 'delinquent child' shall include any child under the age of seventeen (17) years who violates any law of this state or any city or village ordinance; or who is incorrigible, or who knowingly associates with thieves, vicious or immoral persons, or who without just cause and without the consent of its parents or custodian absents itself from its home or place of abode; or who is growing up in idleness; or who knowingly frequents a house of ill-fame; or who knowingly patronizes any policy shop or place where any gaming device is or shall be operated; or who frequents any saloon or dram shop where intoxicating liquors are sold, or who patronizes or visits any public pool room or bucket shop; or who wanders about the streets in the night time without being in any lawful business or occupation; or who habitually wanders about any railroad yard or tracks, or jumps or hooks on to any moving train; or enters any car or engine without lawful authority; or who habitually uses vile, obscene, vulgar, profane, or indecent language; or who is guilty of immoral conduct in any public place or about any school house. Any child committing any of the acts herein mentioned shall be deemed a delinquent child, and shall be liable to guardianship as hereinafter provided. The word 'child' or 'children' may mean one or more children, and the word 'parent' or 'parents' may be held to mean one or both parents, when consistent with the intent of this act. The word 'association' shall include any corporation which includes in its purpose the care or disposition of children coming within the meaning of this act. That a child is dependent, neglected or delinquent shall be a ground for the appointment of a guardian for such child.

"SEC. 2. The judge of probate shall have jurisdiction over the appointment of guardians for dependent, neglected and delinquent children. He shall provide himself with a suitable book in which to record all proceedings taken under the provisions of this act, at the expense of the county, and he shall record in said book all proceedings taken in each case coming before him under this act, but need not record any evidence taken except as it shall seem to him proper and necessary. The reasons for appointing such a guardian shall be entered therein and any parent or the attorney for any child may appeal from the final disposition of the guardianship matter by complying with the law regulating appeals from probate courts.

"SEC. 3. Any reputable person resident in the county, having knowledge of a child in his county, who appears to be either neglected, dependent or delinquent, may file with the probate court of the county where such child resides, a petition in writing, setting forth the facts verified by affidavit. The petition

shall set forth the name and residence of each parent, if known, and if both are dead or the residence unknown, then the name and residence of the legal guardian, if known, or if not known, then the name and residence of some near relative, if there be one, and his residence is known. It shall be sufficient that the affidavit is upon information and belief.

"Sec. 4. Upon the filing of the petition a summons shall be issued by the judge of probate of such county, requiring the person having custody or control of the child, or with whom the child may be, to appear with the child at a place and time stated in the summons, which time shall not be less than twenty-four (24) hours after service. Such summons shall be served as provided by law for the service of summons in civil actions. The parents of the child, if living, and their residence is known, or its legal guardian, if one there be, or if there is neither parent nor guardian, or if his or her residence is not known, then some relative, if there be one and his residence is known, shall be notified of the proceedings. In every case the judge shall appoint some suitable person to act in behalf of the child. Where the person to be notified resides within the county, service of notice shall be the same as service of the summons, but in any other case service of notice shall be made in such manner as the court may direct. Notice by registered mail proven by receipt of letter containing same, shall be sufficient. If the person summoned as herein provided shall fail without reasonable cause to appear and abide the order of the court, or bring the child, he may be proceeded against as in case of contempt of court. In case the party served fails to obey the summons, and in any case when it shall be made to appear to the court that such summons will be ineffectual, a warrant may issue on the order of the court, either against the parent or guardian or the person having custody of the child or with whom the child may be, or against the child itself. On the return of the summons or other process, or on the appearance of the child with or without summons or other process in person before the court, and on return of the service of notice, if there be any person to be notified or a personal appearance or written consent to the proceedings of the person or persons, if any to be notified, or as soon thereafter as may be, the court shall proceed to hear and dispose of the case. Pending the final disposition of any case, the child may be retained in the possession of the person having the charge of the same, or may be kept in some suitable place designated by the judge of probate, at the expense of the county.

"Sec. 5. The court shall have authority to appoint or designate one or more discreet persons of good character to serve as probation officers during the pleasure of the court; such probation officers shall act under the orders of the court in reference to any child or children, committed to his care, and it shall be the duty of said probation officers to make such investigations with regard to any child or children as may be required by the court before or during the hearing of the application for a guardian, and to furnish to the court such information and assistance as the judge may require, and to take charge of any child or children before hearing, during the continuance of the hearing, and after hearing until the guardian shall assume the custody of the child, whenever he may be so directed by the court, and to keep such records and to make such reports to the court as the court may order or direct. Probation officers appointed under authority of this act shall serve without compensation from the county save only that they may have the same fees as constables for similar service, including all travel, when the judge of probate court shall so direct.

"Sec. 6. When any child under the age of seventeen (17) years, shall be found to be dependent or neglected, within the meaning of this act, the court may make any order appointing a suitable guardian for such child, and such guardian may be any state institution or association willing to receive it, embracing in its objects the purpose of caring for or obtaining homes for dependent or neglected children, which association shall have been accredited as hereinafter provided.

"Sec. 7. In any case where the court shall appoint as guardian of any child, any association or individual in accordance with the provisions of this act, the child shall, unless otherwise ordered, become a ward, and be subject to the guardianship of the association or individual to whose care it is committed. Such association shall have authority to place such child in a family home of the same religious belief as the parents of such child, with or without indenture, and may be made party to any proceedings for the legal adoption of the child, and may by its attorney or agent appear in any court where such proceedings are pending and assent to such adoption. And such assent shall

be sufficient to authorize the court to enter the proper order or decree of adoption. When adoption proceedings for any such child or children are commenced, a copy of the petition in such adoption proceedings shall be filed in the court which appointed the guardian for such child, at least thirty (30) days before any final decree of adoption shall be entered. Such guardianship shall not include the guardianship of any estate of the child.

"Sec. 8. If any child so put under guardianship have any property, the income of said property shall, unless more than is necessary, be applied to the education of such child, and upon cause shown to the probate court appointing such guardian, the principal or any part thereof, may be used for the same purpose. Any parent may, after the expiration of any year of such guardianship apply to the probate court which has created such guardianship for the termination thereof; and if it appears by clear and convincing evidence that the causes which produced or contributed to the dependency, neglect or delinquency of such child no longer exist, the child, unless previously adopted, shall be restored to its parents. Ten days' notice by registered mail or by personal service, of the hearing upon said application, shall be given to such child and the guardian thereof, and such guardian shall produce such child at such hearing.

"Sec. 9. In the case of a dependent, neglected or delinquent child the court may continue the hearing from time to time, for the purpose of doing more exact justice according to the fact, including such facts as may thereby become known to him, and may commit the child to the care or custody of a probation officer as a temporary guardian, or may allow said child to remain in its own home subject to the visitation of the probation officer, to be returned to the court for further proceedings at the time to which the case may have been continued, in case provision is made by voluntary contribution or otherwise for the payment of the board of such child, until a guardian is appointed and assumes his duties, such provision shall be considered by the court in determining what shall be done with the child during the continuance of the hearing, or the court may commit the child to any institution incorporated under the laws in this state, that may care for delinquent children, and become their guardian. The probation officer, when the court is of the opinion that guardianship would be ineffectual because of the serious delinquency of the child, may cause such delinquent child or the parent of any such delinquent child, or other person guilty of any offense against the laws of the state, which offense is likely to have affected such child's conduct or character, to be proceeded against in accordance with the laws that may be in force governing the commission of crimes and misdemeanors.

"Sec. 10. All associations receiving children under this act shall be subject to the same visitation, inspection and supervision by the state board of control as are the public charitable institutions of this state, and it shall be the duty of said board to pass annually upon the fitness of every such association as may receive, or desire to receive, children under the provisions of this act, and every such association shall annually, at such time as said board shall direct, make report thereto, showing its condition, management and competency to adequately care for such children as are, or may be committed to it, and such other facts as said board may require, and upon said board being satisfied that such association is competent and has adequate facilities to care for such children, it shall issue to the same a certificate to that effect, which certificate shall continue in force for one (1) year, unless sooner revoked by said board, and no child shall be committed to any such association, which shall not have received a certificate within fifteen (15) months next preceding the commitment. The court may at any time, require from any association receiving or desiring to receive children under the provisions of this act, such reports, information and statements as the judge shall deem proper or necessary for his action and the court shall in no case be required to appoint as guardian of a child any association whose standing, conduct or care of children, or ability to care for the same, is not satisfactory to the court.

"Sec. 11. It shall be lawful for persons having the right to dispose of a dependent or neglected child to enter into an agreement with any association or institution incorporated under any public or private law of this state for the purpose of aiding, caring for or placing in homes such children, and being approved as herein provided, for the surrender of such child to such association or institution, to be taken and cared for by such association or institution or put into a family home. Such agreement may contain any and all proper stipulations to that end, and may authorize the association or institution, by its attorney or agent, to appear in any proceedings for the legal adoption of such child, and

consent to its adoption and the order of the court made upon such consent shall be binding upon the child and its parents or guardian or other person, the same as if such person were personally in court and consented thereto whether made party to the proceeding or not.

"Sec. 12. The court, in appointing a guardian for children, shall select one holding the same religious belief as the parents of said child, or some association which is controlled by persons of like religious faith of the parents of the said child. Such associations shall have all control over such child given it by law over any child surrendered to it.

"Sec. 13. This act shall be liberally construed to the end that its purpose may be carried out, to wit: That the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents.

"Sec. 14. The expenses of the proceedings provided for by this act, including the care of children during continuances when not with relatives, and fifteen cents a folio to the judge of probate for all records made by him additional to his salary, shall be paid by the parents of the child, if of sufficient means, and, if not, so paid by the county upon the certificate of the judge of probate. Suit to recover the same from the parents shall be brought by the county attorney when a judgment therefor could probably be collected.

"Sec. 15. This act shall apply to all counties having a population of less than 50,000, according to the last state or national census."

Sec. 16. * * *

Chap. 232, Apr. 17, 1909. (June 1, 1909.)

- 1091 **Minnesota:** Amending chap. 92, Laws, 1907, providing for punishment of persons responsible for or contributing to the delinquency, dependency, or neglect of children under the age of 17 years and giving to the juvenile courts, in counties having over 50,000 population, concurrent jurisdiction over such offenses.

Chap. 305, Apr. 21, 1909.

- 1092 **Minnesota:** Amending sec. 3, chap. 285, Laws, 1905, regulating the treatment and control of dependent, neglected, and delinquent children.

Chap. 418, Apr. 22, 1909.

- 1093 **Missouri:** Regulating the treatment and control of neglected and delinquent children, and providing the necessary places of detention therefor; establishing juvenile courts in counties having a population of 50,000 inhabitants and over; defining the jurisdiction of such juvenile courts over juveniles, and repealing act of March 23, 1903, and act of April 18, 1905.

P. 423, June 12, 1909.

- 1094 **Montana:** See enactment No. 62.

- 1095 **Oklahoma:** Defining dependent, neglected, and delinquent children and regulating the treatment, control and custody thereof by county courts.

S. B. 88, p. 185, Mar. 24, 1909.

- 1096 **Utah:** Amending secs. 720x, 720x1, 720x2, 720x3, 720x4, 720x5, 720x7, 720x10, 720x12, 720x14, 720x15, 720x16, and 720x21, Compiled Laws, 1907, relating to juvenile courts, the title, term of office, duties, appointment, and compensation of the judge thereof and other officers connected therewith; providing for a juvenile court commission; specifying its duties and the duties of its secretary; defining the jurisdiction of juvenile courts; providing for jurisdiction of district courts in certain districts; prescribing the powers, rights, proceedings, and practice of juvenile courts and providing for the maintenance thereof; providing for appeals; disposing of fines.

Chap. 122, Mar. 22, 1909.

- 1097 **Utah:** Amending secs. 720x24, 720x25, 720x29, and 720x32, Compiled Laws, 1907, relative to the methods for the protection, disposition, and supervision of dependent, neglected, and ill-treated children; prescribing the punishment for such persons as are responsible for the care of children.

Chap. 123, Mar. 22, 1909.

(b) Truant and Detention Schools.

1098 **California:** Providing for the care, custody, and maintenance of dependent and delinquent minor children until 21 years of age. Providing for their commitment to the Whittier State School and the Preston State School of Industry; establishing a probation committee and probation officers to deal with such children; providing for detention homes, and providing for the punishment of persons responsible for the dependency or delinquency of children.

Chap. 133, Mar. 8, 1909.

1099 **Minnesota:** Amending sec. 3612, Revised Laws, 1905, relative to the adoption of children.

Requiring the superintendent of the state public school to join in all petitions for the adoption of a ward of such school.

Chap. 81, Mar. 18, 1909.

1100 **Missouri:** Establishing a state industrial home for negro girls; providing for a commission to locate and erect same, and appropriating money therefor.

P. 599, June 14, 1909.

1101 **Nebraska:** Providing for the creation and location of a state public school for dependent children and providing for the government of the same and for the care and custody of all the dependent children within the State. Repealing secs. 4, 5, and 6, chap. 35, Compiled Statutes, 1907.

Chap. 69, Apr. 3, 1909.

1102 **New Jersey:** Amending sec. 6, chap. 37, Acts, 1906, as amended by chap. 307, Acts, 1908, relative to the establishment of schools of detention.

Chap. 85, Apr. 13, 1909.

1103 **New Jersey:** Amending sec. 1, chap. 37, Acts, 1906, as amended by chap. 307, Acts, 1908, relative to the establishment of schools of detention.

Chap. 205, Apr. 20, 1909.

1104 **Nevada:** Amending secs. 8 and 9, act of Mar. 1, 1873, providing for the government and maintenance of the state orphans' home.

Requiring county commissioners to provide places wherein male orphans 16 years of age and over may be taught a useful trade or occupation. Fixing age of majority of female orphans at 18 years and male orphans at 16.

Chap. 226, Mar. 25, 1909.

1105 **North Carolina:** Establishing a reformatory or manual training school for the detention and reformation of the criminal negro youth of the State.

Chap. 817, Mar. 8, 1909.

1106 **Pennsylvania:** Requiring counties now or hereafter containing a population of not less than 750,000 and not more than 1,200,000 inhabitants to establish and maintain schools for the care and education of male children under the jurisdiction of the juvenile courts, and conferring the powers and regulating the proceedings for the establishment, maintenance, and management thereof.

Act 195, May 1, 1909.

1107 **Rhode Island:** Amending sec. 8, chap. 87, General Laws, 1896, relative to a state home and school for dependent and neglected children.

Authorizing that the education of children placed in families may be received in suitable public schools other than those of the town or city of residence, or in private schools.

Chap. 403, Apr. 29, 1909.

1108 **Texas:** Amending sec. 9, chap. 65, Laws, 1907, relating to the treatment and control of delinquent children. Providing for commitment to the state institution for the training of juveniles.

Chap. 55, p. 101, Mar. 17, 1909.

1109 **Texas:** Amending sundry articles, title 54, Revised Statutes, 1895, relating to the house of correction and reformatory. Changing name and making sundry provisions concerning its support and control, etc.

Changing name to "The State Institution for the Training of Juveniles."

Chap. 56, p. 103, Mar. 17, 1909.

1110 **Utah:** Amending secs. 720x 42 and 720x 43, Compiled Laws, 1907, relative to the establishment and maintenance of detention homes for the care, custody, and education of dependent or delinquent children under 18 years of age.

Chap. 110, Mar. 22, 1909.

RECENT DECISIONS OF STATE SUPREME COURTS UPON TOPICS OF CURRENT INTEREST IN PUBLIC EDUCATION.*

EXPLANATORY STATEMENT.

The following decisions of the highest courts of the States concerned have been selected for presentation here primarily by reason of their evident influence upon the schools of the States in which the decisions have been rendered, in addition to the fact that they deal with topics possessing more than ordinary interest to those engaged in the work of public education. No effort has been made to discuss either the educational or the judicial implications of the decisions. The first would necessitate a fairly accurate knowledge of the local educational circumstances involved, while to attempt the second would carry the discussion beyond the present purpose. It has been deemed sufficient to present the facts and opinions rendered, either in full or by digest, in each case.

EQUALITY OF EDUCATIONAL PRIVILEGES.

I. Kansas.

[Williams v. Board of Education of City of Parsons (supreme court of Kansas, Dec. 12, 1906), 99 P., 216.]

1. SCHOOLS AND SCHOOL DISTRICTS—PLACE OF ATTENDANCE—DANGER IN REACHING.

Where children entitled to school privileges in a city, if required to attend a certain school designated by the board of education, would be exposed to daily dangers to life and limb so obvious and so great that in the exercise of reasonable prudence their parents should not permit them to incur the hazard necessarily and unavoidably involved in such attendance, they should not be compelled to attend the school so designated.

2. SCHOOLS AND SCHOOL DISTRICTS—PUBLIC SCHOOLS—DENIAL OF EQUAL FACILITIES.

The board of education of a city of the first class may provide separate schools for white and colored children in the grades below the high school, provided equal educational facilities are furnished; but where the location of a school for one of these classes is such that access to it is beset with such dangers to life and limb that children of the class for which it is designated ought not to be required to attend it, such children are denied equal educational facilities, and the action of the board requiring them to attend such school and denying them admission to any other is an abuse of discretion.

Original action in mandamus by D. A. Williams against the Board of Education of the City of Parsons. Defendant moves to quash the alternative writ. Motion overruled.

This is an original action in mandamus to compel the defendant board of education to admit the plaintiff's children to the Lincoln School, in the city of Parsons, and to give to them educational facilities equal to those given to the white children in that city; the plaintiff's children being colored. It appears from the recitals of the alternative writ that the city of Parsons is a city of the first class, and that it is divided into four nearly equal parts by the main line of the Missouri, Kansas and Texas Railway Company,

* For digests and citations to other decisions relating to public education, see reference numbers preceded by a capital "D," on preceding pages.

running north and south, and Main street, extending east and west through the city. For a long time the defendant has designated each of these divisions as separate school districts for attendance of school children. The city is also divided into four wards in conformity with these four divisions, each ward containing a schoolhouse. The plaintiff's four children are from 6 to 16 years of age, respectively, and prior to the 28th day of September, 1908, had attended the Lincoln School, situated in the first ward, being the northeast district of the city where the plaintiff resided. On that date the defendant made an order that the plaintiff's children should attend school in the second or southwest ward, requiring them to travel a mile and a half to the schoolhouse in that ward, which was known and designated as the "colored school" or school for colored children, which all children of African descent, commonly called "colored," were required to attend. The plaintiff demanded that his children should be allowed to attend the Lincoln School, as they had theretofore done, which demand was refused, and thereupon this action was commenced.

The Missouri, Kansas and Texas Railway Company has its machine shops, foundries, and roundhouse in the city and maintains switch yards, side tracks, and other tracks adjacent to its main line, and seven of its divisions have their termini in the city, where its trains are made up and are constantly passing over these tracks, and its Osage division extends from a point on its main line in a southwesterly direction. The St. Louis and San Francisco Railroad operates a railroad from Pittsburg to Cherryvale through the city, and also has side tracks and switch yards within the city. The school for colored children is located on a piece of ground bounded on the east by the tracks of the main line of the Missouri, Kansas and Texas Railway Company, on the west by the tracks of the Osage division of that railway, and on the north by the tracks of the St. Louis and San Francisco Railroad. In order to attend the school as now required by the board of education, the plaintiff's children must necessarily travel over 13 tracks of the main line of the Missouri, Kansas and Texas Railway Company, over which more than one hundred trains pass daily, and across the three tracks of the St. Louis and San Francisco Railroad, over which eight trains pass daily, and the passage of such trains and the switching of cars incident to the operation of these railroads obstruct the crossings over which the children must travel, so that their lives are imperiled, and they are often so delayed as to make it impossible to determine when they should leave home in order to arrive at the schoolhouse at the proper time. The school building is in such proximity to these tracks that the noise and confusion from the ringing of bells and blowing of whistles and the passage of trains is so great as to interfere with studies in the school. Because of the perils, noises, and confusion incident to this situation, the long distance that the children are compelled to travel, and unavoidable delays at the street crossings where they are compelled to stand in all kinds of weather, the children of the plaintiff are practically excluded from attending the public schools of the city without endangering life and limb. The schoolhouse was located after the various railroad tracks were built.

The alternative writ contains the following statement referring to the location of the school for colored children: "So that said building is bounded on the west by the main line of the Osage division and seven contiguous side tracks; that said building is bounded on the east by the main line of the said Missouri, Kansas and Texas Railway Company and 12 side tracks lying contiguous thereto, and is bounded on the north by the main line of said St. Louis and San Francisco Railroad Company and two side tracks lying contiguous thereto; that the Missouri, Kansas and Texas Railway Company operates at all hours of the day its engines, cars, and trains of cars over and upon said side tracks and main lines of tracks as above designated."

The defendant moved to quash the alternative writ, and the present hearing is upon this motion. This statement is based upon the recitals of the writ.

C. S. Denison, J. M. Nation, and W. I. Jamison, for plaintiff. J. G. Slonecker, for defendant.

BENSON, J. (after stating the facts as above): The statute relating to schools in cities of the first class provides that: "The board of education shall have power to elect their own officers, make all necessary rules for the government of the schools of said city under its charge and control, and of the said board, subject to the provisions of this act and the laws of this State; to organize and maintain separate schools for the education of white and colored children, except in the high school, where no discrimination shall be made on account of color; to exercise the sole control over the public schools and school property of said city; and shall have the power to establish a high school, and maintain the same in whole or in part by demanding, collecting, and receiving a tuition fee for and from each and every scholar or pupil attending such high school." (Gen. St. 1901, sec. 6290.)

The plaintiff states that the question presented is whether the defendant by locating and constructing the school building for colored children in the dangerous place

described in the alternative writ is maintaining there a lawful school within the meaning of the law, or whether its construction in such perilous location is such an abuse of discretion as will sustain this action. He concedes that the board has the right under the statute to establish separate schools for white and colored children, provided they are given equal educational facilities. It is also conceded that this court can not control the just discretion given to the board to locate and build schoolhouses and maintain schools as provided by law. No malicious motives are charged, and no fraud is implied unless it may be inferred from the location of the school in a place so manifestly perilous as to deprive colored children of their right to attend school. Upon the motion to quash, the facts stated in the alternative writ must be taken as true, and the single question is thus presented whether the location of the school building is such that as a practical matter the plaintiff's children can not attend school there. It is not a matter of taste or convenience (*Reynolds v. Board of Education*, 66 Kans., 672; 72 Pac., 274) or freedom from necessary danger; but the question is whether the perils that must be encountered are so obvious and so great that, in the exercise of reasonable prudence, their parents should not permit them to incur the hazard necessarily and unavoidably involved in attending the school. The schoolhouse was located after the tracks referred to had been laid, and, it is fair to suppose, were being used. The extent of the area included in the school grounds thus surrounded by these tracks, or the number of pupils attending the school, does not appear. It may be that a sufficient school population lives within such boundaries and in places reasonably accessible to make the erection of a schoolhouse there proper for their accommodation, and this may be, and it probably should be presumed is, the reason why this particular site was chosen; but it does not follow that children living in other parts of the city who would be compelled to cross the numerous tracks which the plaintiff's children must cross to reach the school should be compelled to do so or lose all educational privileges. The plaintiff is called upon to choose between a violation of the law and the risk of fine and imprisonment by refusing to send his children to school, as provided in the act compelling such attendance (chap. 423, p. 650, Laws, 1903) and the peril to their lives in crossing twice a day 16 railroad tracks upon which cars are constantly being switched, and trains made up and operated, with the incidental sounds of whistles and bells and all the noise and excitement incident to such a situation. It would seem that ordinary prudence, as well as just parental anxiety, would impel the father and mother to refrain from exposing their children to such hazards.

That boards of education, and not the court, must locate schools, and that the boards must be untrammelled by judicial interference in the exercise of the discretion wisely committed to them by the law, is a principle to which we give full and hearty approval; but the situation here, according to the recitals of this writ, is so beset with impending dangers that we can not say that the attendance of these children at this school should be compelled. We are constrained to say that the order of the board requiring them to attend this school, and no other, was, upon the facts stated in this writ, an "abuse of discretion." As that term is ordinarily used, it implies not merely an error in judgment, but perversity of will, passion, or moral delinquency (And. Law Dict.), but the term is applied here to characterize the denial of the rights of citizens clearly given by the Constitution and the laws, which a just discretion will not permit. "It is really a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence." (*Murray v. Buell and Others*, 74 Wis., 14, 19; 41 N. W., 1010.) Having power to maintain separate schools in cities of the first class, the duty rests upon boards of education therein to give equal educational facilities to both white and colored children in such schools. This requirement must have a practical interpretation, so that it may be reasonably applied to varying circumstances. Its scope and purposes are stated in *Reynolds v. Board of Education*, supra, and need not be repeated here. But, where the location of a school is such as to substantially deprive a part of the children of the district of any educational facilities, it is manifest that this equality is not maintained, and the refusal to furnish such privileges, where it is practicable to do so, is an abuse of discretion for which the courts will afford a remedy. Circumstances may exist where the absence of such privileges is practically unavoidable. It is possible that a family or several families may be located so that no school is accessible, but the facts here stated do not present such an emergency. If it exists, or if for reasons not disclosed in the alternative writ it is practicable for these children to attend the school provided by the board, such facts with any other matter of defense may be pleaded. In deciding this motion we only hold that upon the facts stated the plaintiff is entitled to relief by mandamus—not necessarily, however, to admit his children to Lincoln School, as requested, but to some school where they will have the privileges given to them by the law.

The motion to quash the alternative writ is overruled.

.II. Kentucky.

[Prowse et al. v. Board of Education for Christian County (court of appeals of Kentucky, June 18, 1909), 120 S. W., 307.]

1. STATUTES—REPEAL—GENERAL REPEAL OF INCONSISTENT ACTS.

Act March 24, 1908 (Acts 1908, p. 133, chap. 56; Ky. St., 1909, sec. 4426a), relating to public schools, and providing that all laws, and parts of laws, in conflict therewith were thereby repealed, did not constitute the whole school law, but only repealed so much of the old law as was in conflict with the new.

2. SCHOOLS AND SCHOOL DISTRICTS—SCHOOL SYSTEM—LEGISLATIVE DETERMINATION.

Under constitution, section 183, requiring the general assembly to provide, by appropriate legislation, an efficient system of schools throughout the State, it is for the general assembly to determine what system will be most efficient.

3. SCHOOLS AND SCHOOL DISTRICTS—STATUTES.

Act March 24, 1908 (Acts 1908, p. 133, chap. 56; Ky. St., 1909, sec. 4426a), regulating public schools, was intended mainly to substitute a county board, having control of all the schools in the county, for the district boards of trustees previously existing; the act being intended to apply only to territory lying outside of graded school districts.

4. SCHOOLS AND SCHOOL DISTRICTS—CONSTITUTIONAL PROVISIONS—WHITE AND COLORED CHILDREN.

While the constitution requires the general assembly to maintain separate schools for white and colored children, it does not require a separate system of education for both.

5. SCHOOLS AND SCHOOL DISTRICTS—SEPARATE COLORED SCHOOLS—STATUTES.

Act March 24, 1908 (Acts 1908, p. 133, chap. 56; Ky. St., 1909, sec. 4426a), regulating public schools, did not affect the provisions of the old law requiring separate schools for white and colored children, and forbidding white children to attend colored schools, or vice versa.

6. SCHOOLS AND SCHOOL DISTRICTS—ESTABLISHMENT—COUNTY BOARD.

Act March 24, 1908 (Acts 1908, p. 133, chap. 56; Ky. St., 1909, sec. 4426a), regulating schools and school districts, vests the power to establish school districts for white and colored children in the sound discretion of the county boards.

7. SCHOOLS AND SCHOOL DISTRICTS—HIGH SCHOOLS—WHITE AND COLORED CHILDREN.

Act March 24, 1908 (Acts 1908, p. 133, chap. 56; Ky. St., 1909, sec. 4426a), for the governing and regulation of the common schools of the State, and providing that within two years after its passage there should be established by the county board of education of each county one or more county high schools, provided there was not already existing in the county a high school, which in that event might be considered as meeting the purposes of the act, was not unconstitutional for failure to require a separate high school for whites and blacks, and that, if a high school was established for whites, there would be a discrimination against the blacks, since the act did not contemplate any such discrimination, but required an efficient system of separate schools for both races.

8. SCHOOLS AND SCHOOL DISTRICTS—STATUTES—SCHOOL FUNDS.

Act March 24, 1908 (Acts, 1908, p. 133, chap. 56; Ky. St., 1909, sec. 4426a), regulating public schools, is not unconstitutional in that it requires the fiscal court to make a levy sufficient to raise the sum found necessary by the board of education, since, in obeying the constitutional mandate to provide an efficient school system, the legislature must necessarily have the discretion of choosing its own agencies, and conferring on them the powers deemed by it essential to accomplish the required end.

Appeal from circuit court, Christian County.

Suit by the board of education for Christian County against Charles O. Prowse and others composing the fiscal court of that county, to obtain a writ of mandamus compelling defendants to make a levy for school purposes for the year beginning July 1, 1909. The court granted the writ as prayed, and defendants appeal. Judgment affirmed.

HOBSON, J.: Under an act entitled "An act for the government and regulation of the common schools of this State," approved March 24, 1908 (see Acts, 1908, p. 133, chap. 56; Ky. St., sec. 4426a), the board of education of Christian County, by written statement, asked the fiscal court of that county to make a levy on all property subject to taxation under the act, sufficient to raise the sum of \$10,000, exclusive of the cost of collection, for school purposes for the school year beginning July 1, 1909. The fiscal court, being advised by the county attorney that the act was unconstitutional, refused to make the levy, and thereupon the board of education brought this suit in the Christian circuit court to obtain a writ of mandamus against the members of the fiscal court compelling them to make the levy. The defendants entered their appearance, and filed a demurrer to the petition. The court overruled the demurrer. The defend-

ants declined to plead further, and the court granted the writ as prayed. The defendants appeal.

While the act makes radical change in our present school laws, it was manifestly not intended to be the whole law on the subject. The repealing clause is in these words: "All laws and parts of laws in conflict with this act are hereby repealed." Under this provision only so much of the old law as is in conflict with the new law is repealed. There are many subjects embraced in the old law which are not touched by the new; and it is manifest from the act that it was only intended to change the existing law in the particulars to which it relates. Section 183 of the constitution requires the general assembly to provide by appropriate legislation an efficient system of common schools throughout the State. What system will be most efficient is for the judgment of the general assembly. The legislature was of opinion that the old system was not as efficient as it should be, and that some change was necessary. It also evidently concluded that the proposed change would make the schools more efficient. In a matter like this, resting within the discretion of the general assembly, the court will not substitute its judgment for the judgment of the assembly, and it will not interfere with the action of the legislature, unless a palpable effort to evade the mandate of the constitution should appear. The common school system heretofore has consisted of a school in each district controlled by three trustees elected in that district. The main purpose of the act in question is to substitute a county board, having control of all the schools in the county, for the district boards of trustees heretofore existing. Graded schools are excepted out of the operation of the act. The act only applies to the territory lying outside of any graded school district. The white children and the colored children within any city or graded school district remain under the old law, and are in nowise affected by this act, as it only applies to that part of the county outside of these districts. No injustice is therefore done either the white or colored children in graded school districts by the act; for these districts are governed by the old law, as though this act had not been passed. In providing for a school board to have charge of all the schools in the county outside of the graded school districts, whether white or colored, the legislature did not introduce a new idea into our laws. We have the same system now in the cities of the Commonwealth, and the experience of the working of these boards in the cities no doubt prompted the legislature to extend the same system to the country districts. While the constitution requires the general assembly to maintain separate schools for white and colored children, it does not require a separate system of education for both. We have always had one state superintendent, who has charge of all the schools of the State; one state board of education, whose jurisdiction extends alike over white and colored people; one county superintendent, who has charge of all the schools in the county. To provide for a county board of education is in line with the laws that have always been in force. If the law does not work well in its present shape, the general assembly may remedy the evil, but this is a matter addressed to its discretion. The act is not unconstitutional because the legislature provided for only one county board of education.

All of the provisions of the old law requiring separate schools for white and colored children, and forbidding that white children shall attend colored schools, or that colored children shall attend white schools, are left in force by the act. In fact, section 17 of the act recognizes that there must be separate districts for white and colored children. It is insisted that under section 2 of the act a school district may not contain less than 40 white children nor more than 100, and that as the districts are to be established on this basis, great injustice may be done the colored children. To prevent this, section 17 was inserted in the act, giving the county board power to consolidate any two or more districts with reference to the needs of either white or colored children. If there are not enough colored children in any district, it may be consolidated with some other colored district, so that injustice shall not be done. The question of laying off the counties into districts so as to do no injustice to either race is not without difficulty, as there are in some of the counties of the State a large number of colored people, and in a large part of the State few or no colored people. And so the legislature left the matter of the school districts to be worked out by the county boards in each county according to their sound discretion, upon the idea that these boards being upon the ground could solve the question better than the legislature.

The act provides that within two years after its passage there shall be established, by the county board of education of each county, one or more county high schools, provided there is not already existing in the county a high school, and that, in this event, the high school may be considered as meeting the purposes of the act, without the establishment by the board of a high school. It is insisted that the act is void because it does not require a separate high school for whites and blacks, and that, if a high school is established for whites, there will be a discrimination against the blacks. But it will be observed that the act requires the board to establish one or more high schools. The act also provides that the money derived from the taxes shall be spent

by the board according to its best judgment to promote the cause of education in the county. When the board of education shall discriminate against either race, then the race discriminated against may raise that question. The act does not contemplate that there shall be any discrimination. The act is passed under the provision of the constitution requiring the legislature to provide an efficient system of common schools, and to maintain separate schools for white and colored children. The duty imposed by the constitution upon the legislature is the same as to both white and colored children, both as to separate schools and as to the efficiency of the schools. The county board hold office under the constitution, and in discharging their duties they should administer the funds as provided by the constitution, according to their best judgment. There is nothing in the act authorizing any discrimination.

The act is not unconstitutional in that it requires the fiscal court to make a levy sufficient to raise the sum found necessary by the board of education. In obeying the constitutional mandate to provide an efficient system of common schools the legislature must necessarily have the discretion of choosing its own agencies, and conferring upon them the powers deemed by it necessary to accomplish the ends aimed at. The whole subject of common school education is confided to the judgment of the general assembly by the constitution. It may create such agencies as it deems proper to carry out the provisions of the constitution. The general assembly comes fresh from the people. After a short session of sixty days it returns to the people, and if any measures conceived by it to provide an efficient system of common schools throughout the State shall not prove satisfactory to the people, they have ample remedy in their own hands to correct the evil. While Kentucky has spent large sums for education, the fact remains that our percentage of illiteracy is far above the average in the States about us; and it must be conceded by all that there was urgent need of some action by the general assembly to provide a more efficient system of common schools than we have had. On the whole case, we find nothing in the act that is unconstitutional.

Judgment affirmed.

III. Mississippi.

[McFarland, Tax Collector, et. al. v. Goins (supreme court of Mississippi, Nov. 2, 1909), 50 So., 493.]

CONSTITUTIONAL LAW—CLASS LEGISLATION.

Laws, 1908, page 92, chapter 102, authorizing a county to establish one agricultural high school for instruction of its white youth, and to support it by a tax on all taxable property therein, contravenes Constitution United States, amendment 14, section 1; its object or necessary effect being to abridge the privileges or immunities of a certain class of citizens, or deny them the equal protection of the laws.

Appeal from chancery court, Jasper County; Sam Whitman, jr., chancellor.

Suit by Robert Goins against W. J. McFarland, tax collector, and another. Judgment for plaintiff. Defendant's appeal affirmed and remanded.

The appellee filed a bill in the chancery court to enjoin the appellants, who were the tax collector and treasurer, respectively, of Jasper County, from collecting a special tax levied to support and maintain an agricultural high school in said county, established under chapter 102 of the Laws of 1908, on the ground that the collection of such a tax and its application for such a purpose would be in violation of the Constitution of the United States, and that said act was unconstitutional. The defendants demurred, the court overruled the demurrer, and this appeal is prosecuted.

MAYES, J.: In 1908 the legislature passed an act, entitled "An act to provide for the establishment of a county agricultural high school," etc. This act is chapter 102, page 92, Laws, 1908, and by section 1 it is provided "that it shall be lawful for the county school board of any county in the State to establish one agricultural high school in the county for the purpose of instructing the white youth of the county in high school branches, theoretical and practical agriculture, and in such other branches as the board hereinafter provided for may make a part of its curriculum." By section 2 of this act it is further provided that the board of supervisors of any county, where an agricultural high school has been established by the county school board, shall have the power, if necessary, to levy a tax on the taxable property at the time the annual tax levy is made for the support and maintenance of the said school, etc.

Section 1 of article 14 of the amendments to the Constitution of the United States makes "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, citizens of the United States and of the State wherein they reside," and further provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, * * * nor deny to any person, within its jurisdiction the equal protection of the laws." When the act in question is read in the light of the fourteenth amendment to the Constitution of the United States, its violation of same is too plain for argument. By section 1 of the act of 1908 provision is made for the establishment of an agricultural high school for

the white youth only, and by section 2 of the same act this school is to be sustained by taxation on all "taxable property"—that is, by taxes raised on the property of both white and black for the use of the white citizen only. We are not to be understood as holding that a statute could be passed which provided that the revenue raised for the support of the school could be raised by taxation only on the property of the white citizen for the white school and not be in violation of this provision of the Constitution of the United States; but we cite the method of taxation to emphasize the inequality of the law.

If the fourteenth amendment of the Constitution of the United States means anything at all, it certainly means that all citizens of the United States shall stand equal before the law, and that no special privilege or benefits shall be given to one class of citizens to the exclusion of the other as a matter of statutory enactment. This does not mean that the legislature of the State can not pass laws the object of which is to prevent a social commingling of the races; nor does it mean that an act of a legislature which in its administrative effect fails to work out an exact proportion of benefit to the two races is in conflict with this amendment to the United States Constitution; but a law is only void when its object or necessary effect is to abridge the privileges or immunities of a certain class of citizens, or deny them the equal protection of the laws. In the case of *Plessy v. Ferguson*, 163 U. S., 537; 16 Sup. Ct., 1138; 41 L. Ed., 256, and *West Chester & Phila. Ry. Co. v. Miles*, 55 Pa., 209; 93 Am. Dec., 744, it was held that a state statute which provided separate railway carriages for the white and colored races was not in violation of the fourteenth amendment of the Federal Constitution; and in the case of *Berea College v. Kentucky*, 211 U. S., 45; 29 Sup. Ct., 33; 53 L. Ed., —, the Supreme Court of the United States sustained a statute of Kentucky which provided for the separation of the races in the public schools.

Civil rights do not mean social rights, and the courts, both state and federal, recognizing this, and further realizing that no man-made law can force this condition of affairs, have steadily upheld all laws that merely had for their object this disassociation of the two races as promotive of the peace and welfare of all the citizens. (See citations 175 U. S., 528; 20 Sup. Ct., 197; 44 L. Ed., 262.) But, while it is true, no decision of any federal or state tribunal has yet been called to our attention, nor do we think it will be so long as the fourteenth amendment is in existence, upholding a statute taxing the property of the two races for the benefit of the one.

Counsel for appellant cite the case of *Cummings v. Board of Education*, 175 U. S., 528; 20 Sup. Ct., 197; 44 L. Ed., 262, as an authority sustaining the validity of the act in question; but this case is not at all in point. In the case just cited it was shown that the board of education charged with the administration of the school laws maintained a primary school for white and colored children, and in addition to this also maintained a high school for the white children, discontinuing the high school for the colored children for the reason that the available funds were needed for primary schools for a much larger number of colored children than attended the high school. In short, the administrative school board was making the best application of the funds on hand in order to bring about the greatest service, and the United States Supreme Court held that in so doing they were not denying the colored children the equal protection of the law, nor any privilege or immunity guaranteed by the fourteenth amendment. But in the case now before the court the very law itself creates the school for white children only, and imposes taxes on all taxable property for the purpose of raising revenue for the support of this school, and by its very terms excludes the idea that, whatever conditions may exist, any such colored school can be created. Section 533 of the code of 1906 leaves no doubt as to the complainant's right to file this suit, and we think that the bill states a perfect case.

The chancellor having overruled the demurrer to complainant's bill, the case is affirmed and remanded.

SECTARIAN INSTRUCTION.

IV. Wisconsin.

Dorner et al. v. School District No. 5 et al. (supreme court of Wisconsin, Nov. 27, 1906), 118 N. W., 353.

1. SCHOOLS AND SCHOOL DISTRICTS—MEMBERS—RIGHT TO SUE.

A member of a school district corporation may sue in equity to coerce the reluctant corporation to enforce its legal right against its officers and their confederates.

2. EQUITY—EQUITABLE PRINCIPLES—ENFORCEMENT OF LEGAL RIGHTS.

Equity will not coerce the enforcement of a strict legal right, however clear, if thereby injustice and inequity will be done.

3. EQUITY—RIGHT TO RELIEF—LACHES.

Equity will refuse to set aside consummated and completed transactions to the injury of those who have acted in good faith at the suit of complainants who by laches, or failure to protest on opportunity before the acts were done, have induced or justified belief that they acquiesced in and approved such acts.

4. SCHOOLS AND SCHOOL DISTRICTS—MAINTENANCE OF SCHOOL—SECTARIAN INSTRUCTION—DISTRICT OFFICERS—LIABILITY—RIGHT TO SUE—LACHES.

Where complainants and all other taxpayers of a school district had known that the officers of the district had maintained a sectarian school, in violation of Constitution, article 10, section 8, and that the electors of the district each year had been informed that the school taxes were spent for that purpose, and without protest at each meeting like expenditures were made for the ensuing year, the officers of the district were entitled to believe that the money had been expended in accordance with the wishes of the district, so that complainants were not entitled after twenty years to compel such officers to reimburse the district for the moneys illegally expended.

5. SCHOOLS AND SCHOOL DISTRICTS—SCHOOLHOUSES—AUTHORITY TO 'LEASE'—RELIGIOUS SCHOOL BUILDING.

Statutes 1868, section 430, authorizes the officers of a school district to rent or build a schoolhouse in which the district is required to maintain a common school by section 423, and also authorizes the district to vote a tax to hire a schoolhouse. *Held* that, where a schoolhouse owned by a district was inadequate, the district had power to rent a part of a parochial school building within the district in which to maintain a common school.

Appeal from circuit court, Brown County; Samuel D. Hastings, judge.

Suit by Jacob Dorner and others against school district No. 5, etc., and others. Judgment for complainants for insufficient relief, and they appeal. Affirmed.

The defendant school district, for a period of about twenty years, rented from the defendant congregation of the Immaculate Conception, a Roman Catholic church corporation, certain rooms in its school building and expended the school moneys of the district in paying teachers to conduct schools therein, and also paid certain small amounts for fuel, cleaning, and the like. The building had been erected for the purposes of a parochial school by said church corporation, and the rest of the rooms therein not rented by the district were used to maintain the parochial school, and the public school conducted in the rooms rented by the school district was characterized by certain religious ceremonies, in that certain distinctive prayers of the Catholic Church were said at intervals throughout the school day, church hymns were sung, and the teachers were nuns specially designated to the service by the superior of a Catholic sisterhood to which they belonged. In addition the scholars prior to school hours quite uniformly attended distinctively religious teaching in the adjoining church, and the school was suspended to enable their attendance upon weddings and funerals in the church. The pupils were all children of Catholic parents, members of the church congregation, with occasional exceptions of one or two at various times during said twenty years. The plaintiffs, members of the congregation, but also residents and taxpayers of the district, on behalf of themselves and others similarly situated, brought this action to enjoin the school board and district from persisting in maintaining the public school of the district in such manner and from paying out any moneys of the district for such purposes, and also to recover in behalf of the district all sums paid for maintenance of such school from the said church corporation and from the members of the school board who had joined in paying it out. The trial court found that the school so conducted had at all times been pervaded and characterized by sectarian instruction contrary to law, and granted injunction against continued maintenance thereof, but held that it was within the power of the school district and board to rent rooms as they deemed wise for the maintenance of a distinctively public school, and therefore refused to enjoin the maintenance thereof in the parochial school building. With regard to the moneys expended prior to the commencement of the suit, he held that the plaintiffs and all members of the school district had at all times had full knowledge, both before and immediately after the fact, of the manner in which the school was conducted, and of the expenditure of the school district moneys for the purposes aforesaid, and that, having made no objection, they were guilty of laches such as to warrant the court in denying the prayer for the repayment of moneys expended for services rendered in good faith and with the tacit approval and acquiescence of all interested parties. The plaintiffs appeal from those parts of the judgment which deny injunction against maintenance of a public school in the parochial school building, and deny recovery from the church corporation and from the members of the school board of the moneys paid out for teachers' salaries and other expenses of the school maintained heretofore.

Dodge, J. (after stating the facts as above). But two questions arise upon this appeal, and they rather narrow ones. The very important questions as to what acts

may constitute the giving or allowing sectarian instruction such as is prohibited in public schools by article 10, section 3, constitution Wisconsin, and whether the acts done in the instant case are within that inhibition, are treated in an able and exhaustive opinion by the trial court, but are not presented by the appeal. We are therefore to start with the fact that for nearly twenty years the school officers have annually paid school district moneys for support of a school where sectarian instruction was permitted. The question whether such payments were so unlawful that the school district, as a corporation, might maintain an action at law to recover them back from the recipients, or for damages against the district officers and their confederates for dissipating the school funds, was not decided, but affirmative answer was hypothetically assumed by the trial court, as also that the district will not bring any such action. The right of a member of a corporation to invoke the interference of a court of equity to practically coerce the reluctant corporation to enforce its legal rights against its officers and their confederates is abundantly established by our decisions. (*Frederick v. Douglas Co.*, 96 Wis. 411, 71 N. W. 798; *Webster v. Douglas Co.*, 102 Wis. 181, 77 N. W. 885, 78 N. W. 451, 72 Am. St. Rep. 870; *No Trust Co. v. Snyder*, 113 Wis. 516, 89 N. W. 460; 90 Am. St. Rep. 867.) But, since the application must be to a court of equity, equitable considerations will guide and control in granting or withholding relief. The court will not coerce the enforcement of a strict legal right, however clear, if thereby injustice and inequity will be done. In development of this rule it is well settled that a court of equity may and should refuse to upset consummated and completed transactions to the hurt of those who have acted in good faith at the suit of plaintiffs who, by laches or failure to protest upon opportunity before the acts were done, have induced or justified belief that they acquiesced in and approved such acts. (*Helms v. McFadden*, 18 Wis. 191; *Cross v. Bowker*, 102 Wis. 497, 78 N. W. 564; *Frederick v. Douglas Co.*, 96 Wis. 425, 71 N. W. 798; *McCann v. Welch*, 106 Wis. 142, 151, 81 N. W. 996.) This rule was applied by the circuit court, who found as facts that plaintiffs and all other taxpayers had been cognizant of the manner of conducting the school, and that the electors of the district each year had been informed that the money had been spent for such purpose, and, without protest from any, at each meeting directed like expenditures for the ensuing year. Such finding is not antagonized by any clear preponderance of evidence. On the faith of such acquiescence, believing that all taxpayers approved, the defendant officers have parted with the money, and quite obviously, must lose it if compelled to reimburse the district. These plaintiffs at least can not equitably ask that the defendants so suffer for acts induced and invited by plaintiffs' own conduct.

2. We find no error in the trial court's refusal to enjoin the district and board from maintaining a common school in the parochial school building. Incidentally it may be noted that there is no prayer for such specific relief, but the court considered the question, and we will not rest upon that defect in the pleadings. Inferentially, at least, every school district is commanded to maintain a common school, for it shall be put out of existence if it does not. (Sec. 423, St., 1898.) True, this district owns a schoolhouse, 28 feet by 18, which is obviously wholly inadequate for a common school free to all the 200 or more scholars of the district. Non constat anything in the record or evidence, it may be wholly unable to construct a more commodious one. The school district has express power to vote a tax to hire a schoolhouse. (Sec. 430, subd. 5, St., 1898.) The school board are empowered, when directed by the electors, in the alternative to purchase or lease a site for a schoolhouse, and to build, hire, or purchase a schoolhouse, and to sell and convey any site for schoolhouse, the property of the district. (Sec. 430, St., 1898.) We find nothing either in the expression or policy of the statutes to prevent the school district in meeting assembled or the school board from hiring a building or part of a building in which to maintain the public school, not even though the district may already have a schoolhouse and the hiring may be by way of accommodation for overflow in excess of the accommodations of the schoolhouse so owned. Hence we think that the affirmative grant of powers above mentioned, fairly and reasonably construed, is sufficient to enable the district to maintain a common school in the parochial school building and its discretion in that regard should not be controlled by the court.

We are convinced that in the respects assailed by appeal the judgment is correct.

Judgment affirmed.

LOCAL TAXATION.

V. Georgia.

Coleman et al. v. Board of Education of Emanuel County et al. (supreme court of Georgia, Dec. 1, 1908, 93 S. E., 41.)

1. STATUTES—EXPRESSION OF SUBJECT IN TITLE.

The act approved August 21, 1906 (Acts, 1906, p. 61), amending the act approved August 23, 1905 (Acts, 1905, p. 425), is not unconstitutional on the ground that the provision in the body of the act for the levy of a "local tax for public schools" is unauthorized by the caption of the act, which described the tax to be levied as a "local tax * * * for educational purposes."

2. SCHOOLS AND SCHOOL DISTRICTS—TAXATION—STATUTORY PROVISIONS—VALIDITY.

The act referred to in the first headnote is not violative of article 7, section 1, paragraph 1, and article 7, section 6, paragraph 2, and article 8, section 1, paragraph 1, of the constitution of the State of Georgia, as embodied in the Civil Code, 1895, sections 5882, 5882, 5890, because the act fails to specify on its face that the local tax assessed for educational purposes shall be used for the instruction of children in the elementary branches of an English education, nor because the act fails to provide on its face that the schools shall be free to all children alike, nor because the act fails to specify that the schools for the white and colored races shall be separate. With reference to these matters and details in the conduct of schools and application of the money raised by taxation, the act referred to will be construed in connection with existing laws.

3. SCHOOLS AND SCHOOL DISTRICTS—TAXATION—STATUTORY PROVISIONS—VALIDITY.

Nor does the act referred to in the first headnote violate article 7, section 2, paragraph 2, of the constitution of Georgia, as embraced in Civil Code 1895, section 5884, because the act recites that the tax will be imposed upon "all the property of the county," without making any express provision for the exemption of certain classes of property, which, under Political Code 1895, sections 762, 763, are exempted. The act is to be construed in connection with those sections of the code, and not as repealing them.

4. CONSTITUTIONAL LAW—DUE PROCESS OF LAW—TAXATION.

Nor does the failure of the act in question to provide expressly for contesting an election authorized to be held thereunder before the law becomes effective in a given community by any person, or for "having his rights or interests thereunder inquired into or passed upon," render the act obnoxious to article 1, section 1, paragraph 3, of the constitution of the State of Georgia, nor to article 5 of amendments to Constitution of the United States (Civil Code 1895, sections 5700, 6018), declaring that no person shall be deprived of his property except by due process of law, nor to article 14, paragraph 1, of amendments to Constitution of the United States (Civil Code 1895, section 6030), declaring that no State shall deprive any person of life, liberty, or property without due process of law.

5. SCHOOLS AND SCHOOL DISTRICTS—CONTESTS OF ELECTIONS.

As a general rule, courts of equity will not deal with contests of elections; but, where a statute authorized a tax on property, and provided that the law should become operative in any county or school district only on condition that at an election to be held for the purpose the requisite vote should favor the law being made applicable, if, after a pretended election, the levy of a tax on the property of a taxpayer is attempted, equity will, upon appropriate allegations in a petition of the taxpayer, inquire into the validity of the election.

6. CONSTITUTIONAL LAW—GOVERNMENTAL POWERS—DELEGATION—SUBMISSION TO VOTE.

The legislature has power to enact a law which shall become effective in a particular county or district upon a vote of the people thereof at an election.

7. SCHOOLS AND SCHOOL DISTRICTS—TAXATION—ELECTION—PETITION—CONSTRUCTION.

The petition to the ordinary involved in this case considered as a whole was for a county election, and the order for a county election was not void on the ground that it was based on a petition for a district election.

8. SCHOOLS AND SCHOOL DISTRICTS—ELECTIONS—PLACE OF HOLDING—IRREGULARITY—EFFECT.

Upon the contention that the returns from certain precincts should have been excluded on the ground that the election therein was held at other places than at the lawfully established precincts, the evidence authorized the decision of the presiding judge against such contention.

9. ELECTIONS—IRREGULARITIES—REGISTRATION LISTS—CONSOLIDATION OF RETURNS.

That the registrars, because of lack of sufficient time before the election, failed to purge the registration list, but furnished to the election managers unpurged lists, except at one precinct, where no list was furnished, and that the superintendents of election failed to consolidate the returns from the several precincts promptly at noon on the day next succeeding the election, and received returns from a precinct which did not arrive until 2 o'clock, and received returns which had been sent by mail to the ordinary and by him opened and delivered to the superintendents, are irregularities resulting from a failure to observe statutory provisions which are merely directory, and, in the absence of any fraud or evidence that persons had voted who were not authorized to vote, or had been deprived of voting who were entitled to vote, and that such votes would have changed the result of the election, will not be sufficient cause to set aside the entire election.

10. REFUSAL OF INTERLOCUTORY—INJUNCTION.

Upon the whole case, the presiding judge did not err in refusing to grant the interlocutory injunction prayed for.

Error from superior court, Emanuel County, B. T. Rawlings, judge.

Equitable petition by J. C. Coleman and others against the Board of Education of Emanuel County and others. Judgment for defendants and plaintiffs bring error. Affirmed.

Coleman and others, as citizens and taxpayers of the county of Emanuel, on behalf of themselves and all other citizens occupying a similar position, filed their equitable petition against the members of the board of education and also the commissioners of roads and revenues, for the purpose of enjoining the assessment and collection of a local tax in that county for educational purposes. The act of 1905 (Acts, 1905, p. 425), as amended by the act of 1906 (Acts, 1906, p. 61), under which the election was held, was attacked as unconstitutional on numerous grounds, and the election held under it was also attacked as invalid for various reasons. Upon the hearing the presiding judge refused to grant an interlocutory injunction, and the plaintiffs excepted.

ATKINSON, J.: Several previous attacks have been made upon the constitutionality of the act of 1905 (Acts 1905, p. 425) as originally passed, and also as amended by the act of 1906 (Acts 1906, p. 61). (See *Ga. R. Co. v. Hutchinson*, 125 Ga. 762, 54 S. E. 725; *Brown v. So. Ry. Co.*, 125 Ga. 772, 54 S. E. 729; *Edalgo v. So. Ry. Co.*, 129 Ga. 258, 58 S. E. 846.) So far this legislation has withstood the attacks made upon it, except as to a part of the act of 1905 before its amendment; and the validity of the amended act is now again vigorously attacked on the ground that it is unconstitutional.

1. It is contended that the act contains matter in its body which is not covered by the caption, because in the caption the language used is (a) "Local tax for educational purposes," while in the body of the act language is used referring to (a) "local tax for public schools." Public schools are instrumentalities for educational purposes. If the provision in regard to the manner of voting in the election in the use of the words "public schools," when considered in connection with the immediate contract, varies at all from the caption, it is not broader than the caption, but narrower. The body of the act in this respect does not contain matter not covered by the caption, but rather language which is overlapped and more than covered by the caption. There is no law which makes an act unconstitutional because language employed in the body of the act is not as broad as might be warranted by the caption. (*Plumb v. Christie*, 103 Ga. 700, 30 S. E. 759, 42 L. R. A. 181.)

2. It is urged that the act is violative of the constitutional provisions embodied in Civil Code, 1895, sections 5882, 5892, 5906, because it fails to specify on its face that the local tax assessed for educational purposes shall be used for the instruction of children in the elementary branches of an English education, which is the kind of education within the purview of the constitutional provisions cited, and because it fails to provide on its face that the schools shall be free to all children alike, or that there shall be separate schools for the white and colored races. The act providing for the holding of local elections, and, upon a favorable result thereof, the imposition of a local educational tax, is not void because it does not provide for the details of the application of the fund, being passed to carry into effect the constitutional amendment adopted in 1903 (Laws 1903, p. 23), and in connection with the school laws of the State, which already cover the subjects referred to, and dealing with the general school system of the State as already established. The act is not void because it does not enter into details as to the manner of conducting public schools, or the use of the fund arising from the taxes which will be assessed. If the fund be rightly raised, but officers charged with its administration should proceed to make a wrongful use or application thereof, it will then be time to complain.

3. Again, it is said that the act conflicts with the constitutional provision contained in Civil Code 1895, section 5884, because certain property is by that provision permitted to be exempted from taxation, and that certain property has by the legislature been exempted from taxation accordingly (Pol. Code 1895, secs. 762, 763), and this act declares that a tax shall be levied on "all the property" in the county without mentioning that which has thus been exempted. But where, under express constitutional provision and legislative action in pursuance thereof, certain property has been lawfully exempted from taxation permanently, the omission in this act to specifically mention such exemptions will not render it void. The purpose of the act considered as a whole is not to increase or diminish the subjects of taxation, but to provide for local taxation for educational purposes to be assessed upon the same property as that subject to other taxation, after the provisions of the act have become of force in the locality under an election. It has been held that the tax digest and the returns to the comptroller general can be looked to in determining the property sub-

ject to this tax (Ga. R. Co. v. Hutchinson, 125 Ga. 762, 54 S. E. 725), and they do not include exempted property. Construing this act in connection with the general tax laws of the State, the ground now urged is without merit. The act did not seek to repeal sections 762 and 763 of the Political Code of 1895, by implication without referring to them. On the contrary, it is to be construed in connection with them.

4. The plaintiffs in error contend that the act is in conflict with the provision of the constitution of this State, declaring that no person shall be deprived of his property except by due process of law (Civ. Code 1895, secs. 5700, 6018), and that of the United States, declaring that no State shall deprive any person of life, liberty, or property without due process of law (Civ. Code, 1895, sec. 6030). The contention is that the act under consideration deprives the plaintiffs of their property without due process of law, because no provision is made by its terms for contesting the election by any person, "or having his rights or interests thereunder inquired into or passed upon." It may be noted that there is a difference between the power of a court to declare an act unconstitutional if it is in violation of any provision of the fundamental law, and the necessity for reciting such a power on the face of the act itself. It is not generally necessary that an act should recite that the courts may inquire whether it was lawfully passed, or whether it is in accord with the constitution of the State. The power to test the act by a comparison with the constitution is one inherently residing in the courts, and it is unnecessary for the act itself to recite such power. So far, therefore, as any question of constitutionality of the act itself, or of the provisions for holding an election by virtue of it, are concerned, it needs no recital of authority on the part of the courts to deal with the subject-matter. If the tax sought to be assessed is without constitutional authority, it is no tax in law, and the courts can so declare. (Civ. Code 1895, sec. 5733.)

5. Counsel for defendants in error contended that this was in effect a proceeding to contest an election; that such a contest was a matter pertaining to the political department of the government, rather than to the judicial department; and that a court of equity has no inherent power to determine a contest of an election, but only such authority as may be conferred by statute. On this subject he cited *Caldwell v. Barrett*, 73 Ga. 604; *Tupper v. Dart*, 104 Ga. 179, 30 S. E. 624; *Ivey v. City of Rome*, 129 Ga. 289, 58 S. E. 852. He also contended that the declaration, by the ordinary, of the result of the election, was ministerial, but conclusive, and that the courts can not go behind it, and on this subject he cited *Skrine v. Jackson*, 73 Ga. 377; *Meadows v. Taylor*, 82 Ga. 738, 10 S. E. 204; *Harris v. Perryman*, 103 Ga. 819, 30 S. E. 663; *Harris v. Sheffield*, 128 Ga. 299, 57 S. E. 305. The general proposition that the courts of equity do not deal with the contests of elections is quite true. In matters touching the exercise of political functions the method of determining the result of an election pointed out by the legislature is ordinarily the one to be followed; and, if the lawmaking power has expressly provided in an act a mode of contesting an election, that method should be pursued. Whether a claimant of an office has such a property right or interest in the office and its emoluments and rights as gives him a remedy by quo warranto, without concluding him to contesting the election, is not here involved. The question presented in the case before us is of a different character. It is not a contest of an election. The legislature has provided for the imposition of a tax upon property, and has declared that the law should become operative in a county or district when put in force by an election called in a certain manner, and determined by a certain majority of voters. A person against whose property such a tax is assessed and sought to be enforced can raise the question of whether there is any lawful authority for such assessment and enforcement. He may attack the constitutionality of the act; and, if such an attack is successful, there is no authority in law for assessing the tax, and hence none can be lawfully assessed. The legislature has not directly declared that the educational tax shall be imposed upon all counties. They have only provided for such imposition upon condition that an election is held, and that two-thirds of those voting in a county election shall cast their ballots in favor of the local taxation. (Acts 1906, p. 68, sec. 3.) Where the local authorities seek to assess and enforce a tax against property, the property owner may contest their authority to do so, on the ground that the act has not become applicable in the county, and that, therefore, his property can not be subjected to the tax. In *Pickett v. Russell*, 42 Fla. 116, 28 South. 764, it was held that "equity has jurisdiction to enjoin the assessment and collection of an illegal tax levied upon real estate, which, if assessed or collected, will cast a cloud over the title to such real estate, and, where such levy to be valid must be authorized by the result of an election previously held, the court of equity has jurisdiction, in the absence of other remedies at law, to inquire into the validity of such election in so far as the authority [to] levy and collect the tax is derived therefrom." In *Union Pacific Ry. Co. v. Cheyenne*, 113 U. S. 516, 525, 5 Sup. Ct. 601, 605, 28 L. Ed. 1098, in the opinion of Mr. Justice Bradley it

was said: "Even the cloud cast upon his title by a tax under which a sale could be made would be a grievance which would entitle him to go into a court of equity for relief." (See, also, *Ogden City v. Armstrong*, 168 U. S. 224, 18 Sup. Ct. 98, 42 L. Ed. 444; *Mayor of Macon v. Hughes*, 110 Ga. 795, 36 S. E. 247.) In this case the act makes no provision for any method of contesting the election at law or the question of whether the legislative provisions in regard to the local educational tax have gone into effect legally in any given county. When, therefore, it is sought to assess and enforce such a tax against the property, the owner thereof has a right to call into question the authority under which the local officers are proceeding, and to say that the law is void or the election is invalid. We do not mean to say that every irregularity or failure to comply strictly with directory provisions of the law will invalidate such an election and render its result of no force as an authority to the officers to proceed; but we do mean that, if the election or attempted election was such as to be unlawful and to confer no valid authority upon the local officials to proceed to assess and collect the tax, the property owner could set up and establish that fact, and could prevent the title to his property from being beclouded with an unlawful assessment and seizure. In *Caldwell v. Barrett*, 73 Ga. 604, supra, the question arose under an election to determine the question of prohibiting the sale of liquors in a certain county, and the act provided the manner in which the election should be held and the vote should be ascertained, and gave authority to the county commissioners to throw out any illegal vote. In *Skrine v. Jackson*, 73 Ga. 377, the election involved was on the question of "fence or no fence" in a certain county, and the act of the legislature under which it was held provided that the returns of the election should be made to the ordinary, "who is required to examine the same, and to decide upon all questions which may arise out of said election, and he shall proclaim the result." In *Meadows v. Taylor*, 82 Ga. 738, 10 S. E. 204, the election involved was again in regard to fences and stock law. The question there involved was also whether, where a petition had been filed with the ordinary to call an election, a counter petition could be filed and a hearing had by the ordinary, or whether the duty of that officer in regard to calling an election upon a proper petition therefor was ministerial. In *Harris v. Perryman*, 103 Ga. 816, 30 S. E. 663, the question was again raised in regard to an election whether or not the stock law should be adopted and put in force in a certain district. *Hillsman v. Harris*, 84 Ga. 432, 11 S. E. 400, involved the changing of the lines of a militia district. *Meadows v. Taylor*, 86 Ga. 804, 13 S. E. 155, grew out of the same stock law election as that involved in 82 Ga. 738, 10 S. E. 204, supra. *Harris v. Sheffield*, 128 Ga. 299, 57 S. E. 305, arose under a contest provided by statute in cases of local option elections in regard to the sale of intoxicating liquors, and involved a construction of the section of the Code touching such a contest. *Ivey v. City of Rome*, 129 Ga. 286, 58 S. E. 852, involved an election to determine the question as to whether the territory of one municipality should be annexed to the territory of another. It will be observed that all of these and similar cases differed in one material respect from that at bar. While indirect benefits or injuries might accrue as a result of such elections, none of them directly imposed a tax upon property or made a tax applicable thereto.

Moreover, there is another cogent ground for the distinction between this case and others cited above. This is not purely a legislative matter. The legislature could not have passed an act directly imposing this educational tax without more. The amendment to the constitution proposed by the legislature in 1903, and ratified by the people, declared that no such law shall take effect until the same shall have been submitted to a vote of the qualified voters in each county, militia district, school district, or municipal corporation, and approved by a two-thirds majority of persons voting at such election, and the general assembly may prescribe who shall vote on such questions. The constitution itself requires the election and the carrying of the measure by a specified majority as a condition precedent to the levy of the tax, and the legislature was given power to make provision as to the conduct of the election. In the law which the general assembly has passed no provision has been made for contest or determination of any question, but only for the declaration of the result by the ordinary. The result of the election is not merely to determine some political matter or policy, but directly to impose a tax. We appreciate the difficulties which may arise from the absence of any provision for a mode of contesting the election, or determining any question as to it, before the direct burden of a tax is placed upon property. But that is a matter for legislative discretion and action, and is not for the courts. While the law stands as it is, we must hold that the property owner can be heard, not as a contest properly speaking, but to question whether the officers seeking to levy a tax on his property have authority to do so by virtue of an election carried by the constitutional majority. In some States there are constitutional provisions

in regard to elections for removal of county seats, somewhat like the constitutional amendment above referred to; and in those States there have been rulings similar to that now made. (See, on the general subject, *Gibson v. Board of Supervisors*, 80 Cal. 359, 22 Pac. 225; *Cattell v. Lowry*, 45 Iowa, 478; *People v. Wiant*, 48 Ill. 263.) Where officers are proceeding with apparent regularity under color of law, and their authority to assess and collect a tax is attacked by a property owner, the burden is upon him to show such lack of authority; and this is true whether he claims the lack of authority to arise from an unconstitutionality of the law or because the attempted election was so abortive in character as not to make the law applicable to the locality, and therefore not serviceable as authority for levying and collecting the tax.

6. It was urged that the legislature did not directly impose this tax, but authorized a submission to the people at an election of the question of whether it should be imposed in any particular county or district, and that the act was therefore invalid. But it is well established that the legislature has power to enact a law which shall become effective in a particular county or district upon a vote of the people thereof at an election. (*Caldwell v. Barrett*, 73 Ga. 604; *Mayor of Brunswick v. Finney*, 54 Ga. 317 (6); *Cooley's Con. Lim.* (7th ed.), 163 et seq.)

7. The plaintiffs in error further maintained that the petition which was presented to the ordinary was to hold a district election under section 4 of the act of 1905 as amended by that of 1906, while the order of the ordinary was for a county election, and hence that the election held thereunder was void. The petition presented to the ordinary, when considered as a whole, shows that it was for a county election. It recited that it was made by the voters of the county of Emanuel; that there was no local tax for educational purposes in that county; that one was desired; and that one-fourth of the voters of the county made the application and prayed an election to be held under the act of 1905 as amended by the act of 1906, referring to the whole act by volume and pages of the published laws. It is true that the petition adds: "Said election to be ordered and held in accordance with the provisions of said act as amended, and especially the provisions of section 4; said act to be found in Public Acts of 1906, page 61 et seq." Section 4 of the amended act has reference to district elections; but it is evident from the whole petition, which was not by voters of a district and asked for no district elections, that the number of sections mentioned was a mere inadvertence or clerical mistake. The petition in its entirety was for a county election.

8. It was contended by the plaintiffs that in certain districts the election was not held at the proper precincts. The orders establishing the various precincts were not introduced, except in one instance, where an order for an election in a district several years previously referred to the place in that district where the election would be held. Evidence was introduced pro and con as to the places where the elections had been ordinarily held in different districts. Some of it by which the plaintiffs sought to show that the election was held at places other than the regular precincts, or to locate such precincts, referred to dates quite long past. Thus one witness stated his knowledge of where elections were held in a district "as late as" 1878, and another "as late as" 1880. The election under consideration was held in 1907. The allegations on this subject were denied by the answer, and, under the evidence, there was no error on the part of the presiding judge in denying an injunction on that ground. It was not shown that the election was void, or that the officers were wrongfully proceeding under it so as to require an injunction for that reason. In one case the house in which elections had been held in a certain district appeared to have been destroyed by fire, and the election was held in another house near by in full view. There was no evidence that any voters were ignorant of the place where the election was held, or were misled or failed to vote on account of the irregularity, if there was any in this respect.

9. The plaintiffs allege that the registration lists furnished by the registrars were copied from the book prepared for a white primary election, and in the Fifty-third district of the county there were no lists furnished at all, but the election managers used the voters' book, which had never been purged. It was admitted by the defendants that no list of registered voters was furnished the managers in the Fifty-third district, but it was contended that every citizen qualified to vote had full opportunity to do so; that no qualified person was deprived of that privilege by reason of any of the matters complained of, and that the vote was honestly and correctly consolidated and the result was legally and properly declared. It appears that in the Fifty-third district 125 votes were cast in favor of the local school tax and 138 against it; so that, if the returns from that district were to be thrown out altogether, it would not benefit these plaintiffs. Certainly such an irregularity would not show that the election would have resulted otherwise than it did had the list been regularly made, or that the entire election was void.

Evidence was introduced by the plaintiffs to show that the time which elapsed after the board of registrars of the county received notice of the election to be held on July 10, 1907, was so short that they did not have time to prepare and purge the registration lists of the county; that the tax collector, clerk, and ordinary furnished no list of tax defaulters, and that therefore no registration lists were made up by the board of registrars by purging the list as provided by law. The election was called on June 20, to be held on July 10. It did not appear that the registrars did not furnish lists, with the exceptions referred to above; but the contention was that the lists were not made up and purged as the law directed. This was an irregularity, a grave one; and, while the time was short, it would seem that by diligence and industry perfected lists might have been made. But these plaintiffs carry the burden of showing that the election held did not confer authority upon the local officers to assess and collect the tax as already stated. It does not appear that any unqualified voters participated in the election, or that any persons whose names should have been stricken off of the list voted, or that the election would have resulted otherwise had this irregularity not taken place. While we do not mean to approve of irregular registration lists or irregular modes of conducting an election, we can not say that the omission here referred to was such as to invalidate the entire election and authorize the plaintiffs to treat it as a nullity or as conferring no power on the local officers to act under due declaration of the result. On the subject of irregularities in regard to registration lists, see *Chamblee v. Davis*, 115 Ga. 267, 41 S. E. 691; *Mayor of Madison v. Wade*, 88 Ga. 699, 16 S. E. 21 (3); *Pickett v. Russell*, 42 Fla. 116, 28 South. 764; *Nicholls' Case*, C. S. & J. 213; *Newcomb v. Holmes*, L. & R. 57; *Finley v. Walls*, Smith, 367; *Bell v. Snyder*, Id. 247; *Paine on Elec.*, sections 356, 363; *Throop on Pub. Off.*, section 138.

It was still further urged that, when the superintendents of the precincts assembled at the county site to consolidate the vote at noon on the next day after the election, the returns from one district had not arrived, and they did not reach the consolidators until 2 o'clock, but upon arriving before the consolidation had been completed they were included in it. In another district of the county the returns were not sent for consolidation by one of the superintendents of the election, but by a letter sent to the ordinary, which he opened and delivered to the consolidators, and the votes were included in making up the consolidated returns. It was urged that these irregularities in the returns should have excluded the votes in those districts from being considered, that, if this had been done, it would have affected the result, and that, therefore, the election and the declaration thereof was void. The ordinary testified that he delivered the returns thus received to the consolidators; and there was no intimation in the evidence of any fraud, tampering with the returns, or other wrongdoing. Apparently the letter was delivered to him at the time for the consolidation, instead of to the superintendents, and he at once, upon opening it and ascertaining what it was, delivered it to them. These things were irregularities, but they were not such as to render the election void. There is a marked distinction between mandatory provisions of the law in regard to elections and those which are directory to the officials in holding them. A substantial violation of mandatory provisions affects the validity of the election. A failure of strict compliance with directory provisions of the law will not generally do so, especially where there is no fraud, and where it does not appear that the result would have been otherwise if there had been an exact compliance with the law. Section 12, Political Code, 1895, declares that "no election shall be defeated for noncompliance with the requirements of the law, if held at the proper time and place by persons qualified to hold them, if it is not shown that, by that noncompliance, the result is different from what it would have been had there been proper compliance." This section occurs in chapter 7 of the Political Code of 1895, on the subject of contested elections. Its spirit certainly applies with equal force to a case which is not strictly a contest of an election, but where it is sought to have the election and its result declared void and as conferring no authority upon public officials to act under it in the assessment and collection of a tax. (See *Jossey v. Speer*, 107 Ga. 828, 33 S. E. 718; *Weil v. Calhoun* (C. C.), 25 Fed. 865 (7, 11).) In *Gilleland v. Schuyler*, 9 Kans. 569 (8), it was said that "mere irregularities on the part of election officers, or their omission to observe some merely directory provision of the law, will not vitiate the election." In the opinion, that distinguished jurist, Judge Brewer, who was then a member of the supreme court of Kansas, said: "Questions affecting the purity of elections are in this country of vital importance. Upon them hangs the experiment of self-government. The problem is to secure, first, to the voter a free, untrammled vote; and, secondly, a correct record and return of the vote. It is mainly with reference to these two results that the rules for conducting elections are prescribed by the legislative power. But these rules are only means. The end is the freedom and purity of the election. To

hold these rules all mandatory, and essential to a valid election, is to subordinate substance to form, the end to the means. Yet, on the other hand, to permit a total neglect of all the requirements of the statute, and still sustain the proceedings, is to forego the lessons of experience, and invite a disregard of all those provisions which the wisdom of years has found conducive to the purity of the ballot box. Ignorance, inadvertence, mistake, or even intentional wrong on the part of local officials should not be permitted to disfranchise a district. Yet rules, uniformity of procedure, are as essential to secure truth and exactness in elections as in anything else. Irregularities invite and conceal fraud." He also stated that, "unless a fair consideration of the statute shows that the legislature intended compliance with the provision in relation to the manner to be essential to the validity of the proceedings, it is to be regarded as directory merely." In the statute of this State on the subject of consolidation of returns in such elections (Pol. Code 1895, sec. 72 et seq.), it is provided that the superintendents of precincts must send all certificates and other papers of the elections, including the ballots, under seal, to the county seat for consolidation, in charge of one of their number, which papers must be delivered there by 12 o'clock m. of the next day after the election. Section 73 provides that any superintendent of an election failing to discharge any duty required of him by law is liable to indictment. It does not declare that the election shall be rendered void by reason of a failure of strict compliance with the requirements of the law as to the transmission of such returns. The provision is for a criminal procedure against the officer, not for nullifying the election. We think it is quite clear that these irregularities did not authorize a court of equity to declare the election void. We thoroughly concur in the opinion of Judge Brewer that irregular conduct on the part of officials in regard to an election should neither be encouraged nor permitted. It opens too widely the door for fraud and wrongdoing which may defeat the will of the people as actually expressed at the ballot box, but the irregularities complained of in this case were at most violations of directory provisions of the law. No fraud or wrongdoing was shown, and it did not appear that the election would have resulted otherwise if there had been strict compliance with the directions of the law. See in this connection *Brockenbrough v. Cabell*, 2 Bartlett (Contested Elec. H. R. U. S.) 79; *Richards Case*, 1 Clarke & Hall (Contested Elec. H. R. U. S.) 95.

10. The plaintiffs in their pleading also make other allegations as to the unconstitutionality of the act of 1905 as amended by that act of 1906, but failed to specify the illegality so as to make any proper point for decision. They also alleged one or two other irregularities; but either there was a lack of evidence in regard to them, or there was no error on the part of the court in passing upon the evidence which was introduced by the two parties on the subject. Upon the whole case we can not say that the court erred in refusing to grant the interlocutory injunction prayed.

Judgment affirmed. All the justices concur.

VI. Maine.

[Inhabitants of Orono v. Sigma Alpha Epsilon Society (supreme judicial court of Maine, March 2, 1909), 74 A. 19.]

1. TAXATION—REAL PROPERTY—EXEMPTIONS—STRICT CONSTRUCTION.

The general rule is that all real property within the State is subject to taxation, and an exemption which is an exception to the general rule must always be construed strictly.

2. TAXATION—EXEMPTIONS—REALTY OF LITERARY AND SCIENTIFIC INSTITUTIONS.

Not all the real estate of literary and scientific institutions is exempt from taxation under the provisions of Revised Statutes, chapter 9, section 6, paragraph 2, but only such real estate as is "occupied by them for their own purposes or by any officer thereof as a residence."

3. COLLEGES AND UNIVERSITIES—NATURE AND STATUS.

Although the University of Maine is chartered by the State and fostered by the State, yet it is not a branch of the State's educational system, nor an agency nor an instrumentality of the State, but a corporation, a legal entity wholly separate and apart from the State.

4. COLLEGES AND UNIVERSITIES—NATURE AND STATUS.

By virtue of the provisions of chapter 551, page 947, Private and Special Laws 1897, the name of the corporation then known as the "Trustees of the State College of Agriculture and the Mechanic Arts" was changed to the "University of Maine," but it was also expressly provided that "the said University of Maine shall have all the rights, powers, privileges, property, duties, and responsibilities, which belong or have belonged to the said trustees." This change of name did not change the status of the institution, or work its adoption as a part of the State, or make its property the property of the State, but it remains the same distinct corporation as before.

5. TAXATION—EXEMPTIONS—LITERARY AND SCIENTIFIC INSTITUTIONS—GREEK-LETTER FRATERNITY.

The defendant, a Greek-letter fraternity, is a corporation organized under the general laws of the State for the purpose of "erecting and maintaining a chapter house on the campus of the University of Maine, and to hold and dispose of all such real estate and personal property by purchase, lease, sale or otherwise as may be necessary for all such purposes and any and all other acts and things incident thereto and necessary, proper, and convenient to the transaction of any such business of said corporation." In accordance with its chartered rights, the defendant corporation in 1904, under a parol license granted to it by the trustees of the university, erected upon land of the university in Orono, a frame building, called a chapter house, with properly equipped dining room, kitchen, study, and sleeping rooms, reception rooms, and the like, the funds therefor being provided by issuing its corporate notes to the amount of \$10,000, guaranteed by the trustees of the university. On April 1, 1907, this building was used and occupied by about 30 students of the university, who were members of an unincorporated branch or chapter of the defendant corporation known as Alpha Chapter of Sigma Epsilon Fraternity, and who had entire charge and management of the building, the furnishing of food, and the hiring of servants. The house was used, as such chapter houses usually are, as a home where the students lived while attending the university. No officer or professor of the university lived in the building, or had any control or management of it other than the general supervision and control exercised over the general student body. The expenses of maintenance, including board, fuel, service, repairs, and a certain installment of indebtedness, was apportioned among the active members of the chapter, no income or profit being divided among the stockholders, and no rental for the use of the land was exacted by the university. On April 1, 1907, the plaintiff town taxed the chapter house as real estate, under the provisions of Revised Statutes, chapter 9, section 3, and which said tax the defendant refused to pay on the ground that the property was exempt from taxation.

Held: (1) That the corporate purposes of the defendant are neither literary nor scientific, but rather they are domestic, in the nature of a private boarding house, and such is the business it carries on.

(2) That the defendant is entitled neither to exemption from taxation as an educational or scientific institution, nor immunity as an agency or instrumentality of the State, but that its property was subject to taxation in the plaintiff town.

(3) That the tax assessed against the defendant was not a tax against the University of Maine, but against a separate and independent corporation.

Report from supreme judicial court, Penobscot County.

Action by the town of Orono against the Sigma Alpha Epsilon Society. Case reported to the law court. Judgment for plaintiff.

Action of debt to recover a tax for the year 1907, assessed by the plaintiff town against the Sigma Alpha Epsilon Society, a corporation located in the plaintiff town. When the action came on for trial, an agreed statement of facts was filed, and the case was reported to the law court upon the same with the stipulations that, "if upon such facts the court is of opinion that the action is maintainable, judgment is to be entered for the plaintiffs for the sum of \$84, with interest, as claimed in the writ, otherwise the plaintiffs are to be nonsuited."

Argued before Emery, C. J., and Whitehouse, Spear, Cornish, King, and Bird, JJ. CORNISH, J.: This is an action of debt for a municipal tax for the year 1907, and comes to this court on an agreed statement of facts. The defendant admits that the assessment of the tax and all of the proceedings connected therewith are regular in form, but denies liability on the ground that the property is exempt from taxation. It appears from the agreed statement that the defendant, a Greek-letter fraternity, is a corporation organized November 13, 1903, under the general laws of this State for the purpose of "erecting and maintaining a chapter house on the campus of the University of Maine, and to hold and dispose of all such real estate and personal property by purchase, lease, sale, or otherwise as may be necessary for all such purposes and any and all other acts and things incident thereto and necessary, proper, and convenient to the transaction of any such business of said corporation."

In accordance with its chartered rights the defendant corporation in 1904, under a parol license granted to it by the trustees of the university, erected upon land of said university in Orono a frame building, called a chapter house, with properly equipped dining room, kitchen, study, and sleeping rooms, reception rooms, and the like, the funds therefor being provided by issuing its corporate notes to the amount of \$10,000, guaranteed by the trustees of the university under authority of chapter 393, page 581, Private and Special Laws 1903, to which reference will be made hereafter. On April 1, 1907, when the tax in suit was assessed, this building was used and occupied by about 30 students of the university, who were members of an unincorporated branch or chapter of the defendant corporation known as Alpha Chapter of Sigma Epsilon Fraternity, and who had entire charge and management of the building, the furnishing of food, and the hiring of servants. The house was used, as such chapter houses usually are, as a home where the students lived while attending the university. No officer or professor of the university lived in the building, or had any control or management of it other than the general supervision and control exercised over the general student body. The expenses of maintenance, including board, fuel, service, repairs, and a certain installment of indebtedness, was apportioned among the active members of the chapter, no income or profit being divided among the stockholders. The university exacted no rental for the use of the land.

Under these circumstances was the defendant corporation subject to taxation for this chapter house, which was taxed as real estate, under Revised Statutes, chapter 9, section 3?

1. The general rule is that all real property within the State is subject to taxation. (Rev. St., chap. 9, sec. 2.) Among the exemptions is "the real estate of all literary and scientific institutions occupied by them for their own purposes or by any officer thereof as a residence." (Rev. St., chap. 9, sec. 6, par. 2.) Clearly the case at bar does not fall within this exception to the general rule. This is not a tax against the University of Maine, which is conceded to be a literary and scientific institution. The university does not own the property which is the subject of taxation here. This property is owned by an independent corporation, and the owner is the party taxed and sued. The corporate purposes of the defendant are neither literary nor scientific. They are rather domestic, in the nature of a private boarding house, and such is the business that it carries on.

In *Phi Beta Epsilon Corporation v. Boston*, 182 Mass. 457, 65 N. E. 824, the plaintiff, a corporation, with chartered purposes "to encourage and pursue literary and scientific work and to provide for its members a place for holding literary and scientific meetings, as well as a place for study," while students, owned and maintained a fraternity house not on land of the institute for students of the Massachusetts Institute of Technology. The claim of exemption as being a literary or scientific institution was there set up, but the court found that the dominant use of the property was that of a boarding house for the students, and therefore held that the exemption did not apply. The opinion makes the distinction in these words: "The housing or boarding of students is not of itself an educational process any more than is the housing or boarding of any other class of human beings. The nature of the process, so far as respects its educational features, is not determined solely by the character of those who partake of its benefits. Suppose a number of students of the Institute of Technology should conclude to provide lodging and board for themselves on some cooperative plan, and for that purpose should buy and occupy a house not in any way connected with the grounds or property of the institution, could it be said that such a house was used for an educational purpose? Suppose again, that these students were incorporated for the purpose of providing board and lodging for themselves and others while students, could it be said that the use of the real estate for such purposes was an educational process?" And see *People ex rel. Delta Kappa Epsilon Society v. Lawler*, 74 App. Div. 553, 77 N. Y. Supp. 840, affirmed in 179 N. Y. 535, 71 N. E. 1136.

It is true that in these cases cited the land itself was owned by the fraternity, while in the case at bar the land was owned by the university. This fact, however, makes no legal difference in the result. Not all the real estate of literary and scientific institutions is exempt from taxation. It is only such as is "occupied by them for their own purposes or by any officer thereof as a residence." The lot on which this building was erected was occupied neither by the university nor by any officer thereof, but by an independent corporation for its own purposes, and therefore it lost the privilege of exemption which might under other conditions attach to it. Suppose, for illustration, the university had leased a lot to a citizen of Orono, who erected a boarding house or a store for students thereon, could it be contended that the boarding house or store could escape taxation merely because it rested on land that might have been used by the university for its own purposes, but in fact was not? The exemption, which as an exception must always be construed strictly, does not go so far. (*St. James Ed. Inst. v. Salem*, 153 Mass. 185, 26 N. E. 636, 10 L. R. A. 573; *Foxcroft v. Straw*, 86 Me. 76, 29 Atl. 950; *Foxcroft v. Camp Meeting Assoc.*, 86 Me. 78, 29 Atl. 951.)

2. But the defendant goes further, and claims not merely an exemption, but an immunity from taxation on the ground that the University of Maine is a branch of the state government, an instrumentality of the State itself, and therefore its property is public property, no more subject to taxation by the town of Orono than a jail, a courthouse, or an insane hospital, and still further that the relations between the university and the defendant are such that the immunity reaches to it. The doctrine of such immunity is everywhere acknowledged when the facts present an apposite case. "No exemption is needed for any public property held as such," says the court in *Directors of Poor v. School Directors*, 42 Pa. 25. The same principle is recognized in *People v. Salomon*, 51 Ill. 52; *People v. Doe*, 36 Cal. 222; *Worcester County v. Worcester*, 116 Mass. 193; *Camden v. Camden, Vill. Corp.*, 77 Me. 530, 1 Atl. 689; *Goss Co. v. Greenleaf*, 98 Me. 436, 57 Atl. 581.

The necessary facts, however, are lacking here. The University of Maine, while chartered by the State and fostered by it, especially in recent years, is not a branch of the State's educational system, nor an agency nor an instrumentality of the State, but a corporation, a legal entity wholly separate and apart from the State. The defendant seeks to class it as a state institution in the same sense as are the public schools or the normal schools, but such is not its legal status.

A comparison with the normal schools of the State is a fair one to illustrate the difference. The State maintains at the present time four normal schools, one each at Farmington, Castine, Gorham, and Presque Isle. This system originated in 1863, when a public act was passed providing for the appointment of commissioners to establish two normal schools. (Pub. Laws 1863, p. 155, chap. 210.) This act also prescribed the qualifications for admission, the principles upon which the schools should be conducted, the course of study, and made the state superintendent their superintendent under the approval of the governor and council. Four half townships of wild land were appropriated for their benefit, the proceeds from the sale to be deposited in the state treasury to the credit of the normal-school fund. In this way the State itself took on a new form of public service, and the educational system thus adopted became in fact an instrumentality of the State. No corporation was created, no separate entity was brought into existence, but the State simply put its own beneficent hand in a new direction, and the title to the property was taken in the name of the State. (Priv. and Sp. Laws 1867, p. 306, chap. 372; Resolves 1871, p. 206, chap. 281.) In the Revision of 1871 the normal-school system takes its place alongside the common school and free high school system. (Rev. St. 1871, chap. 11, secs. 83-87.) In 1873 these schools were placed under the direction of a board of trustees, the governor and superintendent of schools to be members ex officio, and the others to be appointed by the governor and council. In 1878 the Gorham Normal School was established (Pub. Laws 1878, p. 37, chap. 44), and in 1903 the normal school at Presque Isle (Priv. and Sp. Laws 1903, p. 363, chap. 223). The entire system is now regulated under Revised Statutes 1903, chapter 15, sections 109-115, and is an apt illustration of what is known as an instrumentality or agency of the State.

Contrast now the history and the legal statutes of the University of Maine. By an act approved July 2, 1862, chapter 130 (12 Stat., 503), Congress donated a certain quantity of public lands to such States as might provide colleges for the benefit of agricultural and the mechanic arts, the money to be received from the sales thereof to be invested as a perpetual fund, and the income thereof to be appropriated by each State acting as trustee to the endowment, support, and maintenance of at least one such college. Acting under this offer from the General Government, the State of Maine, by chapter 532, page 529, Private and Special Laws 1865, created certain persons therein named a body politic and corporate by the name of the "Trustees of the State College of Agricultural and Mechanic Arts," with power to establish and maintain such a college as was authorized by the act of July 2, 1862, to purchase and hold real estate, and through its trustees to have the general management of the institution. A separate and distinct corporation was established, and the separation between the college and the State thus created by the charter has always been observed and maintained. By chapter 59, page 41, the town of Orono, and by chapter 66, page 44, Private and Special Laws 1866, the city of Old Town, were authorized to grant aid to the college. No appropriation was made by the State to the institution for ten years after its incorporation, but by chapter 100, page 38, Resolves 1875, the sum of \$10,500 was donated on condition that the trustees should "not under any circumstances contract any further debts in behalf of said college." Annual appropriations have been made since that time, with the exception of 1879, and in varying amounts, the appropriations for 1880 and 1881 being \$3,000 and \$3,500, respectively, and for 1907 and 1908 \$110,000 each. Such gifts, however, can not change the character or legal status of the institution any more than smaller gifts to academies and private hospitals could make them a part of the sovereign State. In 1897 the name of the corporation was changed from the "Trustees of the State College of Agriculture and Mechanic Arts" to the "University of Maine," but it was expressly provided that "the said University of Maine shall have all the rights, powers, privileges, property, duties, and responsibilities which belong or have belonged to the said trustees." (Chap. 551; p. 947, Priv. and Sp. Laws 1897.)

This change of name did not change the status of the institution, or work its adoption as a part of the State, or make its property the property of the State. It remained the same distinct corporation as before.

Nowhere in the Revised Statutes is the University of Maine mentioned except in connection with the compensation of its trustees (Rev. St., chap. 116, sec. 12), and with the duties imposed upon the Experiment Station, which was established by chapter 119, page 88, Public Laws 1887. It is nowhere recognized as a part of the educational system of the State. Even when power was conferred upon the trustees by chapter 393, page 581, Private and Special Laws 1903, to guarantee loans for the construction of fraternity houses, it was expressly provided that "nothing herein contained shall be construed as binding the State of Maine to pay said loans, or any of them, or any part thereof, or any interest thereon; and provided further that no appropriation therefor shall be hereafter asked of the State of Maine." No language could

more plainly recognize the distinction between the corporation and the State. The legal status of this institution has been and is the same as that of the other colleges in Maine, chartered by Massachusetts or by Maine, Bowdoin College, Colby College, and Bates College. They are each doing excellent work along the lines of higher education, but not one of them is a component part of the State's educational system.

The difference between the relation of the normal schools and of the University of Maine to the State is paralleled in the difference between the various so-called public or general hospitals of the State and the two hospitals for the insane. The former are doing a necessary and charitable work and are recipients of the bounty of the State, but the latter alone represent the State itself in its sovereign capacity along charitable lines. The former are apart from the State; the latter a part of the State. Actions at law would lie against the former as against any other corporations, but not against the latter, as no suit lies against the sovereign power.

The defendant calls attention to the case of Auditor General *v.* Regents of the University of Michigan, 83 Mich., 467, 47 N. W., 440, 10 L. R. A., 376, where the court held that property owned by the defendants was owned by the State, and therefore exempt from taxation under a statute exempting all public property belonging to the State. The court, however, in that case based their decision upon the fact that by the constitution of Michigan, the regents of the university are made an agency of the State. "By these provisions," say the court, "the body corporate, which was at first the creation of the legislative will, has received the sanction of the constitution and has become a part of the fundamental law, and in some respects is not subject to legislative control or interference. It is not, however, independent of, but is a part of, the State, a department to which the education of literature, science, and the arts is confided." This strikingly different situation readily distinguishes that case from the one at bar. That decision is in entire harmony with this opinion.

3. The second step by which the defendant corporation seeks to appropriate any such immunity from taxation as might belong to the university is equally difficult of accomplishment under the facts as they exist, but it is unnecessary to consider the reasons at length, because the first step is itself impossible.

The defendant corporation is entitled neither to exemption as an educational or scientific institution, nor immunity as an agency or instrumentality of the State. Its property was subject to taxation by the plaintiff town, and in accordance with the stipulation of the parties the entry must be:

Judgment for the plaintiff for \$84, with interest, as claimed in the writ.

VII. North Carolina.

[J. R. Collier, Appellant, *v.* Commissioners of Franklin County (supreme court of North Carolina, August term, 1907), 145 N. C., 170.]

Civil action, brought to August term, 1907, of Franklin superior court by the plaintiff and in behalf of other taxpayers of Franklin County, against the board of commissioners of said county, to restrain said board from collection of a tax levied at the meeting of June, 1907, of 1 cent on the \$100 worth of property and 3 cents on each taxable poll, for the support and maintenance of the public schools of the county, in addition to and beyond the limit of 66½ cents on the \$100 worth of property and \$2 on each taxable poll levied for general state and county purposes in said county in said year. Plaintiff obtained from Hon. C. M. Cooke, judge resident of the fourth judicial district, a temporary restraining order, returnable before himself. Upon the hearing his honor dissolved the restraining order, and plaintiff appealed.

William H. Ruffin for plaintiff, appellant. F. S. Spruill, Charles B. Aycock, and R. B. White for defendant, appellee.

Brown, J: It is admitted that the questions presented by this appeal have been passed upon adversely to the contention of the defendant in two cases. (*Barksdale v. Commissioners*, 93 N. C., 473, and *Board of Education v. Commissioners of Bladen*, 111 N. C., 578.) We are now asked to review those cases and disregard them as precedents in the decision of this case. As those cases involve a construction of certain sections of the constitution relating to a question of taxation, and involve no right affecting the life, liberty, or property of the citizen, we can see no reason why they should continue to guide us, if time and reflection have convinced us that they are not correct interpretations of the letter and spirit of our organic law. We are not lacking in respect for the opinion of the eminent judges who decided those cases because we happen to differ from them in our efforts to gather from that instrument the true intent and purpose of its framers. The doctrine of *stare decisis* is worthy of all respect, and should be accorded due weight in the consideration of all cases, but the doctrine, where it does not involve the rights of the citizen, should not be carried to that extreme where it becomes an obstruction to the carrying out of other provisions

of the constitution intended to promote the progress, prosperity, and welfare of the people. Again, it must be remembered that the cases cited are somewhat weakened as authoritative precedents by dissenting opinions in each of acknowledged power and force of reason. Section 1, Article V, of the constitution directs the levying of a capitation tax by the general assembly "which shall be equal on each to the tax on property valued at three hundred dollars in cash." * * * "And the state and county capitation tax combined shall never exceed two dollars on the head." Section 6 of the same article enacts that "The taxes levied by the commissioners of the several counties for county purposes shall be levied in like manner with state taxes, and shall never exceed the double of the State tax, except for a special purpose and with the special approval of the general assembly." Article IX of the constitution, after declaring that "religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education should be forever encouraged," commands, in section 3 thereof, that one or more public schools shall be maintained at least four months in every year in each school district in each county of the State; and further provides that, "if the commissioners of any county shall fail to comply with the aforesaid requirements of this section, they shall be liable to indictment." At every session the general assembly has endeavored to give effect to this section of the constitution by providing that, if the tax levied by the State for the support of the public schools is insufficient to enable the commissioners of each county to comply with that section, they shall levy annually a special tax to supply the deficiency, to the end that the public schools may be kept open for four months, as enjoined by the constitution. Revisal, sec. 4112. It is admitted that, in the Barksdale case, this court held that the sections quoted from Article V are a limitation upon the taxing power of the legislature and control Article IX, so that if the taxes levied in accordance with that limitation and equation are insufficient to support the public schools for four months, the commissioners can not be compelled to levy more, and that the act of the general assembly requiring it is void. The Barksdale case was approved and followed in the Bladen case, and the matter so exhaustively discussed in the opinions of the court and of the dissenting judges in both cases that it is difficult to add anything new to the controversy, and it is unnecessary to repeat the arguments set forth in their opinions. We agree with the court in those cases that Article V is a limitation generally upon the taxing power of the general assembly. Nor are we called upon to hold that the tax to supplement the school fund in each county directed by the statute to be levied in case of need may be upheld as a "necessary county expense," or as a "special tax" for a special purpose. It is unnecessary, in the construction we give to the constitution, to place our decision upon any such grounds. We hold with Mr. Justice Merrimon in the Barksdale case that, while this limitation upon the taxing power of the general assembly prevails generally, it does not always prevail, and that it should not be allowed to prevent the giving effect to another article of the same instrument equally peremptory and important. We must not interpret the constitution literally, but rather construe it as a whole, for it was adopted as a whole, and we should, if possible, give effect to each part of it. The whole is to be examined with a view to ascertaining the true intention of each part and to giving effect to the whole instrument and to the intention of the people who adopted it. (Coke Lit., 381a; Cooley Const. Lim. (7th Ed.), p. 91.)

Of the two constructions which have been given it in the cases cited, we prefer to adopt that which, while properly limiting the power of taxation as to matters not embraced in the constitution, leaves it within the power of the legislature to give effect to one of its most important and peremptory commands. While the general assembly must regard such limitation upon its power to tax, as defined in many decisions of this court, when providing for the carrying out of objects of its own creation and the ordinary and current expenses of the state government, yet, when it comes to providing for those expenses especially directed by the constitution itself, we do not think the limitation was intended to apply. Although the legislature must observe the ratio of taxation between property and the poll provided in Article V, section 1, it is not required to obey the limitation upon the poll and the property tax if thereby they are prevented from giving effect to the provisions of Article IX. It is better, we think, to hold that such limitation applies to legislative creations rather than let it hinder constitutional commands. The purpose of our people to establish by taxation a general and uniform system of public schools, wherein tuition shall be free of charge to all the children of the State, and that such schools should be open every year for at least four months, is so plainly manifest in Article IX of the constitution that we can not think it possible they ever intended to thwart their clearly expressed purpose by so limiting taxation as to make it impossible to give effect to their directions. The reasons which induced the people to adopt Article IX are set forth in its first section, and they are so exalted and forcible in their nature that

we must assume that there is no article in our organic law which the people regarded as more important to their welfare and prosperity. This conviction is greatly strengthened when we find that the only criminal offense defined and made indictable by the instrument is one created especially to enforce obedience to its specific commands in respect to the establishment of four-months schools. In commenting upon this, Mr. Justice Avery well says: "It is difficult to understand why this wide departure from the usual course was made, unless we interpret it as emphasizing the intent of the framers of the constitution that the officers held subject to this unusual liability should have power coextensive with their accountability." (*Board v. Commissioners*, 111 N. C. 585.)

"Schools and the means of education shall forever be encouraged," says the constitution. Why? Because they foster religion and morality, which, with knowledge, are necessary to good government. The people expressed their willingness to incur such expense because of the great good resulting therefrom. It is hardly probable they intended by a previous enactment in the same instrument to render it impossible to carry out purposes expressed in such earnest and unmistakable language. Our people regarded the subject of education as of the highest and most essential importance, and there is no provision in our constitution which is clearer, more direct or commanding in its terms than Article IX. As said by Judge Merrimon, "Its framers, whatever else may be said of their work, seem to have been especially anxious to establish and secure beyond peradventure a system of free popular education." (*Barksdale's case*, 93 N. C. 483.) This sentiment has grown greatly in the hearts and minds of our people since that section of the constitution was adopted. So great has been its growth that they have in recent years adopted an educational qualification as a prerequisite to exercising the electoral franchise. (Constitution, Art. VI, sec. 4.) This places an additional obligation upon us to provide full educational facilities for the youth of the State, who otherwise may grow up in ignorance and be disqualified to take their just part in the administration of our government.

The construction placed upon the constitution by the *Barksdale* decision has been found to be an especial handicap upon the country schools. In the cities and towns, generally, special taxes are levied by a vote of the people, graded schools established, and the requirements of the constitution more than complied with. Very many country schools can not continue open for four months unless the tax prescribed by the act is levied. The country school is the nursery of the larger part of the bone and sinew of this land. It carries a greater responsibility than the city schools in proportion to its advantages, for, as is well said by a recent writer, "It is charged, not only with its country problems, but with the training of many persons who swell the population of cities. The country school is within the sphere of a very definite series of life occupations." Thus it is seen that Article V vitally affects all the leading purposes of the constitution. It therefore becomes more imperative than ever that, if it reasonably can be done, we should give the instrument that construction which will effectuate and carry out its wise and beneficent provisions. We think we do this when we hold that the limitation contained in Article V was not intended to restrain and trammel the general assembly in providing the means whereby the boards of commissioners of the different counties are enabled to perform the duties enjoined by the constitution and give to the people public schools in each school district for at least four months in each year. Instead of prescribing the rate of tax to be levied for the purpose of a four-months school, the general assembly properly and wisely left the amount to be levied to be determined by the county authorities of each county. In some counties it may not be necessary to levy any tax, while in others some tax, differing in amount, will have to be levied and collected in order to carry out the directions of the law. In levying the tax the boards of commissioners must observe the equation between property and poll fixed in the constitution. In estimating the tax necessary beyond the limit of 66 $\frac{2}{3}$ cents on property and \$2 on the poll to give a four-months term, no longer period may be considered. When the four-months' requirement is fulfilled the limit of taxation fixed in Article V necessarily takes effect, and anything beyond that would be void. The taxes levied and collected in pursuance of the act constitute a special fund supplemental to the general school fund, and must be devoted exclusively to procuring four-months terms of the public schools in those counties or districts only where, for lack of funds, they are kept open for a shorter period.

After careful consideration of the matter, we are of the opinion that the judgment of the superior court dissolving the restraining order should be affirmed.

HIGHER EDUCATION: APPROPRIATIONS.

VIII. Kentucky.

[James, Auditor, v. State University. Same v. Board of Regents for Eastern Kentucky State Normal School. Same v. Board of Regents for Western Kentucky State Normal School (Court of Appeals of Kentucky, Dec. 18, 1908), 114 S. W., 767.]

1. STATES—FUNDS—APPROPRIATIONS.

The state university and the state normal schools are among the educational institutions for which, under the proviso of constitution, section 184, the legislature may make appropriations without submitting the question to the voters.

2. SCHOOLS AND SCHOOL DISTRICTS—FUNDS—APPROPRIATIONS.

Neither the change of the name of the "Agricultural and Mechanical College of Kentucky" to "State University, Lexington, Kentucky," by act March 15, 1908 (Acts, 1908, p. 22), nor transfer by such act of its normal work proper to the state normal schools, the collegiate department of pedagogy being retained, destroyed its identity as a public corporation and state institution as respects the matter of appropriations therefor.

3. STATES—APPROPRIATIONS—INDEBTEDNESS.

Whether an appropriation is a debt within constitution, sections 49, 50, prohibiting the legislature contracting an indebtedness in excess of \$500,000 to meet casual deficits or failures in the revenues, or contracting a debt for any other purpose, except with a provision for levy and collection of a tax to meet it, depends on the character of the appropriation and the manner of its payment; and act March 16, 1908 (Acts, 1908, p. 22), appropriating \$200,000 for buildings for state educational institutions, to be paid in three equal sums, in December of three successive years, and \$70,000 for their current expense of the year, and for each succeeding year, will not be held to contravene such sections; it not appearing that, when the payments are to be made, there will be such a deficit.

Appeals from circuit court, Franklin County.

Three actions, one by the state university, another by the board of regents for the Eastern Kentucky State Normal School, and the third by the board of regents for the Western Kentucky State Normal School, all against F. P. James, auditor of the State. Judgments for plaintiffs. Defendant appeals. Affirmed.

SETTLE. *J.*: By an act of the general assembly of the Commonwealth of Kentucky approved March 16, 1908 (Acts 1908, p. 22), there was appropriated to the appellee, the State University, Lexington, Ky., \$200,000, or so much thereof as might be necessary for the erection and equipment of new buildings for its use, payment of its indebtedness, etc., and the further sum of \$20,000 for "the current fiscal year and for each succeeding year;" to the appellee, Eastern Kentucky State Normal School, Richmond, Ky., \$150,000, or so much thereof as might be necessary for the erection and equipment of a suitable dormitory and other buildings, and the further sum of \$20,000 for "the current fiscal year and for each succeeding year;" to the Western Kentucky State Normal School, Bowling Green, Ky., \$150,000 for like purposes, and the additional sum of \$30,000 for "the current fiscal year and each succeeding year." The act contains a provision to the effect that one third of each of the lump appropriations mentioned should be due and payable on December 1, 1908; one-third July 1, 1909; and one-third July 1, 1910. Each of the appellees demanded of the appellant, F. P. James, auditor of the State, that he issue his warrants upon the state treasurer for the payment of the annual appropriation due each for "the current fiscal year," and, in addition, the appellee, the state university, on September 8, 1908, made demand upon him for the sum of \$2,000, that amount being due the contractor upon the architect's estimate at that time on the building of civil engineering and physics, in process of erection under the direction of the board of trustees, and in accordance with the provisions of the act of the legislature. A like demand was made at the same time upon the auditor by the appellee, Eastern Kentucky State Normal School, for the sum of \$12,000, that amount being then due the contractor for work done upon the normal school buildings; but the auditor failed and refused to issue his warrants upon the treasurer in favor of the appellees, or any of them, for the sums demanded, or any part thereof. Following the refusal of the auditor to issue the warrants demanded of him, appellees instituted these several actions against him in the court below to enforce the payment of such part of the appropriations made by the act in question as they are now entitled to, respectively, and prayed that writs of mandamus be granted to compel the issue by him of warrants upon the state treasurer therefor. The appellant, auditor, filed an answer to each petition interposing several grounds of defense: (1) That the act making the appropriations is repugnant to section 184 of the state constitution. (2) That the appellee state university in adopting its present corporate name in lieu of its former one "Agricultural and Mechanical College," and in being separated from its

normal school department by the transfer of that department to the eastern and western state normal schools, as provided by the act of March 16, 1908, lost its identity as a public corporation and state institution, and became a private corporation, which deprived it of the right to longer demand or receive financial assistance from the State. (3) That neither the Eastern nor Western Kentucky State Normal School is mentioned in the constitution, nor fairly included in the provisions of section 184 of that instrument. (4) That the appropriations made appellees by the act of March 16, 1908, when added to the necessary running expenses of the state government and other appropriations made by the general assembly during its 1908 session, would exceed the annual revenues of the State by more than \$500,000, and thus create a debt against the State in contravention of sections 49 and 50 of the constitution. The three causes were consolidated and appellees filed demurrers to the answers. The demurrers were sustained by the circuit court, to which the appellant excepted. He thereupon declined to plead further, following which the lower court entered judgment declaring each of the appellees entitled to the relief sought, and directing a mandamus to issue in each of the cases against the appellant, auditor, to compel the issue by him of his warrants on the treasurer of the State for the amounts respectively demanded by appellees. Of that judgment appellant complains; hence this appeal.

We will consider the several matters of defense relied on by appellant in the order stated. With respect to the first contention made in the answers, we may say that the question of whether the appropriations in controversy are or not obnoxious to the provisions of section 184 of the constitution depends upon whether appellees are among the educational institutions for which, under the proviso of that section, the legislature is authorized to make appropriations without submitting the question to the voters of the State. Section 184 of the constitution reads as follows: "The bond of the Commonwealth issued in favor of the board of education for the sum of \$1,327,000 shall constitute one bond of the Commonwealth in favor of the board of education, and this bond and the \$73,500 of the stock in the Bank of Kentucky, held by the board of education, and its proceeds, shall be held inviolate for the purpose of sustaining the system of common schools. The interest and dividends of said fund, together with any sum which may be produced by taxation or otherwise for the purposes of common school education, shall be appropriated to the common schools, and to no other purpose. No sum shall be raised or collected for education other than in common schools until the question of taxation is submitted to the legal voters, and the majority of the votes cast at said election shall be in favor of such taxation: Provided, the tax now imposed for educational purposes, and for the endowment and maintenance of the Agricultural and Mechanical College, shall remain until changed by law." We understand the question under consideration to have been definitely settled by this court as to all the institutions named. In the case of the Agricultural and Mechanical College *v. Hager, Auditor*, 121 Ky. 1, 87 S. W. 1125, the court had under consideration the constitutionality of an act of the legislature (Acts 1904, p. 288, c. 120) which made an annual appropriation of \$15,000 to the college in question. It was contended in that case, as now insisted in the instant cases, that the appropriation was forbidden by section 184 of the constitution; but the court held that this was not true, and that as it was apparent that the college, a state institution maintained by the State by taxation and through appropriations of public funds, was in existence at the time of the adoption of the present constitution, that the constitutional convention intended the proviso in section 184 to apply to it. Therefore the act of 1904 was valid; the legislature having authority under section 184 of the constitution, and by virtue of the proviso therein, to make the appropriation in question without submitting the matter to a vote of the people. This conclusion of the court, as demonstrated by the opinion, was not only authorized by the language of section 184 of the constitution, but was supported by the opinions of various members of the constitutional convention expressed in debate over that section, and likewise by the contemporaneous practical construction given it by all the departments of the state government, including the legislature; the latter having, from time to time, covering a period of many years, made appropriations, in addition to the tax of half a cent on each \$100 in force when the present constitution was adopted, for the maintenance of the appellee institution now known as the state university. The opinion enumerated various educational institutions of the State, in addition to the appellee state university, which were at the time of the adoption of the constitution owned by the State and being maintained by it through appropriations of public funds raised in whole or in part by taxation, and declared that these institutions were also included by the proviso of section 184, which should be understood to read as if they had been named therein. The several institutions thus named, the opinion holds, the State was left free to continue by necessary appropriations, without submitting them to a vote of the people, till such time as the right to do so, in the language of the proviso

In section 184, shall be "changed by law." All that was said in the opinion, supra, in upholding the constitutionality of the appropriation of \$15,000 made by the act of 1904 to the Agricultural and Mechanical College, we may, with equal propriety, apply to the appropriations made to each of the appellees in these cases by the act of March 16, 1908.

Neither the change in the name of the appellee state university or the separation from it of its normal school department destroyed its identity as a public corporation and state institution, as claimed by appellant. The act changing the name of the "Agricultural and Mechanical College of Kentucky," to "State University, Lexington, Kentucky," expressly retains and preserves to the institution under the new name all the rights and privileges it had and exercised under its old name; and, in order that no doubt might occur or question arise as to the status of the institution after the change of name, the act provides that it shall be maintained by the Commonwealth; that no previous act making provision for it under the old name shall be affected by the change of name; that all moneys to which the institution will be entitled from the federal and state governments shall be paid to it in its present name, "State University," and that all educational or other work formerly done by the institution under the old name except what appertains to the normal school department shall be performed by it under the new one. Its work, plans, and corporate status continue as under the old name. The institution is still officered by trustees appointed by the governor of the State by and with the consent of the senate; the governor and superintendent of public instruction being ex-officio members and the former chairman of the board. In brief, the university is the creature of the State, a mere instrumentality, employed by it "to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life." An apt suggestion contained in the brief of appellees' counsel will illustrate our meaning. Would a devise made by John Smith to his daughter, Mary Smith, become void if she should by marriage change her name to Mary Jones? Certainly not. While the devise was made to Mary Smith, manifestly it was not the name of the daughter that supplied the motive for the devise, but it was the person, the fact that she was his daughter, that he had on that account an affection for her, and that she was entitled to his bounty, that moved the testator to provide for her. In becoming Mary Jones she enters upon a new and perhaps happier sphere of life, but the change of name or manner of living will not affect the devise. So, while the state institution of learning at Lexington, now called "State University," was the "Agricultural and Mechanical College" mentioned in the state constitution and in the statutes of the State previously, and even since enacted by the legislature, it is nevertheless the same institution, possessing the same corporate existence, powers, and privileges, and engaged in the same beneficent work, and what the State has done for it was not because of its name, but because of its work. The new name neither adds to or detracts from the worth or mission of this temple of the arts and sciences founded by the Commonwealth, but is more readily pronounced than the old one, and more in keeping with the relation it sustains to the cause of education and a people whose pride and sympathy are enlisted in its success. A glance at the history of the institution will suffice to show that it was designed to be conducted as and to do the work of a university. That there is a distinction between the college and the university no one can doubt. It seems to be the mission of the college "to impart to the student known facts. It deals with a body of knowledge more or less complete, which has come to the present generation as a legacy. The university, on the other hand, while covering and including the college work in its undergraduate courses, seeks to add to this known body of knowledge by original investigation and research and new discoveries in the fields of science, and thus to widen and enlarge the boundaries of human knowledge."

A university may include several colleges or departments of education, and it was for the purpose of converting the Agricultural and Mechanical College into such a university in name and thereby give it a title that would comport with its past and future work, that the legislature, by the act of March 16, 1908, changed its name to "State University, Lexington, Kentucky." Section 4 of the act provides: "That the requirements of the law of Congress approved July 2, 1862, for the instruction in these branches of learning, relating to agriculture and the mechanical arts and to military tactics, shall be carried out fully, and that these branches shall continue to be integral and indispensable courses of instruction in the state university; and that in addition to the other colleges of said university, one of the colleges shall be denominated the agricultural College, and another the College of Mechanical Arts of the State University." By the same act other departments in addition to those mentioned above, such as a department of education with collegiate rank leading to the usual degree in pedagogy, a department of law, one of medicine, and perhaps others, were added to the state university, but the addition of these departments merely enlarged the work of the institution without destroying its identity as a state institution, relieving it of state control, or affecting its right to receive financial aid from the state government. The separation

from the appellee state university of its normal school department did not affect its legal status, but merely served to transfer the normal work proper to the regular institutions created by the legislature for the purpose of conducting it, viz, the appellees Eastern and Western State Normal Schools, which are auxiliaries of the state university and better able to conduct that department of educational work than the state university. But this arrangement still left to the state university the collegiate department of pedagogy for still higher training in the art of teaching than the normal school can afford. It is patent, therefore, that the state university has yet a department of education, which, though connected with the normal work, was not transferred to the state normal school. The arrangement by which the normal school work proper is confined to the two state normal schools is apparently a most excellent one. The state normal schools constitute a part of the common school system of the State, and the object of the legislature in establishing them was to more fully carry into effect the provisions of section 183 of the state constitution by giving to the teachers of the Commonwealth such training in the common school branches, science and art of teaching, and in such other branches deemed necessary by the normal executive council as will enable them to make the schools throughout the State efficient. While the State has for quite a number of years collected by taxation an annual school fund sufficient to have had good schools for the education of her youth, in point of fact much of it has practically been wasted, and the schools have proved deficient. Perhaps one of the principal causes for this state of things has been the lack of a sufficient number of qualified and competent teachers. The two state normal schools should supply this long-felt want, and, if sufficiently equipped will do so, by educating and turning out each year young men and women specially trained and skilled in the art of teaching. A certain number may be sent every year to these institutions from each county of the State free of tuition, and it was conceded in argument that hundreds from all parts of the State are already taking advantage of the opportunities for special training afforded by these schools, in order that they may qualify themselves for the very honorable and highly useful work of teaching. Whether, as suggested in argument, the appropriations in question were inspired by an awakening upon the part of the people of Kentucky and its legislature upon the subject of education, we need not inquire; but it is manifest that with the facilities afforded by the common schools, high schools, and state university for the education of the youth of the State and those afforded by the normal schools for the training of teachers, neither inspiration nor prophetic vision is required to enable those concerned for the welfare of the Commonwealth to see that the time is near at hand when much of the illiteracy that is now a curse to the State will give place to greater general intelligence, and in consequence, greater respect for law and order. While it is true, as claimed by appellant, that neither of the state normal schools is mentioned in the constitution of the State, we do not concede, as he further contends, that they are not included by the provisions of section 184 of that instrument. On the contrary, they are, as we have already indicated, so included.

In the case of *Agricultural and Mechanical College v. Hager, Auditor, supra*, the opinion in enumerating the educational institutions of the State embraced in the proviso of section 184, named the state normal school for colored persons as one of them. In commenting on that fact in the later case of *Marsee v. Hager, Auditor*, 101 S. W., 882, 31 Ky. Law Rep., 79, which involved the construction of an act establishing a system of normal schools in the State, creating a board of regents to control them, and appropriating \$50,000 for the benefit of the schools to be established, the court said: "It was not intended by the enumeration of the various institutions set forth therein to present an exhaustive catalogue, but only to name certain institutions as illustrating the kind of educational interests which the convention intended to place within the benefits of the proviso. It was not intended to say there were no other institutions, although they were not then in the mind of the court, for whose benefit the legislature might appropriate money from the treasury. In mentioning the state normal school for colored persons as one of the institutions for which appropriations from the treasury are permissible, it was intended to convey the idea that normal schools as a department of public education, whether for white or colored persons, are among the educational purposes introduced in the proviso of section 184. It would be a serious construction, indeed, that would establish the principle that the legislature might appropriate money for the benefit of a normal school for colored teachers but not for white. At the time the present constitution was framed, the normal school for white persons was carried on as a part of the Agricultural and Mechanical College, where it still, in part, is conducted. What the act in question does in practical effect is to separate that school into three parts, leaving one as a department of the Agricultural and Mechanical College at Lexington and establishing two others at different points in the State, one at Richmond and the other at Bowling Green, Ky. There is nothing in section 184, or any other part of the constitution, to which our attention has been directed that militates against the power of the legislature to separate the normal school for white persons into

as many parts as may be deemed appropriate and to divide the appropriation between the different schools as may be thought proper. Certainly it will not be contended that the legislature lacks the power of making any appropriation it sees fit for the normal school as conducted under the auspices of the agricultural college. * * * This is conclusive of the question at bar. Normal schools are among the institutions for which, under the proviso of section 184, the legislature is authorized to make appropriations without submitting the questions to a vote of the people, and therefore the act under consideration must be held valid." The opinions in the case, *supra*, are also conclusive of the validity of the act making the appropriations sought to be recovered in the cases before us.

It yet remains to consider the fourth and final contention of appellant, which is that payment of the appropriations claimed would create a debt against the State of more than \$500,000 in excess of its revenues, which would be violative of the provisions of sections 49 and 50 of the constitution. Sections 49 and 50 were a part of the constitution of 1850. At that time the State was greatly in debt on account of internal improvements, and the proceedings and debates of the convention which framed that instrument prove that the sections in question were adopted for the purpose of restraining the legislature from further indulgence in reckless investment of the State's money and credit in internal improvements. Looking to the contemporaneous practical construction of these two sections of the constitution for guidance in arriving at a solution of the questions raised by appellant's final contention, we find that the legislature has, since the adoption of the present constitution, passed like acts to that under consideration, appropriating large sums of money to such institutions as appellees, which have been approved by the sinking fund commissioners and other executive boards of the State and audited and paid by its ministerial officers without doubt or question. The value of contemporaneous construction is well stated in *Agricultural and Mechanical College v. Hager, auditor, supra*, wherein the court, in speaking of such construction with respect to section 184 of the constitution, said: "This long and unquestioned construction coming up for actual decision at least several times each year ought to have, and by the rules of the courts does have, great weight in resolving any doubt that the words themselves may have left as to the meaning of this section." In *Eastern Kentucky Asylum, etc., v. Bradley*, 101 Ky., 551, 41 S. W., 556, the constitutionality of an act authorizing the issue and sale by the State of \$500,000 of bonds for the funding of certain indebtedness of the State, created in part on account of the several asylums for the insane, was under consideration. The court said: "This is the first exercise of authority under section 49, and, as the existence of a deficit sufficient in amount to warrant the exhaustion by the general assembly of the power conferred by the constitution has been averred, we see no good reason for denying to the general assembly the right in this act to proceed to the limit of its constitutional power." Also in the case of *Hager, auditor, v. Gast, etc.*, 119 Ky., 502, 84 S. W., 556, the court, in respect to sections 49 and 50 of the constitution, said: "These provisions of the constitution do not embrace the ordinary expenses of the government. The State may repair its blind institute, or build a road to it, to make it more accessible or conduct its ordinary affairs without making a special levy for this purpose."

The bearing of the last decision on the question involved in these cases is apparent, for, if the provisions of sections 49 and 50 of the constitution do not embrace the ordinary expenses of the government, and the State has the right to repair its institute for the blind without a special levy, surely it has the right to make an appropriation to equip or repair its state university or state normal schools without making a special levy for the purpose. It is, we think, further manifest that appropriations such as these can not fairly be said to create an indebtedness against the Commonwealth, for they may be discontinued, reduced, or changed at the pleasure of the legislature, or that body might at its next session repeal the act as to so much of the appropriations as would then remain unpaid; but these things could not be done if the appropriation were a debt. Such was the doctrine announced in the case of *Hager, auditor, v. Kentucky Children's Home Society*, 83 S. W., 605, 26 Ky. Law Rep., 1133, 67 L. R. A., 815, wherein the court, having under advisement the constitutionality of an act appropriating \$15,000 to the Kentucky Children's Home Society, said: "Nor does the appropriation create an indebtedness against the Commonwealth. It may be discontinued, reduced, or changed at the pleasure of the legislature, which would not be done if it was a debt. It is a gratuity, just as the present provision for the support of the insane and idiots is, which may be altered both as to the amount and manner of application at the pleasure of the lawmaking body. We find nothing in the act violative of the constitution. Its subject is one wholly within the sound discretion of the legislature." We may, however, concede, and do concede, that under sections 49 and 50 of the constitution the legislature has not the power to make appropriations in excess of the revenues provided by law and the cash in the treasury, whereby a

deficit of more than \$500,000 may be created. In these cases it does not appear that such a state of affairs exists because of the appropriations in dispute, as only one-third of the lump appropriations is payable in the current year. Whether, therefore, an appropriation is a debt in the meaning of sections 49 and 50 of the constitution must depend upon the character of the appropriation and the manner of its payment. The fact that the payment of all the appropriations made by the last legislature as contemplated by that body would have created a large deficit in the state treasury at the close of the last fiscal year (June 30, 1908), or when these actions were instituted, is not pertinent. That there may have been a large deficit at those times can be true, and yet a full treasury at the time the auditor should pay the appropriations to appellees, for the state revenue—that is, the bulk of it—is not paid into the treasury until the fall months, and this year the last day for the payment of taxes was changed from November 1 to December 1, thus delaying the receipt of the revenues a full month. The last auditor's report discloses that, while there was a deficit of at least \$250,000 on June 30, 1907, yet on December 1 of that year there was in the treasury over \$1,500,000. No showing was made, or could be made, by the answers of what amount would be in the state treasury December 1 or will be therein when it will be necessary to pay the several amounts now demanded by appellees; and while it is doubtless true that the expenses of the state government during the fiscal year ending June 30, 1908, have been greater than usual, as the bulk of the revenue for the year 1908 was received since the filing of appellant's answers, and much of it is yet to be collected, and as it is conceded that the revenues for 1908 will be larger than in any previous year, we will not assume that the payment of such parts of the appropriations as are now demanded by appellees, or that the payment of the remainder of the appropriations when due, will cause a deficit in the treasury or so add to the indebtedness of the State as to violate the provisions of its constitution.

An examination of the published acts of the session of 1908 will show that the act making the appropriations for the benefit of appellees was passed with an emergency clause, and that, with the exception of a small one of \$15,000, the appropriations to appellees were the first made by the legislature during that session; and if, as claimed by appellees, the State has paid some of the appropriations which were made at that session after those to appellees were made, the question may well be asked, Is it the province of the auditor, instead of paying the appropriations in the order made by the legislature, to select and pay only such of them as he may think should be first paid, and in so doing make it impracticable to pay other appropriations antedating them, because their payment would perchance create a deficit in the revenues in excess of \$500,000? We do not understand that the acts of the auditor can thus affect the constitutionality of an act of the legislature. If, however, a deficit should exist at any time, it will be time enough for the legislature in its discretion and by virtue of the authority vested in it by section 49 of the constitution to meet such casual deficit or failure in the revenue and, to the extent of \$500,000, contract a debt to pay the same.

The auditor has three years to complete the payment of the lump appropriations made the appellees by the act of March 16, 1908. Only one-third of the lump appropriation for each institution is now due, and the payment of such third is all that can be demanded by them. The amount thus claimed they are entitled to as well as the further sum of \$20,000 to the state university, a like sum to Eastern Kentucky State Normal School, and \$30,000 to the Western Kentucky State Normal School, the last-named sums being the annual allowance due the appellees, respectively, for the current fiscal year.

The judgment of the circuit court in each case is affirmed.

HIGH SCHOOLS.

IX.—Illinois.

[People v. Moore et al. (supreme court of Illinois, June 16, 1909), 83 N. E., 979.]

I. SCHOOLS AND SCHOOL DISTRICTS—HIGH SCHOOLS—PART OF SCHOOL SYSTEM—"COMMON SCHOOL."

Where a high school maintained by a district was a department of the common or free schools, maintained under the constitution, which declares that the general assembly shall provide a thorough and efficient system of free schools, whereby all the children of the State may receive a good common school education, the children of the district and of other districts of school age sustained no different relation to the high school from that sustained to any of the grades or other departments of the schools, but the entire system of schools altogether constituted the "common schools" of the district.

2. SCHOOLS AND SCHOOL DISTRICTS—PUPILS—TRANSFER—HIGH SCHOOL.

Under School Law, article 5, section 35 (Hurd's Rev. St., 1908, chap. 122, sec. 155), providing for the transfer of pupils from the common schools of one district to those of another whether in the same or another township, the directors of a district maintaining no high school were entitled to authorize certain of its pupils to attend high school in another district at the expense of the district where they resided.

3. SCHOOLS AND SCHOOL DISTRICTS—PUPILS—TRANSFER—TUITION—BURDEN OF PROOF.

In an action to recover money alleged to have been paid without authority of law for tuition of high school pupils residing in another district, from which they had been transferred, the burden was on plaintiff to show that the law regulating the transfer of pupils had not been complied with.

4. SCHOOLS AND SCHOOL DISTRICTS—TRANSFER OF PUPILS—TUITION—STATUTES.

Act May 23, 1907 (Laws 1907, p. 523), to provide free high school privileges for graduates of the eighth grade, and requiring payment of the tuition from the funds of the district of the pupil's residence only in case the parents are unable to pay the tuition, is unconstitutional, as violating constitution, article 8, section 1, requiring the establishment of a free school system for the benefit of all children in the State.

Appeal from circuit court, Vermilion County; M. W. Thompson, judge.

Action by the People against Dana W. Moore and others. Judgment for plaintiff, and defendants appeal. Reversed and remanded.

DUNN, J.: This was an action of debt, brought under section 11 of article 15 of the school law (Hurd's Rev. St., 1908, chap. 122, sec. 285), against two of the directors of school district No. 112 in Vermilion County, to recover money of their district claimed to have been paid out on their order without authority of law. A judgment was rendered against the defendants, from which they have appealed to this court on the ground that the constitutionality of a statute is involved.

District No. 112, known as the "Roselawn district," maintains a school in which grades from 1 to 8, inclusive, are taught, but does not maintain a high school. District No. 118, in the same county, but in another township, and known as the "Danville district," does maintain a high school. On April 30, 1908, the directors of the Roselawn district granted permits to 13 pupils of school age and graduates of the eighth grade, residing in said district, to attend the high school in the Danville district from May 1 to June 12, 1908. The board of education consented to accept said pupils, and they attended the high school during the time mentioned. The parents and guardians of all the pupils except two were able to pay the tuition, but the defendants, who were two of the directors of the Roselawn district, on July 9, 1908, drew an order on the township treasurer, which he paid, for the sum of \$43.90 to pay the tuition of said pupils at the rate of \$3 per month, which did not exceed the per capita cost of maintaining the high school. The judgment rendered was for \$37.50, the amount of the tuition of the 11 pupils whose parents and guardians were able to pay it.

The constitution commands that the general assembly shall provide a thorough and efficient system of free schools whereby all children of this State may receive a good common school education. The general assembly has provided by law for the establishment and maintenance of such schools. The high school maintained by the Danville district was a department of such common or free schools. (Russell v. High School Board, 212 Ill., 327, 72 N. E., 441.) The children of the district, and of other districts, of school age, sustained no relation to the high school different from that sustained to any of the grades or other departments of the school. All together constituted the common schools maintained by the district. The fact that foreign languages, the higher mathematics, and sciences were taught in the high school did not change its character from that of a common school. (Richards v. Raymond, 92 Ill., 612, 34 Am. Rep., 151; Powell v. Board of Education, 97 Ill., 375, 37 Am. Rep., 123.)

The school law has for a great many years provided for the transfer of pupils from the common school of one district to that of another, whether in the same or another township, substantially in the same manner as is now provided in section 35 of article 5 of that law (Hurd's Rev. St. 1908, chap. 122, sec. 155.) That section requires the keeping of a separate schedule for each district from which pupils are received, certifying the proper amount due the teacher from such district, computed pro rata. Where the pupils are transferred from the district of another township, as here, the schedule for such district is to be delivered to its directors, and it thereupon becomes their duty immediately to draw an order on their treasurer in favor of the treasurer of the township in which the school is taught, for the amount certified to be due. In this case written permits were given by the directors of the district of the pupils' residence, and the directors of the district to which they went consented. Whether this consent was written or not written, and whether the proper schedule was kept and certified

does not appear. If the requirements of section 35 were complied with, no reason is seen why the Roselawn district did not become liable, under this section, to pay the Danville district the amount demanded. This action is to recover money paid without authority of law, and the burden is upon the plaintiff to show that the law was not complied with, and not upon the defendants to show that it was. The testimony as to the amount paid teachers and the number of pupils in the high school was irrelevant because it applied to the time of the trial, January, 1909, and not to the months of May and June, 1908.

It is, however, insisted that the transfer of pupils from a district not maintaining a high school to the high school of a district which does maintain one is governed by the act approved May 25, 1907 (Laws, 1907, p. 523), entitled "An act to provide free high school privileges for graduates of the eighth grade." That act provides for the payment of tuition from the funds of the district of the pupil's residence only in cases where the parent or guardian of such pupil is unable to pay tuition. The terms and conditions upon which the transfer of pupils from one district to another shall be permitted are matters for the determination of the legislature. It may, if it sees fit, make different terms or conditions where the transfer is to the department of the common school known as the "high school," from those required where the transfer is to the grades lower than the high school. In making such terms and conditions, however, the same privileges must in all cases be extended equally to all children under the same circumstances. The constitutional requirement for the provision of a system of free schools is not only a mandate to the legislature, but also a limitation of its power. It can only authorize the establishment of high schools of the character of free schools, whereby all the children of the State may receive a good common-school education. The high school, as well as the lower grades, must be open to all children in the district of school age free, so that all shall have the right to an equal education therein. If this right is extended to the children of other districts it must be upon the same terms to all similarly situated. It can not be extended to different individuals at different prices, according to their ability to pay. Within the district it must be free to all. If open to nonresidents the terms must be equal to all. Since the act in question, in providing for the transfer of pupils to the high school, authorized the payment of their tuition only when their parents or guardians were unable to pay tuition, it is obnoxious to section 1 of article 8 of the constitution of the State, under which the system of free schools required to be established must be for the benefit of all the children of the State.

The judgment of the circuit court is reversed and the cause remanded.
Reversed and remanded.

X. Nebraska.

[*Wilkinson v. Lord*, treasurer of Richardson County (supreme court of Nebraska, Sept. 25, 1909), 122 N. W., 699.]

1. CONSTITUTIONAL LAW—STATUTES—PRESUMPTION OF VALIDITY.

In passing on the validity of the act which provides a four-year course of free high-school instruction for pupils residing in districts where that privilege is denied, permits them to attend properly equipped schools in other districts, and makes the home district liable for payment of tuition at the rate of 75 cents a week for each pupil, it will not be assumed without pleading or proof that the tuition fixed by the legislature will fall below or exceed the cost of educating a nonresident pupil.

2. SCHOOLS AND SCHOOL DISTRICTS—TAXATION—STATUTES—CONSTITUTIONALITY.

In directing the county superintendent of public instruction to furnish the county clerk with the necessary data for a levy, when a school district refuses to vote taxes for free high school purposes, the free high school act of 1907 (Sess. Laws 1907, p. 402, chap. 121) does not delegate to that school officer a taxing power committed exclusively to school districts under the constitutional provision that "all municipal corporations may be vested with authority to assess and collect taxes." Const., art. 9, sec. 6.

3. STATUTES—TITLES AND SUBJECTS.

A title declaring a legislative purpose to provide a four-year course of free high-school instruction for pupils residing in districts where that privilege is denied is broad enough to cover taxation for the purpose stated and legislation to prevent school districts from defeating the act by refusing to vote taxes.

4. STATUTES—AMENDMENT—IMPLICATION.

The free high school law of 1907 (Sess. Laws 1907, p. 402, chap. 121) is an independent act, and its validity must be tested by the rule that changes or modifications of existing statutes as an incidental result of adopting a new law covering the whole subject to which it relates are not forbidden by section 11, article 3, constitution, relating to the amendment of statutes. *De France v. Harmer*, 66 Neb., 14; 22 N. W., 167.

Appeal from district court, Richardson County; Pemberton, judge.

Action by Thomas M. Wilkinson against Joshua S. Lord, treasurer of Richardson County: From a judgment for defendant on sustaining demurrer to petition, plaintiff appeals. Affirmed.

DEAN, J.: The only question presented in this suit is the constitutionality of the free high school act of 1907 (Comp. St. 1907, chap. 79, subd. 6, secs. 5-8b [secs. 5494-5497b]; Sess. Laws 1907, p. 402, chap. 121). The purpose of the act is to provide a four-year course of instruction at a free high school for the benefit of pupils residing in school districts which do not afford that opportunity. To make the legislative purpose effective, a properly equipped high school in any district in the county is authorized to admit such pupils from other districts in the same county, and the home district is made liable for payment of their tuition at the rate of 75 cents a week for each pupil. All districts liable for tuition are authorized to vote taxes enough to meet the obligations thus incurred, and, if they fail to do so, the school board or county superintendent of public instruction is empowered to furnish the county clerk with the data for a levy which the latter is authorized to make. Plaintiff owns 40 acres of land in school district 42, Richardson County. Three pupils residing therein are entitled to free high-school instruction in another district under the provisions of the free high school law. On account of their tuition the obligation of their home district is \$81, but the tax authorized by the statute was not voted. On information furnished by the county superintendent, the county clerk, to raise the sum stated, made a 15-mill levy on all the taxable property in the district containing plaintiff's 40 acres of land. Plaintiff's share of the burden is 75 cents, and he brought this suit to enjoin defendant, as treasurer of Richardson County, from collecting the tax. The suit is also brought on behalf of other taxpayers similarly situated. The district court sustained a demurrer to the petition, held the free high school act valid as against plaintiff's attack, and dismissed the action. Plaintiff appeals.

1. In addition to provisions for educating at any properly equipped high school in the county all duly qualified pupils residing in districts which have not established a four-year high-school course of study, the statute declares: "Every public school district granting free public high school education to nonresident pupils under the provisions of this act shall receive the sum of 75 cents for each week's attendance by each nonresident pupil from the public-school district in which the parent or guardian of such nonresident pupil maintains his legal residence. Such public-school district is hereby made liable for the payment of such tuition." (Comp. St., 1907, chap. 79, subd. 6, sec. 6.) In attacking the statute from which the foregoing excerpt is taken plaintiff argues that the legislation contravenes the following provisions of the constitution: "The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property and franchises, the value to be ascertained in such manner as the legislature shall direct, and it shall have power to tax peddlers, auctioneers, brokers, hawkers, commission merchants, showmen, jugglers, innkeepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, vendors of patents, in such manner as it shall direct by general law, uniform as to the class upon which it operates." (Const., art. 9, sec. 1.) "The legislature shall have no power to release or discharge any county, city, township, town, or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or due any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever." (Const., art. 9, sec. 4.) "The legislature may vest the corporate authorities of cities, towns, and villages with power to make local improvements by special assessment or by special taxation of property benefited. For all other corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes, but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same." (Const., art. 9, sec. 6.)

Plaintiff's principal objection to the free high school act is that the arbitrary sum of 75 cents a week for the tuition of each nonresident pupil will fall below or exceed the cost of his instruction, and that in either event the enactment contravenes the foregoing constitutional provisions, to the effect that the legislature must adopt a system of revenue under which every person shall pay a tax in proportion to the value of his property, that the legislature shall have no power to release or commute taxes, and that all taxes for municipal purposes shall be uniform in respect to persons and property within the taxing district. Plaintiff reasons that tuition at the fixed rate of 75 cents a week, when excessive, will impose an unlawful burden on the district in which the pupil resides, and that it will impose a like burden on the school district wherein the nonresident pupil is instructed when it falls below the

cost of his high-school education. Plaintiff therefore concludes that the act can not be enforced without violating the rule requiring uniformity in the burdens of taxation and forbidding commutation of taxes. In this position plaintiff relies on *High School District v. Lancaster County*, 60 Nebr., 152; 82 N. W., 381; 49 L. R. A., 343; 83 Am. St. Rep., 525. In that case the court held that the free high school act of 1899 was void. Under the terms of section 3 thereof the county was required to pay to certain school districts maintaining high schools tuition at the rate of 75 cents a week for each nonresident pupil. The ground on which the enactment was assailed is stated in the opinion as follows: "It is argued that inasmuch as a taxpayer inside the high-school district must, under this act, pay the difference, if any, between the cost of tuition of nonresident pupils and the 75 cents per week allowed by section 3 of the act to be paid out of the general fund of the county, and must also pay his proportionate share of the 75 cents per week, with the other taxpayers of the county, in addition to bearing the whole of the expense of educating those pupils resident within the limits of the high-school district, the law violates sections 1, 4, and 6 of article 9 of the constitution." (*High School District v. Lancaster County*, 60 Nebr. 152; 82 N. W. 381; 49 L. R. A. 343; 83 Am. St. Rep. 525.)

What the court decided is stated in two paragraphs of the syllabus as follows:

"(1) The constitution of this State requires not only that the valuation of property for taxation, but the rate as well, shall be uniform.

"(2) Sections 1, 3, chapter 62, pages 290, 291, Session Laws 1899 (Comp. St. 1907, chap. 79, subd. 6, secs. 5, 7), which provide that pupils residing without the limits of high-school districts in the State may attend such schools free of charge to them, and that an arbitrary sum shall be paid out of the general fund of the county as compensation to such high-school district for such tuition, which sum may in any case fall below or exceed the cost of such tuition, contravenes sections 1, 4, and 6, article 9, of the constitution, which declare, among other things, that the legislature may provide such revenue as may be needful by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property and franchises, that the legislature shall have no power to release or commute taxes, and that all taxes for municipal purposes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same." (*High School District v. Lancaster County*, 60 Nebr. 148; 82 N. W. 380; 49 L. R. A. 343; 83 Am. St. Rep. 525.)

A critical examination of the opinion will show that the constitutionality of the act of 1899 was tested by two assumptions—the first was that 75 cents a week was insufficient to meet the expenses of educating a nonresident pupil. On the fact thus assumed the consequence is stated in the opinion as follows: "It is plain this difference must be made good by levying and collecting taxes on the property of the taxpayers resident in the school district, and this difference can not be collected from taxpayers of the whole county. Then the taxpayers within the school district will pay a greater proportion of these taxes than would those residing within the county, but outside the school district, and while the valuation of the property of those within the school district and those without it might be uniform, yet the rate of taxation for the same purpose would be higher on the property within than upon that without the school district." (*High School District v. Lancaster County*, 60 Nebr., 154; 82 N. W., 381; 49 L. R. A., 343; 83 Am. St. Rep., 525.) The second assumption was that 75 cents a week exceeded the cost of educating a nonresident pupil. On the fact assumed the result is stated in the opinion as follows: "The excess would accrue to the high school districts, and the taxpayers thereof would profit at the expense of those outside the limits of the high school district, and, in either case, the rule of uniformity prescribed in section 6 of said article of the constitution would be violated." (*High School District v. Lancaster County*, 60 Nebr., 154; 82 N. W., 381; 49 L. R. A., 343; 83 Am. St. Rep., 525.)

What would have been the effect of the free high school act of 1899 if the court had assumed the legislature was correct in estimating the cost of educating a nonresident pupil at 75 cents a week, is nowhere stated in the opinion. In considering the bearing of the case cited on the present inquiry, it is pertinent to remark that the act of 1907 contains no provision for a county tax, for a county liability, or for drawing money from the county treasury. The unit of taxation is the school district, which is required by law to educate its own pupils, and no provision is made for taxing people into her taxing districts. Plaintiff's petition shows that under the provisions of the existing law all the property in school district 42, Richardson County, was subjected to a 15-mill levy. No burden was imposed except what was necessary to educate three resident pupils at the rate of 75 cents a week for each. If this legislative estimate is accurate, it is perfectly apparent that the taxation authorized does not violate the rule that the valuation of property as well as the rate must be uni-

form. The burden rests on all property alike within the jurisdiction of the taxing district. This fully meets the constitutional requirement as to uniformity. (*Pleuler v. State*, 11 Nebr. 547, 10 N. W. 481.) It is equally clear that, if 75 cents a week is a correct estimate of the cost of educating a nonresident pupil at a high school, neither the people of the district in which the tax is levied nor the people of the district in which the high school is situated are assessed to pay obligations of another taxing district, and that the rule forbidding commutation of taxes has not been violated. From what has been said it will be observed that *High School District v. Lancaster County*, 60 Nebr. 147, 82 N. W. 380, 49 L. R. A. 343, 83 Am. St. Rep. 525, is not a precedent for holding the present law invalid, except on the assumption that the legislative estimate of 75 cents a week for educating nonresident pupils is incorrect. On a careful reconsideration of the question we are unwilling to assume without pleading or proof that tuition at the rate of 75 cents a week, as fixed by the present law, will fall below or exceed the expense of educating a nonresident pupil. An enactment of the legislative department of government should not hang in the judicial department by such a slender thread. Legislative acts are presumed to be valid. Burdens imposed by statute are presumed to be reasonable. Courts should never assume that the lawmakers will deliberately attempt to spoliolate one community for the benefit of another or pass laws without knowledge of existing conditions. In absence of proof to the contrary, courts ought to assume that the legislature acted with full knowledge of the facts upon which the legislation is based. The burden of proving that a statute contains unlawful or unreasonable terms rests upon those assailing it. The legislature has power to investigate any subject for the purpose of legislation. To ascertain the facts the resources of the government are at its command. It can explore the offices of the executive department and other repositories to ascertain conditions relating to any subject of legislation. For these reasons the trial court was correct in holding that tuition of 75 cents a week would not as a matter of law exceed or fall below the cost of educating a nonresident pupil at a high school.

2. The next point argued by plaintiff is stated in his brief as follows: "The act is void as a delegation of the taxing power vested in the legislature to the county superintendent, contrary to the express provisions of our state constitution, which limits the grant of such power to none but the corporate authorities of municipal corporations; and school districts come within that designation." By section 3 of the act of 1907 the legal voters at the annual school district meeting are authorized to vote the amount of taxes required for free high school education during the coming year. If they fail to perform that duty, section 4 authorized the school board to furnish the county clerk with a proper estimate of the necessary revenue. For failure of the school board to perform that duty, the following remedy is created by section 5: "If the district board or board of education of any public school district, wherein there are pupils entitled to and desiring free high school education as in this act provided, neglect or refuse to make and deliver the required estimate as set forth in section 4 of this act, the county superintendent of the proper county shall make and deliver to the county clerk of each county in which any part of such public school district is situated, not later than the first Monday in August following the annual school district meeting, an itemized estimate of the amount necessary to be expended by such public school district during the ensuing year for free high school education. It shall be the duty of the county clerk to levy such tax on all the taxable property of such school district the same as though such tax had been voted by the annual school district meeting." (Sees. Laws 1907, p. 406, chap. 121, sec. 5.)

Plaintiff argues the power thus delegated to the county superintendent is a violation of the following provision of the constitution: "The legislature may vest the corporate authorities of cities, towns, and villages with power to make local improvements by special assessment, or by special taxation of property benefited. For all other corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes, but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same." (Const. art. 9, sec. 6.) The amount of money to be raised by taxation for high school instruction depends on the number of pupils. The liability of the school district is fixed at 75 cents a week for each pupil. By these provisions the amount to be raised by taxation is definitely fixed by legislation, and depends on facts which the county superintendent by virtue of his office may readily ascertain. He is required to furnish facts, but not to make a levy. In the first instance the legal voters of the district are directed to obtain the necessary information and vote taxes accordingly. If they fail to do so, the school board may make and forward to the county clerk an estimate of the funds necessary for high school education. If both are derelict in the performance of their duties, the right to free high school instruction under the law is not lost, since the legislature has empowered the county superintendent to furnish the county clerk with the neces-

sary data for a levy. When provision is made by law for free high school education, children should not be deprived of that right by the contumacy of electors or officers of a school district. The right of the legislature to provide free instruction includes the power to create a remedy when electors and school officers disregard their obligations to the public. The best results of a free government can only be obtained by an enlightened citizenship. This is recognized by the constitutional provision which requires the legislature to provide "for the free instruction in the common schools of all persons between the ages of five and twenty-one years." This command of the supreme law is not defeated by the provision that "all municipal corporations may be vested with authority to assess and collect taxes." The electors and school board in district 42, Richardson County, can not within their jurisdiction put an end to the free instruction required by the constitution on the ground that the sole power to levy taxes for school purposes has been committed to them as a "municipal corporation." Judge Cooley expressed himself on this subject as follows: "Wherever a system of public instruction is established by law, to be administered by local boards, who levy taxes, build schoolhouses, and employ teachers for the purpose, it can hardly be questioned that the State, in establishing the system, reserved to itself the means of giving it complete effect and full efficiency in every township and district of the State, even though a majority of the people of such township or district, deficient in proper appreciation of its advantages, should refuse to take upon themselves the expense necessary to give them a participation in its benefits. Possibly judicial proceedings might be available in some such cases, where a state law for the levy of local taxes for educational purposes had been disobeyed; but the legislature would be at liberty to choose its own method for compelling the performance of the local duty." (2 Cooley on Taxation, p. 1299.) In any event, this court by a long line of decisions, some of which are cited in *Magneau v. City of Fremont*, 30 Nebr. 843, 47 N. W. 280, 9 L. R. A. 786, 27 Am. St. Rep. 436, is committed to the doctrine that the section of the constitution containing the provision, "all municipal corporations may be vested with authority to assess and collect taxes," is not a limitation on the power of the legislature. It is therefore unnecessary to discuss contrary holdings in other jurisdictions. In declining to adopt plaintiff's interpretation of the constitution on this point the trial court did not err.

3. Plaintiff's next objection to the act is that it violates the constitutional provision relating to titles of bills. The title in question is: "An act to provide four years of free public high school education for all the youth of this State whose parents or guardians live in public school districts which maintain less than a four-year high school course of study, and to repeal all acts and parts of acts in conflict herewith." (Seas. Laws 1907, p. 402, chap. 121.) This is challenged as insufficient within the meaning of the following provisions of the constitution: "No bill shall contain more than one subject, and the same shall be clearly expressed in its title." (Const., art. 3, sec. 11.) The operation of the act beyond the scope of the title, as understood by plaintiff, is described in his brief as follows: "It amends considerable of the existing laws. It makes a peculiar process for the raising of revenue not provided for by the title. It provides the farce of the voters of the district to vote on a proposition, and then, as a nullity of the wants or desires of the inhabitants of the district, finally commands the superintendent to impose the taxes without any representation of the taxpayers." The title declares a legislative purpose to provide a four-year course of free high school instruction for the benefit of pupils residing in districts where that advantage is denied. In making provision for free high school education the power of the lawmakers to classify subjects for the purpose of legislation was not exceeded. The legislation relates alone to the class described in the title. Raising funds by taxation was within the purpose announced. The means devised to prevent electors and officers from evading the law was also within the purview of the title. There is no surreptitious legislation anywhere in the act. All provisions in the bill "are comprehended within the objects and purposes of the act as expressed in its title," in compliance with the rule announced in *Affholder v. State*, 51 Neb. 91, 70 N. W. 544, and in *Alperson v. Whalen*, 74 Neb. 680, 105 N. W. 474. The trial court so held, and the ruling was correct.

4. When the high school act of 1907 was passed, a statute then in force required each school district to determine the amount of money required for the maintenance of schools during the coming year, and made provision for raising the necessary funds by taxation, but limited the amount to a 25-mill levy. (Comp. St. 1907, chap. 79, subd. 2, sec. 11.) Plaintiff finally argues the effect of the new act is to increase by amendment the statutory limitation of 25 mills in violation of the constitutional provision that "no law shall be amended unless the new act contain the section or sections so amended and the section or sections so amended shall be repealed." The point does not appear to be well taken. The later act extends a four-year course of free high

school instruction to pupils residing in districts where that privilege was denied. To carry out the purpose of the legislature a new class is created. The law applies alone to pupils within that class. The 25-mill limitation imposed by the former act did not apply to educational facilities applicable to the new class. The present law is on its face an independent act covering the new subject of legislation, and must be tested by the doctrine that "changes or modifications of existing statutes as an incidental result of adopting a new law covering the whole subject to which it relates, are not forbidden by section 11, article 3, of the constitution." (*De France v. Harmer*, 66 Nebr. 14, 92 N. W. 159; *Eaton v. Eaton*, 66 Nebr. 676, 92 N. W. 995, 60 L. R. A. 605.) The rule invoked by plaintiff is therefore inapplicable, and this case is not controlled by *Board of Education v. Moses*, 51 Nebr., 283; 70 N. W., 946, wherein the high school act of 1895 was held void.

There being no error in the rulings of the district court, the judgment is affirmed.
ROSE, J., not sitting.

XI. South Dakota.

[*Board of Education of City of Yankton v. School Dist. No. 19, Yankton County* (supreme court of South Dakota, June 26, 1906), 122 N. W., 411.]

1. SCHOOLS AND SCHOOL DISTRICTS—HIGH SCHOOLS—TUITION—STATUTES.

Laws, 1903, page 148, chapter 132, declares that any pupil who shall successfully complete the work of the eighth grade may continue his work up to and including the twelfth grade by attending any neighboring graded school, and the tuition shall be paid by the board of his home district, provided the home district does not provide instruction in such higher grade. *Held*, that where a pupil completed her eighth grade in her resident district, which did not afford higher instruction, the fact that such district had never authorized instruction in higher grades was sufficient reason why she should not attend school in her home district, and authorized her attendance at a neighboring high school to continue work up to the twelfth grade at the expense of her resident district.

2. SCHOOLS AND SCHOOL DISTRICTS—TUITION—QUASI CONTRACTUAL OBLIGATION.

Under Laws, 1903, page 148, chapter 132, authorizing a pupil having completed the eighth grade to attend school in a neighboring district affording a higher course of study not afforded by her home district at the expense of the latter, it was no defense to an action against a resident district to recover tuition for instruction furnished to a pupil under such circumstances that there was no contractual relation between plaintiff and defendant district; defendant being liable for such tuition under quasi contract.

Appeal from circuit court, Yankton County.

Action by the Board of Education of the City of Yankton against School District No. 19, Yankton County. Judgment for plaintiff, and defendant appeals. Affirmed.

McCoy, J.: This is a suit to recover tuition brought by the board of education of the city of Yankton against school district No. 19 of Yankton County. Edna Simonson, a minor, residing with her parents in said school district No. 19, having successfully completed the work of the eighth grade as established in the state course of study, attended the high school of the city of Yankton for the purpose of continuing her school work up to the twelfth grade. It appears that said school district No. 19 did not provide higher instruction above the said eighth grade, and that the high school of the city of Yankton maintained a higher course of study, consisting of a four years' course, known as freshman, sophomore, junior, and senior years, and that the junior year of said course corresponds to the eleventh grade in the state course of study, and that, during the school year of 1905-6, the said Edna Simonson attended said Yankton High School as a junior and received instruction in said eleventh grade; that the said Yankton High School was the nearest neighboring school in which the said higher course of study was maintained within the said county of Yankton; that the said board of education during the school year 1905-6 established a rule that all pupils attending said high school whose place of residence was outside the city of Yankton should pay a tuition of 60 cents per week. This suit was brought to recover for thirty-six weeks' tuition at the rate of 60 cents per week. The case was tried to the court without a jury, and findings and judgment were in favor of plaintiff, the board of education of the city of Yankton. The only question for consideration is whether as a matter of law the plaintiff was entitled to recover.

Chapter 132, page 148, Session Laws, 1903, among other things, provides as follows: "Any pupil who shall successfully complete the work of the eighth grade, as established in the state course of study, is privileged to continue his work up to and including the twelfth grade, by attending any neighboring graded school furnishing a higher course of study, and the tuition charge therefor shall be paid by the board of his home district, provided his home district does not provide instruction in such higher grades." It is contended by defendant that, because the electors of said district No. 19 had never authorized by vote instruction to be given in said higher grades above the eighth, plaintiff should not recover, but we are of the opinion that this fact would be a sufficient

reason why the pupil would be excused from attending school in his home district, and would furnish him grounds for attending some neighboring school where the higher grades were maintained. The fact that no provision for the higher grades had been made in the home district would furnish ground for attending the neighboring school within the same county, regardless of what caused such failure to so provide in the home district.

It is also contended by defendant that there is no contractual relation existing between plaintiff and defendant sufficient to support a cause of action for the recovery of the tuition in question. In this contention we also believe defendant to be in error. It is not necessary that there should be any contractual relation between the parties under the circumstances of this case. The relation here is "quasi" contractual only, being an obligation imposed by law without regard to the intent or assent of the party bound thereby, but which is allowed to be enforced by an action ex contractu, and includes all cases in which an obligation to pay money is imposed by a statute. The obligation to pay arises by virtue of the statute, although there is no intention or agreement of the parties to create a contract. 9 Cyc., 243; *Millford v. Commonwealth*, (144 Mass., 64; 10 N. E., 516; 2 Current Law, 285.)

Finding no error in the record, the judgment of the circuit court is affirmed. SMITH, J., taking no part in the decision.

CONSOLIDATION AND TRANSPORTATION.

XII. Indiana.

[*Lyle v. State ex rel. Smith* (supreme court of Indiana, June 22, 1909), 88 N. E., 850.]

1. SCHOOLS AND SCHOOL DISTRICTS—PUBLIC SCHOOLS—PUPILS—ATTENDANCE—STATUTORY PROVISIONS.

Acts 1907, page 444, chapter 233, section 1 (Burns' Ann. St., 1908, sec. 6422), permits the trustees to abandon a school when the average daily attendance during the last preceding school year was 15 or less, and requires such action when the average daily attendance was 12 or less. Section 2, Burns' Ann. St., 1908, section 6423, requires the trustees to provide transportation to other schools for pupils affected by such discontinuance who live more than 2 miles, and for all pupils between the ages of 6 and 12 who live less than 2 miles and more than 1 mile from the schools to which they were transferred upon the discontinuance of their own school. Upon the discontinuance of the school which relator's children attended, the driver of the conveyance procured to carry the children to another school established a uniform route along which he would meet the children at designated points every morning, no child being required to walk more than five-eighths of a mile to the wagon, and relator's child only being required to walk one-half mile, by which means all of the children on the route could be gathered in one wagon and delivered to the schoolhouse in an hour and a quarter and returned in the same length of time, while to drive to each pupil's house and return him there in the evening would require some six hours a day, and necessitate starting at an unreasonably early hour, as well as additional expenditures for wagons. *Held*, that the statute did not require that children in an abandoned district be furnished with greater conveniences than others, and the driver was not bound to carry each pupil to and from his home, and the practice of picking them up along the established route, and delivering them there in the evening to walk home, was proper.

2. STATUTES—CONSTRUCTION—REMEDIAL STATUTES.

The statute, being remedial and administrative in character, should be liberally and reasonably construed, so that the words need not be given strict legal signification if, from the context, history, and object of the statute it appears that it should be construed otherwise.

3. SCHOOLS AND SCHOOL DISTRICTS—PUBLIC SCHOOLS—OFFICERS—APPEAL FROM DECISIONS.

Under Burns' Ann. St., 1908, section 6667, allowing appeals from the decisions of township trustees relative to school matters to the county superintendent, parents who were dissatisfied with the decision of the township trustees as to any matter in connection with transportation of children to and from school upon the discontinuance of their own school, as provided for by Acts 1907, page 444, chapter 233, sections 1, 2 (Burns' Ann. St., 1908, secs. 6422, 6423), could appeal to the county superintendent to review such decision.

Appeal from superior court, Marion County; Lawson M. Harvey, judge. Mandamus by the State, on the relation of John C. Smith against Charles C. Lyle, trustee of Lawrence school township. From a judgment granting the writ, defendant appeals. Reversed and remanded, with directions to quash return to the alternative writ, and for further proceedings.

HADLEY, J.: The relator is seeking to compel by mandamus appellant, as trustee of Lawrence Township, to transport his child, who is of school age, to and from the public school. In his verified petition for the writ, and which forms a part of the alter-

tive writ, besides formal averments, among many other things he alleges that he is the father of Eather Smith, who is over the age of 6 years, and resides with him in school district No. 7; that in 1907, the daily average of pupils in attendance at the school held in said district having been less than 15, the defendant, as trustee of the township, did discontinue and abandon said school, and did transfer the pupils of said district to another school in said township located in Oaklandon; that the relator and child reside $3\frac{1}{2}$ miles from the Oaklandon school; that the defendant as such trustee has provided for the conveyance of the children from said abandoned district to Oaklandon, and has established a fixed route of travel for the carrying vehicle in going to and returning from the said school; that the relator's child is free from infectious diseases, and is entitled to be transported to and from the Oaklandon school to which she has been transferred as aforesaid, but the defendant has refused, and still refuses, to allow said vehicle to come to a point nearer than one-half mile from the relator's house to receive and discharge his said child. The relator has notified the defendant that his child is of school age, and requested that defendant cause said conveyance to drive to his said residence and there to receive and discharge the child, but the defendant fails and refuses so to do. Appellant's demurrer to the alternative writ for insufficiency of facts was overruled. Whereupon he filed a return to the writ, which, among other things, admits his official character, the abandonment of the school in district No. 7, and transfer of the pupils, including the relator's child, to the Oaklandon school as averred in the petition, and then alleges, in substance, that school district No. 7 is $1\frac{1}{2}$ miles wide east and west, and $2\frac{1}{2}$ miles in length, north and south, and the Oaklandon school is situate northeast and adjoining said district; that a highway, partly graveled, runs generally north and south through said district, about the center thereof, and from which highway no school patron lives at a greater distance than three-fourths of 1 mile, and all such patrons except three families reside from 300 yards to five-eighths of a mile therefrom; that, before the commencement of the current school year, the defendant designated and established a route to be traveled by the township wagon, commencing at the south line of said school district No. 7, and going thence northwardly over said central highway to the north boundary line of the district, thus passing within a convenient distance of all the pupils of the district, no one being obliged to travel more than five-eighths of a mile to reach the road over which the township wagon passed; that other east and west highways cross said central road which furnish the children living on either side of said central road easy and convenient ways by which to reach the wagon on said central road; that, in establishing said route, the defendant designated points nearest and most convenient to the several homes of the children entitled to transportation as places where the township wagon should stop and take them on in the morning and put them out in the evening. By such means all the children of said district are gathered between the hours of 6.45 o'clock a. m. and 8 o'clock a. m. of every school day, and transported safely, comfortably, and timely to said Oaklandon school in one wagon; that all of said children are dismissed from school at 3.55 o'clock p. m., and for three months in midwinter at 3.35 o'clock p. m., and are transported from school and discharged from the wagon at said stopping points in time for them all to reach home before 5 o'clock p. m. and before dark; that one wagon could not drive to the homes of all the children in the district in less than three hours' time, and could not reach Oaklandon in time for the opening of school without starting at an unreasonably early hour, and many of the children in going and returning home would be required to spend from five to six hours every school day in said wagon; and it is averred that, to enable him to drive to the home of each child entitled to transportation to receive and discharge such child, it will be necessary for him to provide another wagon at a great outlay of money, and which he alleges will amount to an unreasonable and unwarranted expenditure of the public funds. He further shows that he has provided a safe and comfortable conveyance for all school children in district No. 7 entitled to transportation, and that he is now engaged in transporting all of them to the Oaklandon school in safety and comfort, and without imposing upon any child hardship or inconvenience. The relator's motion to quash the return for insufficient facts was sustained, and appellant refusing to plead further a judgment for a peremptory writ of mandate was entered against him.

The only question presented may be thus stated: Is it the duty of township trustees under the provisions of the statute of 1907 (Acts, 1907, p. 444, chap. 233; secs. 6422, 6423, Burns' Ann. St., 1908) to cause school children to be taken up from and returned to their several homes in comfortable conveyances provided for that purpose? Or is that duty fulfilled by causing a proper conveyance to be punctually driven over a route so established and maintained as to bring and stop the conveyance within a reasonable distance of the dwelling place of each pupil? The first section of the act provides that all schools at which the average daily attendance during the last preceding school year has been 12 or less the trustee shall, and when the average daily attend-

ance for the same period has been 15 or less, the trustee may, discontinue and abandon the same. Section 2 reads as follows: "It shall be the duty of the township trustees to provide for the education of such pupils as are affected by such, or any former discontinuance in other schools, and they shall provide and maintain means of transportation for all such pupils as live at a greater distance than two miles, and for all pupils between the ages of six (6) and twelve (12) that live less than two and more than one mile from the schools to which they may be transferred as a result of such discontinuance. Such transportation shall be in comfortable and safe conveyances. The drivers of such conveyances shall furnish the teams therefor, and shall use every care for the safety of the children under their charge and shall maintain discipline in such conveyances. Restrictions as to the use of public highways shall not apply to such conveyances. The expenses necessitated by the carrying into effect of the provisions of this act shall be paid from the special school fund." We can not believe that the general assembly intended that school children of districts abandoned under the provisions of the statute should be relieved of effort and incident exposure in going to and returning from school; or, in other words, that it was intended to furnish children in such abandoned districts with facilities and comforts superior to those enjoyed by school children generally throughout the State. It is clear that it was intended that such children should not have less than they as a body possessed before their own school was discontinued. We must bear in mind that we are dealing with facts as they exist in Marion County within a few miles of the state capital, where the school district is small and the school revenues abundant. But the law that controls these facts must likewise be applied to and control the facts in communities of the State where the population is sparse, districts large, and revenues more limited. The eloquence of counsel for appellee with respect to the fact that this is an age of progress in the development of educational facilities and in the conservation of health is appreciated, but we are unable to acknowledge that there is reason or authority for bestowing special benefits and favors on a particular class of children. The statute is clearly remedial and administrative in character, and should receive a liberal and reasonable construction. (*State ex rel. v. Schmetzer, trustee*, 156 Ind., 528; 60 N. E., 269.) We are not, therefore, required to import to the language of the law the strict signification ordinarily warranted by the words employed if, from the context, the subject, the history, and object to be attained clearly show that the general assembly intended that it should receive a modified interpretation.

Turning, then, to the construction of the statute, it will be first noted that the children who are over the age of 12 years and reside within a distance of 2 miles and children under 12 years who reside within 1 mile of the school to which they have been transferred are not entitled to transportation by the trustee, but must make their own way to and from school. This exception is significant. It shows two things: (1) That the lawmakers did not intend to bestow special privileges and immunities upon the patrons and children of abandoned districts, and (2) that in the legislative judgment 2 miles in the one case and 1 mile in the other are not unreasonable distances for children to walk in attending the public schools. Furthermore, if it was the purpose to relieve the children of the district from the fatigue of walking, both before and after spending the day on the benches, the reason why the right was not extended to all the children of the district is obscure. It is beyond belief from these and many other considerations that present themselves, that the spirit of the statute requires the trustee to cause a conveyance to be driven to the home in the morning, and again in the evening, and take up and leave every child residing beyond the limited distances at his own doorstep, when many of the children might reduce the time en route twofold by the generally pleasurable and health-giving exercise of a reasonable walk. Being a matter of administration, the whole subject must necessarily rest largely upon the sound discretion of the trustee reasonably exercised. The determination of questions arising in the establishing of such a route relate to school matters, and, if a patron is dissatisfied with any decision of the trustee with respect to the walking distance, or any other decision relating to the transportation of children, an appeal may doubtless be had to the county superintendent under the provisions of section 6667, Burns' Ann. St., 1908. (*State v. Black*, 166 Ind., 138; 76 N. E., 882; *State v. Schmetzer*, 156 Ind., 528; 60 N. E., 269.) As a public officer, it is the duty of the trustee to furnish the children of his township of school age with reasonable facilities for attendance upon the public schools: It is just as plainly his duty to subject his township to no unnecessary or unreasonable expense. If he can, by requiring the pupils to walk a reasonable distance to meet the conveyance, comfortably, safely, and timely transport all the children of the district in one wagon or conveyance, he should not subject his township to the expense of two wagons in performing the same service. It can hardly be doubted that the mirthful play of well-clad children in the open in journeying over fences and fields, and along highways for short distances, is more hygienic and sanitary

and in the end better for the children, than to assemble and haul them in closed vehicles—sometimes too warm, sometimes too cold—for hours at a time in doubling the travel to the several homes. The health and protection of the children should in all cases be fundamentally considered. Their ages and sex, whether they must travel alone or in company, the character of the way, the facilities for rest and shelter while waiting for the conveyance in inclement weather, are all proper matters to be weighed in determining what is reasonable. It seems to us that it should not be difficult to make just and reasonable arrangements in all cases where there is a proper cooperation by the parents and trustee.

Appellant alleges, in substance, in his return to the alternative writ that the route established by him for the school wagon was so laid down that no pupil is required to walk from his home to reach the wagon exceeding five-eighths of 1 mile, and the relator's child one-half mile; that he designated points nearest and most convenient to the several homes as places for the wagon to stop, and take on and put off the children, by means of which he was enabled to gather all the children in one wagon, and deliver them at the Oaklandon schoolhouse between 6.45 and 8 o'clock a. m., or in one hour and fifteen minutes, and return all of them in the evening in substantially the same length of time, and before 5 o'clock; that to drive the wagon to each home would require three hours in the morning, and the same in the evening, thus compelling the start to be made at an unreasonably early hour in the morning and afternoon, and to provide, man, and operate another wagon would incur a heavy outlay of money and unreasonable and unnecessary burden upon the revenues of the township. We think this return to the alternative writ was sufficient, and that the peremptory writ should have been denied.

Judgment reversed and cause remanded, with instruction to overrule appellee's motion to quash appellant's return to the alternative writ, and for further proceedings in accordance with this opinion.

XIII. Missouri.

(State ex rel. School Dist. No. 1 v. Andrae et al (supreme court of Missouri, division No. 1, Feb. 25, 1909), 116 S. W., 561.)

1. CONSTITUTIONAL LAW—DEPARTMENTS OF GOVERNMENT—DIVISION OF POWERS—JUDICIAL POWER.

Under constitution, article 6, section 1 (Ann. St., 1906, p. 212) providing that the judicial power of the State as to matters of law and equity shall be vested in the supreme court, and other courts specifically named, the judicial power referred to, as a matter of law and equity, must be such powers and authority as courts and judges exercise; such as legitimately pertains to an officer in the department designated by the constitution as "judicial;" such as exercised in the ordinary forms of a court of justice, in a suit between parties with process. It does not include every authority judicial in its nature which requires the exercise of judgment or discretion.

2. CONSTITUTIONAL LAW—DELEGATION OF LEGISLATIVE POWER—SCHOOL BOARDS.

It is not a prohibited delegation of legislative power that the general assembly gives by general laws to boards of school directors and county superintendents the rights of local self-government in school matters.

3. CONSTITUTIONAL LAW—ENCROACHMENT ON JUDICIARY—CONSOLIDATION OF SCHOOL DISTRICTS.

Revised Statutes, 1899, section 9742 (Ann. St., 1906, p. 4463), relating to school district boundaries, and providing that if, on an election to consolidate districts, all the districts do not vote in favor thereof, the matter may be referred to the county commissioner, who shall appoint four disinterested persons, who, with him, shall constitute a board of arbitrators to decide on the necessity, which decision shall be final, does not contravene constitution, article 6, section 1 (Ann. St., 1906, p. 212), providing that the judicial power of the State "as to matters of law and equity" shall be vested in the specified courts.

4. CONSTITUTIONAL LAW—ENCROACHMENT ON JUDICIARY—CONSOLIDATION OF SCHOOL DISTRICTS.

Neither does the fact that by Revised Statutes, 1899, section 9739 (Ann. St., 1906, p. 4461), the school districts are a body corporate, and hence are interested parties to the proceedings before the board, make it a matter of law and equity, since the districts are bodies corporate for a public purpose only, being formed by constitution, article 11, section 1 et seq. (Ann. St., 1906, p. 296), for the establishment of free public schools.

5. SCHOOLS AND SCHOOL DISTRICTS—STATUTORY PROVISIONS—CONSTRUCTION.

A statute regulating the public school system, and providing, in Revised Statutes, 1899, section 9742 (Ann. St., 1906, p. 4463), the procedure for the organization of school districts, the formation of new districts, and consolidation of districts, will be liberally construed, since school matters are usually in the hands of persons not learned in the law.

6. SCHOOLS AND SCHOOL DISTRICTS—CONSOLIDATION OF DISTRICTS—PETITION FOR APPEAL.

Under Revised Statutes, 1899, section 9742 (Ann. St., 1906, p. 4463), relating to the consolidation of school districts, and providing that notices shall be given by the clerks of the districts on petition being received by them of the election to determine the question, and providing for an appeal to the county commissioner if all votes are not in favor of the consolidation, a petition for appeal is not insufficient in not showing that the clerk of the district voting against the consolidation posted the notices required, where it was alleged that no votes were cast in favor of the consolidation and against it, since it will be presumed that he did his duty.

7. SCHOOLS AND SCHOOL DISTRICTS—CONSOLIDATION OF DISTRICTS—TIME OF FILING APPEAL.

Under Revised Statutes, 1899, section 9742 (Ann. St., 1906, p. 4463), relating to the consolidation of school districts, and providing that if an appeal is taken to the county commissioner, it must be taken within five days after the annual meeting of the board of directors, that the county commissioners' records do not show that the petition was filed within the five days does not render the proceedings thereunder negatory, where there is no requirement in the school law that he should keep a record, as it must be presumed that he did not act on a petition not filed in time.

Error to circuit court, St. Louis County; John W. McElhinney, judge. Certiorari by the State of Missouri, on the relation of school district No. 1, in township No. 45 of range No. 3 E., against J. Will Andrae and others, to review the consolidation of school districts. From a final judgment for defendants, plaintiff brings error. Affirmed.

GRAVES, J.: At the school meeting in April in the year 1905, an attempt (whether successful or unsuccessful remains to be determined) was made to change the boundary line between two adjoining school districts in St. Louis County. The relator is one of said two, and school district No. 4, in township 45 N., range 3 E., is the other. After the school election, one district having voted for said change of boundary and the other against it, the matter was taken before J. Will Andrae, the then superintendent of public schools of said county, for determination. He is one of the defendants in error herein. The other four defendants in error are the four men appointed by him as a board of arbitration, under the provisions of section 9742, Revised Statutes, 1899 (Ann. St., 1906, p. 4463). This board of arbitration, in a written decision signed by the members hereof, found that a necessity existed for the change of the boundary line in question. The relator then made application to the circuit court of St. Louis County for a writ of certiorari, and was granted such writ. Returns were made to the writ, and after the filing of the returns, relator filed its objections thereto, and moved for judgment. These both being overruled, final judgment was entered in favor of the respondents in that court, the defendants in error here. Relator filed motion for new trial, which was overruled, and in proper time, to complete its record, filed its bill of exceptions. Thereafter, within one year, the pending writ of error was sued out in this court. J. Will Andrae having died before the hearing in this court, and proper suggestions of such death having been made, W. T. Bender, the successor in office of said Andrae, entered his appearance as defendant in error.

The numerous alleged weaknesses in the record of this inferior tribunal, the board of arbitrators, are thus set out by relator, in its objection to return and motion for judgment: "Now comes the relator, and objects to the returns herein made by the several defendants, and alleges that it appears by said returns that the proceedings of defendants, as superintendent of public schools of said county and alleged arbitrators, are void, and that defendants had no jurisdiction to hear or determine or decide the matter in controversy, as stated in the petition for writ of certiorari filed herein, and which petition is made a part hereof, for the following reasons, to wit: It does not appear by any act, record, finding, order, or judgment of said alleged board of arbitration (1) that said petition or appeal was filed with or presented to said superintendent within five days after the annual meetings in said two districts; (2) that said superintendent appointed four disinterested men, resident taxpayers of said county, to act with himself as a board of arbitration; (3) that the other defendants alleged and claimed to be said board were or are disinterested or were or are resident taxpayers of said county; (4) that said alleged board met said superintendent at any time or place in said county; (5) that said alleged board met within fifteen days after said annual school meeting; (6) that any notice of the time and place of said meeting, if any was held, was given to the relator herein; (7) that a petition desiring any change of boundary between said districts was given or received by the clerks of either of said two districts fifteen days or more prior to the annual meeting in said districts; (8) that any such alleged petition desiring a change of boundary was signed by at least 10 qualified voters residing in both or either of said districts; (9) that any such petition described the change of boundary desired; (10) that both of the clerks of said districts posted, or caused to be posted, notices of said desired change in at least five public places in both of said districts, at least fifteen days before said annual meetings; (11) that any

notices claimed to have been posted in said districts contained a description of said proposed change of boundary; (12) that either or both of said districts voted on said proposed change of boundary; (13) that any vote taken by said districts, or by either of them, did or did not favor said proposed change of boundary; (14) that the decision of said alleged board of arbitration conforms to the proposition contained in any notice of the said proposed change of boundary; (15) that the decision of said alleged board of arbitration conforms to the proposition voted on at the annual meeting of either or both of said districts; (16) that the alleged decision of said board of arbitration defines, sets out, or describes the proposed change of boundary between said districts, and that said decision is so vague and indefinite that the rights of the respective districts can not be determined therefrom; (17) that the proposed change of boundary does not leave in any district, by actual count, less than 20 pupils of school age; (18) that the proposed change of boundary between said districts is not made simply for the acquisition of territory one from the other; (19) that any necessity exists for the proposed change, or the facts upon which any such necessity is supposed to depend; and it further appears that said board of arbitration exceeded its jurisdiction in said controversy, and that said board had no jurisdiction whatever to decide said controversy for the following reasons: (20) That the statute under which said alleged board was constituted and organized is contrary to and in violation of article 6 of the constitution of the State of Missouri and the amendments thereto (Ann. St. 1906, p. 212); (21) that said board as a court attempted to act under said statute, and by said article of said constitution the legislature had, and has, no power or authority to constitute, authorize, organize, or otherwise provide for any courts other than the courts in said article enumerated. Wherefore relator asks the court, by its judgment and finding, to declare and hold the proceedings of said alleged board null and void, and to vacate the same, and to render judgment for costs against said defendants."

The case reaches this court, owing to the fact that the constitutionality of section 9742, Revised Statutes, is challenged. The portion of such section so challenged is the part which provides for the determination of appeals by the school commissioner, and a board of arbitrators and reads: " * * * But if all the districts or parts of districts affected do not vote in favor of such change, the matter may be referred to the county commissioner; and upon such appeal being filed with him, in writing, within five days after the annual meeting, he shall appoint four disinterested men, resident taxpayers of the county, who, together with himself, shall constitute a board of arbitration, whose duty it shall be to consider the necessity for such proposed change and render a decision thereon, which decision shall be final. When there is an equal division, the county commissioner shall give the casting vote. The commissioner shall at the time of the appointment of these members of this board of arbitration notify them to meet him at some convenient place in the county within fifteen days after annual school meeting, where the deliberations of the board shall take place and its decision be rendered. But in making such change, the decision in all cases shall conform to the propositions contained in the notices and voted upon at the annual meeting; and the county commissioner shall, on or before the last day of April, transmit the decision to the clerks of the various districts interested, or to the clerk of the district divided, and the said clerk or clerks shall enter the same upon the records of his or their respective district or districts." In counties where school supervision has been adopted by vote the name "superintendent" is given rather than that of "commissioner," but they perform the same duties under this statute. Defendants in error maintain: (1) That the law is constitutional; (2) that district No. 4 is vitally interested, and should have been made a party to the action nisi; and (3) that the law does not compel either the commissioner or the board of arbitration to keep a record, and that the papers and records set out in the returns are sufficient. Such are the contentions of the parties.

1. We are first met with a constitutional question, and for that reason the cause reaches this court. Hon. John W. McElhinney, the judge trying the cause nisi, filed a written opinion upon this branch of the case, in which opinion we concur. The opinion is full of research, and we shall appropriate it as and for our discussion of this phase of the case. His opinion reads:

"In this case arguments have been presented on the proposition that the provision of the school law referring the question of the necessity for the proposed separation of the district or change of boundary lines to a board of arbitrators gives to a body other than a court the determination of a judicial matter, and is therefore in violation of section 1 of article 3 of the Missouri constitution. The law as originally enacted in 1874 required that the matter be referred to the county commissioner for final decision, who should 'inform himself as to the necessity of the proposed change,' and his decision thereon shall be final. (2 Rev. St., 1879, sec. 7023.) Even if this did refer to the county commissioner the determination of a judicial matter, it was not in violation of

the constitution of 1865, then in force. By that constitution it was provided as follows: 'The judicial power as to matters of law and equity shall be vested in a supreme court, in district courts, in circuit courts, and in such inferior tribunals as the general assembly may from time to time establish.' (Const. 1865, art. 6, sec. 1.) This would seem to authorize the general assembly to refer to the county school commissioner, as an 'inferior tribunal' for this purpose, the authority to determine such questions as these. The provision of the school law in this respect continued in force after the change in the constitution in 1875, and was changed by amendment to its present form in the revision of 1899. (2 Rev. St., 1899, sec. 9742.) Its validity must be considered in its present form as governed by the constitution of 1875. That constitutional requirement is as follows: 'The judicial powers of the State as to matters of law and equity, except as in this constitution otherwise provided, shall be vested in a supreme court, the St. Louis court of appeals, circuit courts, criminal courts, probate courts, county courts, and municipal corporation courts.' (Const. 1875, art. 6, sec. 1.) The constitution also provides for appointment or election of justices of the peace, and the continuation of other courts than those named or provided for in the constitution until the expiration of the terms of office of the several judges. (Id., secs. 37, 42; Ann. St., 1906, pp. 240, 242.)

"The 'judicial powers' referred to in the constitution are those 'as to matters of law and equity.' This means such powers and authority as courts and judges exercise; such as legitimately pertain to an officer in the department designated by the constitution as 'judicial,' such as are exercised in the ordinary forms of a court of justice, in a suit between parties, with process. It does not include every authority, judicial in its nature, which requires the exercise of judgment or discretion. (State v. Hathaway, 115 Mo. 36, 48, 49, 21 S. W. 1081, and cases cited.) This body provided for in the school law is a mere board or commission, intrusted with the determination of a matter or matters in dispute like any other commission or board, but having no authority to take testimony, to swear or compel the attendance of witnesses, or to do any of the ordinary acts incident to the procedure of courts. Their qualifications are that they are to be 'disinterested men, resident taxpayers of the county.' They are not required to be sworn. (State ex rel. v. McClain et al., 187 Mo. 409; 86 S. W. 135.) They, with the school commissioner, constitute a 'board of arbitration, whose duty it shall be to consider the necessity for such proposed change and render a decision thereon.' They may consider this question in any way they think proper. There is no course mapped out for them. They may, and no doubt should, investigate for themselves, on their own observation and information, as well as by taking the statements of others who are considered to have better information; that is, they should inform themselves, as the commissioner was required by the previous law to 'inform himself.' Such are the ordinary qualifications, and such the course of procedure of ordinary boards and commissioners, and it does not appear from the law that they are to pursue any other or different course, or exercise any higher authority.

"It is argued that the school districts concerned are 'bodies corporate,' and as such are parties to a controversy, having their respective rights to be determined by the decision. This is true. But they are bodies corporate, possessing 'the usual powers of a corporation for public purposes.' (2 Rev. St., 1899, sec. 9739; Ann. St., 1906, p. 4461.) The constitution requires that 'the general assembly shall establish and maintain free public schools.' And, subject to a few restrictions, this power is left to that branch of the government. (Const., art. 11, sec. 1 et seq.; Ann. St., 1906, p. 296.) A division into districts is necessary, and the constitution expressly recognizes this. How this division shall be made is left to the general assembly. There is no restriction, except the general limitation as to legislative action. That body establishes districts, provides for boards of directors and county and city superintendents, and, under general laws, provides for local self-government in school matters. This is not deemed or considered a prohibited delegation of legislative powers. The districts exist for public purposes, under authority of the State. It becomes necessary that boundaries should be changed, and new districts should be formed. This is left in the first instance to the people themselves, speaking through their qualified voters. If they disagree, the matter is appealed to the highest school authority of the county, who under the former law informed himself as to the necessity of the proposed change, and decided it officially as a school officer, and who under the present law acts officially, and in that manner selects and calls to his assistance citizens of the county, residents, taxpayers, but disinterested, who consider the matter with him and render a decision. They are local representatives of the State, qualified by their residence and property interests, and selected by an officer on account of their fitness, to discharge a public duty with reference to the determination of a public question in which public interests are concerned. No one would contend that the legislature should itself act directly in defining and changing the boundaries of each district in the State, without delegating

this to local authorities, or that, however necessary a change may be, it can be made only by consent of both districts concerned. We must conclude that the method of appeal to the commissioner for his decision, or for his selection of a commission of interested and qualified citizens to assist him in forming a decision, is eminently appropriate. And, unless there is some prohibition in the constitution, it should be upheld. It is nothing unusual in the law to provide that such matters of public concern, and even when they affect private interests, should be considered and determined by a board or by commissioners. The selection of county seats, the location of public and private roads and drainage districts, the valuation and assessment of homesteads and exemptions are instances. Others may be cited. All these require the exercise of judgment and discretion. But no one could contend that they must be done within and by a court." With this argument and this conclusion we agree. The board of arbitration mentioned in and provided for by section 9742, supra, is a legal and constitutional body possessing the powers granted to it by said section. This contention of relator is ruled against it.

2. As to the merits of this controversy, the record before us shows the following return made by J. Will Andrae, county superintendent: "Now comes J. Will Andrae, school superintendent, and, in obedience to a writ of certiorari issued on the 29th day of April, 1905, by the circuit court of St. Louis County, Mo., and to me directed, does hereby return the finding of the board of arbitrators appointed by me, and made on the 15th day of April, 1905, and with it a petition of the board of directors of the Orville school board asking for the appointment of the board of arbitrators, a copy of the petition of the citizens of the Orville and Bonhomme school districts to the board of the Orville and Bonhomme school districts, filed April 8, 1905, and the affidavit of the board of arbitrators, all of which papers are a part of the report and finding of the said board of arbitrators."

To this was attached the following papers:

"Petition of appeal.

"ORVILLE, ST. LOUIS COUNTY, MO.,

April 6, 1905.

"To J. Will Andrae, superintendent of the public schools of St. Louis County, Mo.: Your petitioners, the undersigned board of directors of school district No. 4, township 45 N., range 3 E., in St. Louis County, Mo., would respectfully represent and show that a petition signed by 10 qualified voters of said district No. 4 and of school district No. 1, in said township and range, a copy of which is hereto attached, marked 'Exhibit A,' was, on the 13th day of March, 1905, presented to the respective clerks of said school districts Nos. 1 and 4, asking that the question of changing the boundary line between said districts, as in said petition prayed for, be submitted to the qualified voters of said respective districts at the annual meetings, to be held in said respective districts on Tuesday, April 4, 1905. That the district clerk of said district No. 4 caused 5 notices to be posted up in said district, in as many public places, at least 15 days before the 4th day of April, 1905. Which said notices contained a copy of said petition, and notified the qualified voters of said district that the question of changing the district or dividing line between said districts as prayed for in said petition would be submitted to the qualified voters of said respective districts at the annual meetings to be held in said respective districts on Tuesday, April 4, 1905. That at said annual meeting held in said district No. 4 upon the question of changing said boundary line 24 votes were cast in favor of the proposed change and 1 vote against said proposed change. That in said school district No. 1 no votes were cast for the proposed change and 23 votes were cast against said proposed change. Wherefore the undersigned board of directors of said school-district No. 4, township 45 N., of range 3 E., would respectfully appeal said proposition to you as superintendent of the public schools of said county of St. Louis, Mo., and pray that you inquire into and determine, as the law directs, the necessity of said proposed change in said boundary line, and that the same be granted as prayed for in said petition. [Signature omitted.]"

"Petition and notice for change of boundary.

"ST. LOUIS COUNTY, MO., March 13, 1905.

"To the clerk and board of directors of school district No. 1, in township 45 N. of range 3 E., in the county of St. Louis and State of Missouri: You are hereby notified that the petition hereto attached has been received by the clerk and board of directors of school district No. 4, in township 45 N. of range 3 E., in St. Louis County, State of Missouri, and is delivered to you by order of the board of directors of said district No. 4, a duplicate thereof remaining on file with me as clerk of said district No. 4. Walters S. Ficke, clerk of school district No. 4, township 45 N. of range 3 E., in St. Louis County, Mo."

Petition to change boundary line between districts No. 1 and No. 4, township No. 45 N., range 3 E., in St. Louis County, State of Missouri.

"To the qualified voters of school district No. 4, township No. 45 N., range 3 E., and of school district No. 1, township No. 45 N., of range 3 E.: The undersigned petitioners, qualified voters and taxpayers of district No. 4 and district No. 1, township No. 45 N., range 3 E., would respectfully pray that the boundary line between school district No. 1, township No. 45 N., range 3 E., and school district No. 4, township No. 45 N., range 3 E., all in St. Louis County, Mo., be changed so that the following tracts of land be taken from said school district No. 1 and added to said school district No. 4, as follows, to wit: [Description of the tracts of land, 10 in number, the writer omits for brevity.] This change of boundary line as above prayed for is not asked for the mere 'acquisition of territory' or the 'acquisition of revenue,' but because the land in question belongs to the patrons of school district No. 4, and the diversion of their taxes to district No. 1 works a grievous hardship and injustice both to the patrons and children of district No. 4. It is also asked for the purpose of bringing into said district No. 4 certain children who now attend the school in district No. 4, because of the convenience thereto. [Signed] Chas. Koeving and eighteen others."

"Affidavit.

"We, the undersigned, having been appointed by the superintendent of public schools of St. Louis County, Mo., as members of a board of arbitration to consider the necessity for the change of the boundary line between school districts Nos. one (1) and four (4) in township forty-five north, of range three east, do solemnly swear that we are disinterested resident taxpayers of said county of St. Louis, and that we will do and perform the duties required of us as members of said board according to law and to the best of our ability. [Signatures and jurat omitted.]"

"Arbitrators' decision.

"CLAYTON, Mo., April 15, 1905.

"We, the undersigned, Charles Cunningham, John P. Ossenfort, John D. Ripley, and John Zimmerman, having been appointed by the superintendent of public schools of St. Louis County as members of a board of arbitration or appeals to consider the necessity for the change of the boundary line between school districts numbers one and four (4) (1) in township 45 north, of range 3 east, as prayed for in the petition hereto attached, and made a part of this report and finding, assembled at the courthouse in Clayton, the county seat of said county at 10 a. m., Saturday, April 15, 1905, and after being duly sworn, as shown by the affidavit hereto attached, together with the superintendent of public schools of said county, heard all of the evidence offered by both of said school districts, both for and against said proposed change, and, after duly considering all of said evidence, we find that a necessity does exist for the change as asked for by said petition, and do therefore find that said change should be made according to said petition, and do therefore sustain the appeal. [Signatures omitted.]"

These instruments constitute all the records in the office of the county superintendent, and the arbitrators had no records or papers whatever. The motion for judgment upon the returns challenged the sufficiency of these records, and such sufficiency is the question for our consideration. Relator says that there is a failure to show any authority in the superintendent and the arbitrators to act, and therefore their action is a nullity. We can not concur in the contention made by the relator. The petition for appeal is the document upon which the superintendent first acts. If this petition shows that there has been a valid election held in the two interested districts upon the question submitted, and that one district voted in favor of the proposition and the other against it, and this appeal is taken within five days, then the superintendent acquires jurisdiction of the matter and can act. Does this petition so show? We think so. It shows that the petition for the change of boundary line (which is good upon its face) was presented to the respective clerks on March 13, 1905. It shows that the clerk of district No. 4 posted up five notices, with the petition attached; that such act was done more than fifteen days prior to April 4, 1905, the date of the annual school meeting; that at such meeting 24 votes were cast in favor of the proposition and 1 vote against it. Thus far there is no question. As to district No. 1 the petition only says "that in said school district No. 1 no votes were cast for the proposed change, and 23 votes were cast against said proposed change." It will be noticed that it does not aver that the notices were posted in this district, but it does aver that a vote was taken. It previously averred a proper delivery of the petition to the clerk of district No. 1 on March 13. Under Revised Statutes 1899,

section 9742, it was the duty of the clerk of district No. 1 to post these notices upon the receipt of the petition. It is presumed that this officer did his duty, and the fact that the proposition was voted upon lends color to the view that he did perform his duty. Whilst this averment is not just what it might be, yet we think when the whole context of the appeal paper is considered it is sufficient. These matters must be given a liberal construction. Upon this subject, Fox, P. J., in *State ex rel. v. Job*, 205 Mo., loc. cit. 34, 103 S. W., 502, has well said: "While the statute controlling and regulating the public school system of this State, and providing for the organization of school districts and the forming of new districts, and the change of boundary lines in other districts, should be substantially complied with in order to effect the purpose sought under the law, yet the proper and prompt administration of such law is of such paramount importance to the public that the provisions of the statute providing for the settlement of disputes arising in the organization of school districts or the forming of new districts should receive at the hands of the court a reasonable and liberal construction. It is but common knowledge that matters pertaining to the interests of the public schools, in nearly all the districts of this State, rest with plain, honest, worthy citizens not specially learned in the law, and if we are to look at all times for a strict and technical compliance with the statute, then we confess that numerous districts in this Commonwealth would fail of their purpose, for the reason their organization did not meet such strict and technical requirements. Under our public school system and the law regulating it new school districts are constantly being formed and old ones divided and changed. Therefore what was said by this court in *State ex rel. v. Town of Westport*, 116 Mo., loc. cit. 595, 22 S. W. 888 [in which case it was sought to annul the incorporation of a municipality], may be very appropriately applied to the case at bar."

But it is urged that the record fails to show the filing of the petition in appeal within five days, and for that reason there is a failure to show jurisdiction. So far as the record before us is concerned there is no file mark upon this paper, nor did the superintendent keep a record showing the date of the filing. The instrument itself shows the date of April 6, 1905, and the annual meeting was upon April 4, 1905. In abstracting the record the relator has omitted the jurat to the oath of the arbitrators, the date of which might, or might not, tend to show the date of the receipt of this petition in appeal. For instance, had the jurat shown the qualification of these arbitrators within five days from April 4 it would have been a strong circumstance tending to show when the paper was received. Of course they did not have to be appointed within that time, nor did they have to take an oath. (*State ex inf. v. McClain*, 187 Mo. 409, 86 S. W. 135.) But it has been said that no extended record is required in cases of this kind. Thus in *School District v. Hidgin*, 180 Mo., loc. cit. 79, 79 S. W. 151, this court said: "The only evidence of the formation and creation of a new school district in this State, when it has been done, as in the case of plaintiff district, out of parts of two or more old contiguous districts, by the action of the county school commissioner and the board of arbitration called to his assistance, is that a decision to so form the new district is made and determined; and thereafter the commissioner, on or before the last day of the following April of that year, transmits the decision to the clerks of the various school districts interested or affected by the formation of the new district, and that said clerks enter the same upon the records of their respective districts. This may be thought a rather vague and uncertain evidence of the corporate existence of so important a public body as a school district, but the statute has not provided nor required anything more definite or formal by way of an announcement of its formation and creation, or as a record evidence of its right to continued existence as a corporation, and as such the citizens and the courts must recognize it until its life and authority have been assailed and overthrown by the State in a direct proceeding by quo warranto to accomplish that purpose." And in *School District v. Pace et al.*, 113 Mo. App., loc. cit. 140, 87 S. W. 582, the St. Louis court of appeals says: "It is contended by respondent that the certificate made by the board of arbitrators, and transmitted to the clerks of the four districts affected, constituted the entire record of the board of arbitrators. If this question was one of first impression we would be inclined to hold that the record of these tribunals is composed of the petition or petitions presented to the clerk or clerks of the district or districts and the notices posted for the election; for the reason that upon these documents depends the jurisdiction of the arbitrators to hear the appeal, and from them only can it be ascertained whether or not jurisdiction was conferred upon the arbitrators to act. The school statutes are silent as to what disposition shall be made of the documents. Notwithstanding their importance, the statutes made no provision for their custody or perpetuation. The only record the board of arbitration is required by the statutes to make is to reduce its decision to writing, sign it, and hand it over to the commissioner, who is required to

transmit it to the clerks of the districts affected." The opinion cites and quotes from the *Hidgin* case, *supra*.

It is not necessary for the board to disclose by what means it arrived at the decision reached, nor from what, if any, evidence it was deduced. The statute says: "He shall appoint four disinterested men, resident taxpayers of the county, who, together with himself, shall constitute a board of arbitration, whose duty it shall be to consider the necessity for such proposed change and render a decision thereon, which decision shall be final." Of this statute, our courts have said that it only meant a mere informal investigation as to the propriety of such change of boundary lines. (*State ex rel. v. Job*, 205 Mo., loc. cit. 33, 103 S. W. 493; *State ex rel. v. Gibson*, 78 Mo. App. 170; *School District v. Pace et al.*, 113 Mo. App. 141, 87 S. W. 580.) If, as appears to be the law, the superintendent is required to keep no records of his proceedings, then the absence of a record as to the filing of the petition for appeal within five days is not fatal, because this official is presumed to have followed the law, and would not have proceeded with the case unless such petition had been filed within time.

The written decision of the arbitrators, when taken in connection with the other document therein referred to and on file with the board of arbitrators, is valid upon its face, and fully meets the requirements of the law. So that upon the merits the judgment nisi, was correct; and, as we have indicated in the preceding paragraph that such a board had a legal existence under the laws and our present constitution, it follows that this judgment should be affirmed, and it is so ordered. All concur.

HEALTH REGULATIONS—VACCINATION.

XIV. Missouri.

[*State ex rel. O'Bannon v. Cole et al.* (supreme court of Missouri, May 22, 1909), 119 S. W., 424.]

1. SCHOOLS AND SCHOOL DISTRICTS—REGULATION—RULES—SMALLPOX—VACCINATION.

Revised Statutes 1899, section 9759 (Ann. St. 1906, p. 4476), vests the government of the schools in a district in a board of directors of three members, and section 9764 (p. 4478) authorizes the board to make all needful rules and regulations for the government of the schools. *Held*, that such board could make and enforce rules excluding from school all children who had not been externally vaccinated, whenever a smallpox epidemic either existed or was threatened in the district.

2. SCHOOLS AND SCHOOL DISTRICTS—SCHOOL LAW—COMPULSORY ATTENDANCE.

Parents of school children could not be guilty of violating the compulsory school act (Laws 1905 p. 146; Ann. St. 1906, secs. 9982[1]-9982[9]) in refusing to have their children vaccinated externally in accordance with a rule of the board of school directors, which was a condition precedent to their right to attend school during a smallpox epidemic existing or threatened in the district.

3. SCHOOLS AND SCHOOL DISTRICTS—PUPILS—RIGHT TO ATTEND SCHOOL—VACCINATION—COMPULSORY SCHOOL LAW.

The compulsory school law (Laws 1905, p. 146; Ann. St. 1906, secs. 9982[1]-9982[9]), requiring school attendance by children of school age, did not preclude the school directors of the district from requiring, during a smallpox epidemic, existing or threatened, that no child not externally vaccinated should be permitted to attend school.

4. SCHOOLS AND SCHOOL DISTRICTS—REGULATIONS—VACCINATION—STATUTES.

Revised Statutes 1899, section 9766 (Ann. St. 1906, p. 4479), prohibits children affected with a contagious or infectious disease, or one exposed thereto and liable to transmit the same, from attending public schools, and provides that the child may be examined by a physician, and excluded so long as there is danger of transmitting the disease, declaring that the parents' refusal to permit the child to be examined shall justify its exclusion, and, if the parent or guardian persists in sending a child to school, he shall be guilty of a misdemeanor. *Held*, that such section applied to children actually diseased or exposed to contagious or infectious diseases and did not prevent a board of school directors from forbidding attendance of nonvaccinated children during an epidemic, existing or threatened, of smallpox.

Burgess and Fox, JJ., dissenting.

In Banc. Appeal from circuit court, Pettis County; Louis Hoffman, Judge. Mandamus by the state, on the relation of J. E. O'Bannon, against H. B. Cole and others, constituting the board of school directors of Sedalia. Judgment for relator, and respondent's appeal. Reversed and remanded, with directions.

GRAVES, J.: Relator is a resident taxpayer of the city of Sedalia, and of the Sedalia school district. He is also the father of two children, aged between 8 and 14 years, which were excluded from the public schools of said district by reason of the action

of the defendants, who constitute the board of directors of the defendant school district of the city of Sedalia. The board of directors of said school district on December 4, 1908, made the following order: "Whereas, it has come to the knowledge of the board of education that smallpox exists within the school district, that they deem it necessary that all children attending school who have not been vaccinated must be vaccinated within thirty days." On January 8, 1909, said board made the following additional order: "On motion the following resolution was unanimously adopted: The board will not accept a certificate of vaccination unless the physician does state that the child has been vaccinated with vaccine virus, and all children who have had smallpox must bring a certificate from the physician in attendance to that effect; and, where such certificate can not be procured, then the parent or guardian must make affidavit that such child has had the smallpox. Any child who has been vaccinated as many as two times without taking a certificate from the physician will be accepted. On motion Doctor Cole was authorized to purchase vaccine points to vaccinate poor children; the bill to be paid by the board." And on January 12, 1909, the records of said school district show the following additional order: "Called meeting of the board of education held at the office of J. T. Montgomery. Meeting called to order by the president. Present: William H. Powell, W. M. Johns, Doctor Cole, Charles Hoffman, J. T. Montgomery. The president stated the object of the meeting was for the purpose of taking further action on the question of vaccination, and that he had been informed by the superintendent that certain doctors had been vaccinating school children by giving powders internally and giving them certificates that they had been vaccinated internally with vaccine virus. Doctor Barnum was present and requested to be heard on the subject, which was granted, and Doctor Barnum stated that he had been vaccinating school children by giving the vaccine virus internally, and that such treatment would render the patient immune from smallpox. On motion the following resolution was passed: That no certificate of vaccination shall be received unless the same states that the person was vaccinated externally with vaccine virus. There being no further business, the board adjourned."

Relator's two children were excluded from the schools of the district in January, 1909, under the orders aforesaid, and because they had not been vaccinated as by said orders required. Upon their exclusion the relator instituted this action by mandamus in the circuit court of Pettis County to compel the defendants to reinstate his children as pupils in said schools, and to cancel and annul the alleged illegal orders aforesaid. After pleading certain facts, the petition of relator concludes thus: "Wherefore, the premises considered, the plaintiff, at the relation of J. E. O'Bannon, prays the court to issue its writ of mandamus, directed to the said defendants, and that they be directed and compelled to admit the relator's said children to the said school in the said city of Sedalia in the appropriate rooms, and that they be directed and compelled by the order and writ of this court to cancel, annul, and set aside said illegal order and have such other and further allegations as to the court may seem proper in the premises." Defendants made due return to the alternative writ issued upon relator's petition, and by reply filed the issues were duly made up, and the case proceeded to trial. There is little dispute as to the facts. From the evidence it appears: That smallpox has been prevalent in the city of Sedalia, which city is within the school district; for at least eight years, that at the time the first order was made there were 27 cases of smallpox in said city; that a year or so previous smallpox had been so prevalent that the state board of health threatened to take charge of the city; that there had been 500 to 600 cases within the past eight years; that at the Missouri, Kansas and Texas Hospital, within said city, there was a pest ward, and there were smallpox patients treated there every year; that there were cases of smallpox in the city to the extent of two weeks of the trial of the case nisi. Upon the trial the alternative writ was made peremptory, and by the judgment and decree of the court the order of December 4, 1908, supra, and all subsequent orders of the school board were declared null and void, and defendants directed to set them aside and to forthwith admit relator's children to said school. Judgment also went against defendants for costs. From such judgment defendants, after unsuccessful motions for new trial and in arrest of judgment, have duly appealed to this court.

1. Appellants contend that the board of directors had the inherent right to promulgate and enforce the orders and rules in question, and they further contend that they have that power under the general statutory provisions. By section 9759, Revised Statutes, 1899 (Ann. St. 1906, p. 4475), it is provided: "The government and control of the district shall be vested in a board of directors composed of three members, who shall be citizens of the United States, resident taxpayers and qualified voters of the district, and who shall have paid a state and county tax within one year next preceding his or their election." And by section 9764, Revised Statutes, 1899 (Ann. St. 1906, p. 4478), it is provided: "The board shall have power to make all needful rules

and regulations for the organization, grading, and government in their school district—said rules to take effect when a copy of the same, duly signed by order of the board, is deposited with the district clerk, whose duty it shall be to transmit, forthwith, a copy of the same to the teachers employed in the schools; said rules may be amended or appealed in like manner.”

In this contention we agree with the appellants. The precise question has never been before this court, but has been before the St. Louis court of appeals in the case of the matter of the application of Rebenack for a writ of mandamus against the board of education of the city of St. Louis (62 Mo. App. 8). This court, however, has always recognized the right of the school boards of the State to make reasonable rules for the regulation of their respective schools. (*Deskins v. Gose*, 85 Mo. 485, 55 Am. Rep. 387; *King v. School Board of Jefferson City*, 71 Mo. 628, 36 Am. Rep. 499; *Dritt v. Snodgrass*, 66 Mo. 286, 27 Am. Rep. 343.) In the Rebenack case, *supra*, Judge Rombauer, of the St. Louis court of appeals, had to deal with the exact question before us. In that case the rules of the school board excluded children from attending the public school without satisfactory evidence that such children had been vaccinated. Rebenack's children were excluded under this rule, and by mandamus he sought to reinstate them. The charter provisions with reference to the board of education gave such board power “to make all rules, ordinances, and statutes for the government and management of such schools and property, so that the same shall not be inconsistent with the laws of the land.” One of the laws of the land then in force and applicable to St. Louis was section 9765 (p. 4479), relied upon by respondent in this case, and discussed later in this opinion. The rule was held to be a reasonable one, and it was further held to be within the power granted by the charter as above quoted. The grant in our statute (Rev. Stat. 1899, section 9764 [Ann. St. 1906, p. 4478]) is fully as comprehensive and broad as is this charter grant of powers. The Rebenack case has been cited with approval in the following cases: (*Blue v. Beach*, 155 Ind., loc. cit. 138, 56 N. E. 89, 50 L. R. A. 64, 80 Am. St. Rep. 195; *Commonwealth v. Pear*, 183 Mass., loc. cit. 246, 66 N. E. 719, 67 L. R. A. 935; *State ex rel. Freeman v. Zimmerman*, 86 Minn., loc. cit. 358, 90 N. W. 783, 58 L. R. A. 78, 91 Am. St. Rep. 351; *Hutchins v. Durham*, 137 N. C., loc. cit. 70, 49 S. E. 46; *State ex rel. Cox v. Board of Education*, 21 Utah, loc. cit. 415, 60 Pac. 1013.)

By section 9759, *supra*, the government and control of the district is vested in the board of directors. We have here a broad and general grant, as do we also in section 9764, *supra*. We have no doubt that, in the event of a threatened epidemic of smallpox, such boards can pass a rule excluding all pupils who have not been vaccinated. That a person who has never been vaccinated is subject to the contagion of smallpox is general knowledge. That vaccination has reduced the ravages of this disease is also general knowledge. That the appearance of unvaccinated pupils in a public school at a time of a smallpox epidemic would tend to break up and disorganize a public school is unquestioned. That the school board has the power to absolutely suspend the school during epidemics of contagious or infectious diseases, we think can hardly be questioned. No court would compel the opening of a school under such circumstances. The power here exercised was a very similar power, and, if these rules are reasonable, we see no reason why their enforcement should be prohibited.

In the Rebenack case, *supra*, it is said: “In the nature of things, it must rest with the boards of education to determine what regulations are needful for a safe and proper management of the schools, and for the physical and moral health of the pupils intrusted to their care. If such regulations are not oppressive or arbitrary the courts can not or should not interfere.”

In *Duffield v. School District*, 162 Pa., loc. cit. 483, 29 Atl. 742 (25 L. R. A. 152), the supreme court of Pennsylvania, in discussing the question, says, “It would not be doubted that the directors would have the right to close the schools temporarily during the prevalence of any serious disease of an infectious or contagious character. This would be a refusal of admission to all the children of the district. They might limit the exclusion to children from infected neighborhoods, or families in which one or more of the members was suffering from the disease. For the same reason they may exclude such children as decline to comply with requirements looking to prevention of the spread of contagion, provided these requirements are not positively unreasonable in their character. Is the regulation now under consideration a reasonable one? That is to be judged of in the first instance by the city authorities and the school board. It is only in the case of an abuse of discretionary powers that the court will undertake to supervise official discretion.” And further, at page 484 of 162 Pa., page 742 of 29 Atl. (25 L. R. A. 152), the court says: “It is conceded that the board might rightfully exclude the plaintiff's son if he was actually sick with, or was just recovering from, the smallpox. Though he might not be affected by it, yet, if another member of the same family was, the right to exclude him, notwithstanding he might

be in perfect health, would be conceded. How far shall this right to exclude one for the good of many be carried? That is a question addressed to the official discretion of the proper officers; and, when that discretion is honestly and impartially exercised, the courts will not interfere."

In the Zimmerman case the supreme court of Minnesota thus expresses the law: "It is very true that the statutes of our State provide that admission to the public schools shall be free to all persons of a defined age and residence, and that, if any parent having control of any child of school age is denied admission or suspended or expelled without sufficient cause, the board or other officers may be fined; but all these statutory provisions must be construed in connection with, and subordinate to, the statutes on the subject of the preservation of the public health and the prevention of the spread of contagious diseases. The welfare of the many is superior to that of the few, and, as the regulations compelling vaccination are intended and enforced solely for the public good, the rights conferred thereby are primary and superior to the rights of any pupil to attend the public schools."

The North Carolina court, in *Hutchins v. Durham*, supra, thus speaks: "The plaintiff relies upon *Potts v. Breen*, 167 Ill. 67, 47 N. E. 81, 39 L. R. A. 152, 59 Am. St. Rep. 262, that, in the absence of express legislative power, a resolution requiring vaccination as a prerequisite to attending schools is unreasonable, when smallpox does not exist in the community and there is no reasonable ground to apprehend its appearance. With the present rapid means of intercommunication, smallpox may make its appearance in any community at any moment without any notice given beforehand, and incalculable havoc be made, especially among the school children, which can not be remedied by a subsequent order excluding the nonvaccinated. 'An ounce of prevention is worth a pound of cure.' Besides that case is not in point here, where smallpox had been epidemic and was still threatening. The language of the resolution making it 'permanent' will not prevent its repeal, if upon the subsidence of the danger the school board of that day shall deem it proper to repeal. If the action of the board is not satisfactory to the public, a new board will be elected who will rescind the resolution."

The Illinois case thus criticised in the above is of the line of Illinois cases relied upon by the respondent here. It will be noticed, however, that the Illinois rule does not go to the extent of holding that a board of education, in case of a threatened smallpox epidemic, could not exclude pupils who had not been vaccinated. In the very recent case of *People v. Board of Education*, 234 Ill., loc. cit. 425, 84 N. E. 1048 (17 L. R. A. [N. S.] 709), the doctrine of the *Potts* case is thus stated: "In the case of *Potts v. Breen*, 167 Ill. 67, 47 N. E. 81, 39 L. R. A. 152, 59 Am. St. Rep. 262, it was held that the exclusion of a child from a public school because of a refusal to be vaccinated can only be justified where such course is necessary, or reasonably appears to be necessary, in case of an existing or threatened epidemic of smallpox and to prevent the spread of the disease. In the case of *Lawbaugh v. Board of Education*, 177 Ill. 572, 52 N. E. 850, the court adhered to those principles and declined to further discuss them, although earnestly urged to reconsider the former decision."

Likewise says the Utah court (*State ex rel. Cox v. Board of Education*, 21 Utah, loc. cit. 414 and 415, 60 Pac. 1013).

The courts may be somewhat divided upon the question as to whether or not vaccination, under all conditions and at all times, may be made a condition precedent to a child attending a public school; but the courts are practically a unit in holding that in the event of a present or threatened epidemic, such rules are reasonable and should be upheld by the courts. And such has been the rule in States where there is no express authority requiring vaccination. Vide some of the cases supra. Many States have passed laws requiring vaccination of pupils before entering schools, and these have been generally upheld, and that, too, in the face of statutory and constitutional provisions making such schools open to all pupils within the required ages. (*Bissell v. Davison et al.*, 65 Conn. 183, 32 Atl. 348, 29 L. R. A. 251; *Viemeister v. White*, Pres., etc., 179 N. Y. 235, 72 N. E. 97, 70 L. R. A. 796, 103 Am. St. Rep. 859; *Commonwealth v. Pear*, 183 Mass. 242, 66 N. E. 719, 67 L. R. A. 935; *Field v. Robinson*, 198 Pa. 638, 48 Atl. 873; *Jacobson v. Massachusetts*, 197 U. S. 11, 25 Sup. Ct. 358, 49 L. Ed. 643, and cases cited.) To the opinion in the *Jacobson* case is appended a valuable note showing the effectiveness of vaccination, and the origin of compulsory vaccination. We shall not go further upon this branch of the case. Nor shall we go beyond the case in question. For years there had been smallpox in Sedalia. Within two weeks of the trial, nisi, there were yet cases there. At the promulgation of the rules in question, there were a number of cases, so there was not only a threatened epidemic of the disease, but an epidemic itself. We are of opinion that school boards in Missouri, in the event of a smallpox epidemic, or a threatened smallpox epidemic, have the right to enforce such rules as were enforced in this case, unless they are precluded therefrom

by certain other statutes relied upon by respondent, and these statutes we discuss in the succeeding paragraphs.

2. The contention of respondent is that, by reason of the compulsory school act of 1905 (Laws 1905, p. 146; Ann. St. 1906, secs. 9982 [1]-9982 [9]) the rules in question would force him to violate that law, and that under that law the rules enforced by the school board are void. This act in no way affects these rules. In the first place, there can be no prosecution of a parent for failing to send his child to school under this act of 1905 until after an officer of the school district has notified him to send such child, and then, if he fails, a prosecution can be had. Respondent is in no danger of violating this law. The act makes it a misdemeanor to violate its provisions, and we have yet to hear of a criminal case wherein a defendant was convicted of willfully violating a law, when in fact he has manifested the disposition that this respondent has to comply with the strict letter of the law; but, laying aside all levity, the act of the school board, whose officer must initiate the prosecution by giving notice, would be an absolute defense. Beyond all this, the act of 1905 must be construed with the whole body of the school law, and, when so construed, it can be made to harmonize therewith to the end that there would be no violation of the law. The same question is discussed in a way in the Minnesota case, *supra*, wherein the court uses the language hereinabove quoted. It will be observed that the court says that all the statutes must be construed together. The exact question before us came up in Pennsylvania, in case of *Commonwealth v. Smith*, 9 Pa. Dist. R. 625. Smith refused to produce a certificate that his son had been vaccinated as required by the order of the board of education. Under the order the teacher refused to admit the child upon application of Smith. The attendance officer (the same as provided for in our act of 1905) notified Smith to send his child to school, and at the expiration of the time designated in the notice proceeded to prosecute Smith, and upon being convicted in the justice's court he appealed to the district court, in which court, Fanning, P. J., in an elaborate opinion in which is discussed the compulsory school law of that State (much like our own), reversed the judgment of the lower court. So that we are of opinion that there is no real conflict between rules of the character involved in the case before us and the act of 1905. This contention is therefore ruled against the respondent.

3. Respondent chiefly relies upon section 9765, Revised Statutes 1899 (Ann. St. 1906, p. 4479), as the battering ram by which the rules of the school board, *supra*, are to be demolished. This statute, it is said, when interpreted under the familiar maxim of "*expressio unius est exclusio alterius*," is an unsurmountable barrier to the exercise of the power exercised by the Sedalia school board. This statute reads: "It shall be unlawful for any child to attend any of the public schools of this State while afflicted with any contagious or infectious disease, or while liable to transmit such disease after having been exposed to the same. For the purpose of determining the diseased condition, or the liability of transmitting such disease, the teacher or board of directors shall have power to require any child to be examined by a physician or physicians, and to exclude such child from school so long as there is any liability of such disease being transmitted by the same. A refusal on the part of the parent or guardian to have an examination made by a physician or physicians, at the request of the teacher or board of directors, will authorize the teacher or board of directors to exclude such child from school; and any parent or guardian who shall persist in sending a child to school, after having been examined as provided by this section, and found to be afflicted with any contagious or infectious disease, or liable to transmit the same, or after having refused to have such child examined as herein provided, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by fine of not less than five nor more than one hundred dollars."

The maxim above quoted is purely one of construction. It is one of limited use and application, and, when applied in the construction of statutes, it must be with the purpose solely of gathering the legislative intent; that is to say, whether or not the legislative body intended by mentioning one thing to exclude all others. Of this maxim, Black, in his concise and estimable work on Interpretation of Law (p. 146), says: "The maxim '*expressio unius est exclusio alterius*' is of very important, though limited, application in the interpretation of statutes. It is based upon the rules of logic and the natural workings of the human mind. But it is not to be taken as establishing a Procrustean standard to which all statutory language must be made to conform. On the contrary, it is useful only as a guide in determining the probable intention of the legislature, and if it should be clearly apparent, in any particular case, that the legislature did not in fact intend that its express mention of one thing should operate as an exclusion of all others, then the maxim must give way." And Endlich, equally strong and expressive, in his work on Interpretation of Statutes (sec. 398), says: "And, on the other hand, if there is such a rule, it is confessedly liable to so many restrictions and exceptions in its application as to be practically swept away. Indeed,

the extreme caution necessary in its application is emphasized wherever it is recognized by writers. Even as to penal statutes, it is said to be too general and subject to too many exceptions to govern the construction." In Broom's Legal Maxims (8th ed.) p. 653, that noted writer uses this cautionary language: "It will, however, be proper to observe, before proceeding to give instances in illustration of the maxim 'expressio unius est exclusio,' that a great caution is requisite in dealing with it, for, as Lord Campbell, C., observed in *Saunders v. Evans*, it is not of universal application, but depends upon the intention of the party as discoverable upon the face of the instrument or of the transaction."

Other text writers and cases are along the same line. The maxim, as applied to statutory construction, is of very limited use, and, when invoked at all, is for the mere purpose of discovering the legislative intent in enacting the law. Legislative intent is at the basis of all statutory construction. So that the real question before us in the construction of section 9765, supra, is whether or not there was a legislative intent to limit in this particular the broad powers granted to school boards by sections 9759 and 9764 to govern and control their respective schools and to make all needful rules therefor. We think not. These statutes, being *pari materia*, should be construed so as to make them each and all stand, if such construction fairly falls within the legislative intent, as such intent is or may be gathered from them. Let us analyze said section 9765. This analysis shows: (1) It prohibits a child afflicted with a contagious or infectious disease, or one exposed to such a disease and liable to transmit the same, from attending a public school; (2) for determining either its diseased or exposed condition, either the teacher or school board may require the child to be examined by a physician; (3) such child may be excluded so long as there is danger of transmitting such disease; (4) a refusal upon the part of the parent or guardian to permit such child to be examined authorizes the exclusion of such child from the school; and (5) if the parent or guardian shall persist in sending such child to the school, such act is made a misdemeanor and a punishment is affixed. This analysis of the section shows that it is dealing wholly with a case where a child is actually diseased, or has been exposed to a disease of the character named. The statute does not undertake to abrogate the general power to control the school given to the board of directors by section 9759, supra, nor does it undertake to deal with the subject of needful rules, as authorized by section 9764, supra. One main purpose of this section 9765 is to provide a punishment for that class of either careless or persistent parents, who are willing to inflict upon others the diseases and troubles of their own children. The first part of the statute, as said, deals with a concrete case of a diseased or exposed child; but by no maxim, or other rule of construction, can we see how it can be said that in the enactment of this statute there was a legislative intent to preclude a school board from enacting reasonable rules to prevent the appearance of contagious or infectious diseases in the schoolroom. The rules in question in this case were enacted for the purpose of preventing the appearance of disease in the school. This the school board can do, so long as their rules are reasonable, under the general grant of power. As said, the statute relied upon by respondent deals with a case where actual disease has appeared, or with a case where it is known that there has been exposure, and thereby reasonably expected appearance of the disease.

These statutes are not conflicting. Nor is there apparent in the latter statute an intent upon the part of the legislature to exclude the powers of a school board to pass rules intended to prevent the first appearance of smallpox in the school. In our judgment there was no attempt to curtail the powers of a school board to pass needful rules for their schools. As stated in a former part of this opinion, we shall not go beyond the facts of the case, and, in confining ourselves to the facts of the particular case, may not go quite so far as seems to have been done in the *Rebenack* case, for it does not therein appear that there was in fact either an epidemic of smallpox or a threatened epidemic of smallpox. We are of the opinion that the school boards of Missouri have the right to enact and enforce rules of the character here in question at all times whenever there is either a smallpox epidemic in the district, or whenever there is a threatened smallpox epidemic. The very purpose of such regulations might be thwarted were we to actually await the epidemic itself.

From these views it follows that this cause should be reversed and remanded, with directions to the circuit court to set aside its judgment making the alternative writ of mandamus peremptory, and to enter a judgment quashing the alternative writ and rule, and for costs against the relator in favor of the defendants.

All concur, except VALLIANT, C. J., absent, and BURGESS and FOX, JJ., who dissent.

XV. Washington.

[State ex rel. McFadden v. Shorrock et al. (supreme court of Washington, Oct. 6, 1909), 104 P., 214.]

1. STATUTES—SUBJECTS AND TITLES.

Laws 1907, page 392, section 92, as amended by Laws 1905, page 263, chapter 142, section 3, making it the duty of a board of school directors to require vaccination as a condition of school membership, is germane to the general subject of the act, entitled "An act to establish a general uniform system of public schools," and therefore not in contravention of the provision of the constitution that a bill shall embrace only one subject, and that shall be expressed in the title.

2. SCHOOLS AND SCHOOL DISTRICTS—CONDITIONS OF SCHOOL MEMBERSHIP—STATUTES—REPEAL.

Laws 1907, page 356, chapter 118, establishing a general uniform system of public schools, and by section 92 (p. 392) as amended by Laws 1905, page 263, chapter 142, section 3, making it the duty of a board of school directors to require vaccination as a condition of school membership, is not repealed by Laws 1907, page 569, chapter 231, providing for compulsory education of children, even if the latter makes attendance on public schools compulsory, and with the former makes vaccination compulsory.

3. SCHOOLS AND SCHOOL DISTRICTS—COMPULSORY ATTENDANCE.

The legislature can require all minors to attend public schools, and to be vaccinated before so attending.

4. SCHOOLS AND SCHOOL DISTRICTS—CONDITION OF SCHOOL MEMBERSHIP—EXCEPTION TO STATUTE.

An exception to Laws 1907, page 392, section 92, as amended by Laws 1905, page 263, chapter 142, section 3, requiring vaccination as a condition to school membership, is to be presumed in favor of children whose condition of health is such that the operation would endanger their lives, or injure them mentally or physically.

5. SCHOOLS AND SCHOOL DISTRICTS—CONDITION OF SCHOOL MEMBERSHIP—"SUCCESSFUL VACCINATION."

Laws 1907, page 392, section 92, as amended by Laws 1905, page 263, chapter 142, section 3, making it the duty of a board of school directors to require "successful vaccination" as a condition of school membership, is not too indefinite to be capable of enforcement; a common-sense construction being to treat as successfully vaccinated not only one in whom the customary reaction follows the operation, but one in whom no such reaction follows three several operations, thus evidencing that he can not be vaccinated.

Department 1. Appeal from superior court, King County; Geo. E. Morris, judge.

Application by the State, on the relation of J. Clinton McFadden, for writ of mandate against E. Shorrock and others, board of school directors. From an adverse judgment, relator appeals. Affirmed.

FULLERTON, J.: On October 30, 1908, the board of directors of Seattle school district No. 1, King County, State of Washington, at the suggestion of the commissioner of health of the city of Seattle, and the King County Medical Society, adopted a resolution requiring all pupils desirous of attending the public schools of the district to be successfully vaccinated as a condition precedent to their right so to do, further directing that the resolution be not enforced against anyone whose condition of health was such as to render it unsafe for him to undergo vaccination. Under the provisions of this resolution the appellant's minor son was excluded from one of the schools of the district, known as the University Heights School, solely because he refused to submit to vaccination. The appellant as relator thereupon applied to the superior court of King County for a writ of mandate against the board of directors to compel them to admit his son to the school. To his application the board of directors made a return in which they gave, as reasons for excluding the son, the resolution above mentioned, together with the recommendations on which it was founded; the fact that smallpox then existed to a greater or less extent in the city of Seattle, and was epidemic in a mild form in many of the near-by cities; that the minor son of the appellant refused to be vaccinated, and the parents and guardian refused to cause or permit him to be vaccinated, and that to permit him to attend the school would be a menace to good health; and further that by virtue of the laws of the State of Washington the board of directors are clothed with power, and it is their duty, to require successful vaccination as a condition to school attendance whenever in their judgment conditions demand the exercise of the power. To this return the respondent demurred, on the grounds, first, that the act of the legislature on which the resolution of the board of directors was founded is unconstitutional; second, that it was repealed by a subsequent statute; and, third, that it is too indefinite to be capable of enforcement. The superior court held the return to be sufficient, and overruled the demurrer. The appellant then elected to stand on his demurrer, whereupon the court entered a judgment dismissing the application.

The appellant urges in this court the objections to the return he insisted upon in the court below. He argues that the clause of the act of the legislature which the board of directors rely upon to sustain their action is unconstitutional because it is not included in the title of the act of which it forms a part. In 1897 the legislature by a general act under the title "An act to establish a general uniform system of public schools in the State of Washington, and repealing," etc., provided a complete code for the government of the state educational institutions, and repealed by express mention practically all of the prior acts relating thereto then upon the statute books. (Laws 1897, p. 392, chap. 118, amended by Laws 1905, p. 262, chap. 142, sec. 3.) The act, among other things, provided for the organization of school districts in cities having a population of 10,000 or more, and the election of a board of directors to have charge and control of the schools and school property therein. Section 92 of the act read as follows: "Every board of directors shall have power, and it shall be their duty * * * Ninth: To require successful vaccination as a condition of school membership and to provide free vaccination to all who are unable to pay for the same." It is this clause that is thought not to be within the title of the act.

The section of the constitution providing that "No bill shall embrace more than one subject, and that shall be expressed in the title" (art. 2, sec. 19) has frequently been a subject for consideration by this court. In the early case of *Marston v. Humes*, 3 Wash. 267, 28 Pac. 520, we said that this word "subject" as used in the constitution could be interpreted in two ways; one to hold that the word is not capable of further reduction, and the other "to hold that it means a single subject in a more enlarged sense in which may be included a large number of subsubjects; that to adopt the first would so tie the hands of the legislature as to make legislation extremely difficult, if not impossible, while to adopt the second would substantially subserve the object which the framers of the constitution had in view, and at the same time leave the legislature free to legislate in a reasonable manner." The more liberal construction was thereupon adopted, and it has been the rule followed by the court since that time. Thus, in *Lancey v. King County*, 15 Wash. 9, 45 Pac. 645, 34 L. R. A. 817, it was held that an act of the legislature will not be declared void under this clause of the Constitution, except in cases where the violation is most clear, and that both public policy and legislative convenience require that this provision should be liberally construed, that the purpose of the title is only to call attention to the subject-matter of the act, and that the act itself must be looked to for a full description of the powers conferred. In *State ex rel. Savings Union v. Whittlesey*, 17 Wash. 447, 50 Pac. 119, it was said that while the object of the constitutional provision is that neither the members of the legislature, nor the people, shall be misled by the title of a legislative act, it had never been held that the title should embody all the distinct provisions of the act in detail; that such a construction would be eminently unreasonable, for in such a case the body of the act would be nothing more than a repetition of the title. Again in a number of cases it has been held that title need not be an index to the body of the act, but is sufficient if it gives such notice of its subject as to reasonably lead to an inquiry into its body. (See *Seattle v. Barto*, 31 Wash. 141, 71 Pac. 735; *State v. Sharpless*, 31 Wash. 191, 71 Pac. 737, 9 Am. St. Rep. 893; *McKnight v. McDonald*, 34 Wash. 98, 74 Pac. 1060; *Seattle and Lake Washington Waterway Co. v. Seattle Dock Co.*, 35 Wash. 503, 77 Pac. 845.) In *State ex rel. Smith v. Dental Examiners*, 31 Wash. 492, 72 Pac. 110, the court, in passing on the question whether a penalty for practicing dentistry without a license could be enacted under a title reading, "An act to regulate the practice of dentistry in the State of Washington, and declaring an emergency" (Laws 1893, p. 88, chap. 55), used this language: "It is true the act shall contain but one subject, and that shall be expressed in its title. While the act shall contain but one subject, yet there are many phases of that subject that may properly be treated in the same act, just as a work upon the subject of damages may treat upon many phases of the general subject. It is impracticable to indicate in the title of either a book or a legislative act every phase of the general subject that may be treated. The subject of an act being to regulate the practice of a given profession, the legislature may include in the act the means related to the subject for effecting the object sought."

The clause in question, it will be noticed, does not empower the board of directors of the district to provide for compulsory vaccination. The appellant may or may not, as suits his desire, require his son to be vaccinated. The act does no more than provide that the board of directors may make vaccination a necessary condition precedent to attendance upon the public schools. It thus stands on the same plane as the provisions contained in the act for the exclusion of those afflicted with infectious or contagious diseases, or who reside in houses wherein such diseases are prevalent. In other words, it defines the class of persons who may be permitted to attend the schools created by the act. It seems to us, therefore, that when considered in the

light of the rule announced by the cases cited, this clause is clearly within the title of the act. One would expect to find in an act establishing a general, uniform system of public schools a provision defining the class of persons who may be permitted to attend on the schools thus created. It was therefore germane to the general subject, and this is sufficient to sustain its enactment under a title covering the general subject.

The second contention is that the act is repealed by the subsequent statute of March 16, 1907 (Laws 1907, p. 569, chap. 231), providing for the compulsory education of children. But this contention is likewise untenable. There is no express repeal of the one statute by the other, nor is there such a conflict between them as to work a repeal by implication. If the later statute required compulsory attendance on the public schools, the two statutes taken together might require compulsory vaccination, but even in that case there would be no repeal of the former by the latter; the legislature has power to require all minors to attend the public schools and to require them to be vaccinated before so attending. *Jacobson v. Massachusetts*, 197 U. S., 11, 25 Sup. Ct. 358, 49 L. Ed. 643. Nor is the statute void because it makes no allowance for those physically incapable of vaccination. But, as said by the Supreme Court of the United States, in *United States v. Kirby*, 7 Wall. 482, 19 L. Ed. 278: "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always therefore be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter." So here it is not presumed that the legislature intended to require, as a condition of its right to attend the public schools, the vaccination of a child whose condition of health is such that the operation would endanger its life or injuriously affect it mentally or physically. It is presumed that exceptions were intended in favor of such individuals; and, if the officers having in charge the execution of the statute refused to recognize an exception in such a case, the courts can be appealed to, to compel such recognition.

Finally, it is said that the statute is too indefinite to be capable of enforcement. This is founded on the fact that it requires "successful vaccination," and no definition of the term is furnished by the statutes. The board of directors, it appears, construed the statute to mean that a person was successfully vaccinated when the customary reaction was obtained by the operation, or when three operations had been performed without obtaining reaction. Here, again, we think the rule of common-sense construction can properly be invoked. Of course, if the customary reaction follows the operation, there is no question concerning the success of the operation. But if no reaction follows three several operations, it is evident that the individual can not be vaccinated, and such individual can be held to be either successfully vaccinated, or as one not included within the general language used in the statute. To allow individuals to attend the schools who from their condition of health or other causes can not be successfully vaccinated is not a violation of the statute, as the appellant supposes. This is but a recognition of an exception intended by the legislature, but which was not provided for because not foreseen.

We find no objection to the statute itself, nor to the manner it is being enforced. The order appealed from will therefore stand affirmed.

RUPKIN, C. J., and CHADWICK and GOSE, JJ., concur. MORRIS, J., took no part.

TEACHERS' SALARIES AND CONTRACTS.

XVI. Iowa.

[*Byrne v. Independent School Dist. of Struble* (supreme court of Iowa, Oct. 23, 1908), 117 N. W., 983.]

1. PLEADING—ISSUES—DENIAL OF DAMAGES.

Under Code, section 3622, providing that an allegation of amount of damages shall not be deemed true by failure to controvert it, etc., an answer in an action for breach of contract to teach a public school, which denies nothing but the damages suffered, raises no issue.

2. SCHOOLS AND SCHOOL DISTRICTS—BREACH OF CONTRACT TO TEACH—DAMAGES.

The rules applicable to ordinary contracts of employment as to measure of damages obtain in cases of breach of contract to teach a public school.

3. SAME.

Where a contract to teach a public school is disregarded by the district, and the teacher is denied the right to perform, he must find other employment to mitigate the damages, but his damages are not to be diminished for failure to secure other employment, unless by reasonable diligence he might have secured employment of the same grade in the same locality.

Appeal from district court, Plymouth County; David Mould, judge.
Action to recover damages for breach of a contract to teach a school in the defendant district. The defendant answered, and to this answer plaintiff demurred. Her demurrer was sustained, and defendant appeals. Affirmed.

DEEMER, J.: Defendant admitted all the allegations of plaintiff's petition with reference to her contract to teach a school in defendant district for the school year 1905-6, admitted plaintiff's wrongful discharge and its refusal to permit her to teach the school as agreed, and denied nothing but the damages suffered by plaintiff. It further pleaded as a third division of its answer the following: "And defendant further says that the plaintiff had opportunity to, and was solicited by the directors of other public schools to, teach public schools during the months of March, April, and May, 1906, at the sum of \$36 per month; that she refused to accept said schools or teach the same; that she used no effort whatever to secure other employment as a school-teacher, and intentionally and wilfully refrained from seeking any employment from which she could have received compensation, and thus reduced the damages she might have been entitled to recover from the defendant; that, had the plaintiff made any effort to procure or had she accepted the employment offered her, she would have received compensation therefor equal to the full amount defendant had contracted to pay her for her services under the contract sued on in this petition." The demurrer challenged the sufficiency of this answer, and the trial court held that it did not constitute a defense.

For a reversal defendant relies upon two main propositions, to wit: (1) That the answer, without reference to the third division tenders an issue as to the amount of plaintiff's damage; and (2) that the third division pleads a defense to plaintiff's cause of action, or at least amounts to a plea in mitigation of damages. The second proposition involves two incidental questions: (a) Do the ordinary rules relating to clerks, agents, servants, and employees apply to school-teachers? (b) If so, do the facts recited bring the case within these rules? The only denial of the allegations of plaintiff's petition related to the amount of plaintiff's damages, and it is in this language: "Denies that the plaintiff has been damaged as alleged in her petition in the sum of \$200 or any other sum." An allegation in a petition as to the amount of damages is not deemed true by failure to controvert it (Code, sec. 3622), and a denial of any indebtedness to plaintiff whatever raises no issue. *McIntosh v. Lee*, 57 Iowa, 356; 10 N. W., 895. This is a sufficient answer to defendant's first proposition.

2. The rules applicable to ordinary contracts of employment so far as the measure of damages is concerned obtain in cases of breach of contract to teach school. (*Park v. Ind. Dist.*, 65 Iowa, 209; 21 N. W., 567.) And, when such contract is disregarded by the school district and the teacher is denied the right to perform, it is her duty to find other employment, and, when sued, the school district may show that she has found other employment, or that by the use of reasonable diligence she might have found other employment for the purpose of mitigating the damages; but, if the discharged teacher did not accept other employment, her damages should not be diminished for failure to secure it, unless it be shown that by reasonable diligence she might have secured employment of the same grade in the same locality where she was employed to teach. She was not required to accept employment in another locality or of a different or lower grade. The law is very clear on this proposition. (*Jackson v. Ind. Dist.*, 110 Iowa, 316; 81 N. W., 596; 8 Ency. of Ev., 517-518, and cases cited.) Going now to the allegations of the answer, it will be observed that they do not bring the case within these rules. There is no averment that plaintiff might have found employment in the same locality, or that the schools were of the same grade as that contemplated in the contract between plaintiff and defendant. For these reasons, the third division of the answer did not constitute a defense, nor did it amount to a good plea in mitigation of damages.

The demurrer was properly sustained, and the judgment must be, and it is, affirmed.

PUPILS.

INSTRUCTION, PROMOTION, DISCIPLINE.

XVII. Mississippi.

[Hobbs et al. v. Germany et al. (supreme court of Mississippi, May 31, 1909) 49 So., 515.]

1. INJUNCTION—SCHOOL OFFICERS—RESTRAINING ENFORCEMENT OF RULES.

Code 1906, section 4487, providing that the board of education shall decide all appeals from decisions of county superintendents, etc., and section 4503, providing that in all controversies arising under the school law the opinion of the county superintendent shall be first sought, from whose decision an appeal may be taken to the state board of education, do not exempt the school authorities, acting beyond the scope of their powers and in violation of law, from interference by the courts; and equity has jurisdiction to enjoin the trustees and the teacher of a school district from enforcing an invalid rule.

2. SCHOOLS AND SCHOOL DISTRICTS—AUTHORITY OF SCHOOL OFFICERS—STATUTES.

Code 1906, section 4525, empowering the trustees of school districts to prescribe and enforce rules not inconsistent with law for the government of schools, and to suspend and expel pupils for misconduct, and section 4623, authorizing teachers to enforce rules prescribed for schools, and to hold pupils to a strict account for disorderly conduct on the way to and from school, on the playgrounds, etc., do not authorize the adoption of a rule requiring all pupils of the school to remain in their homes and study between designated hours in the evening.

Appeal from chancery court, Lincoln County; G. G. Lyell, chancellor.

Suit by W. T. Germany, individually and as next friend for his minor son, Henry Germany, against G. A. Hobbs and others. From a decree sustaining the injunction granted, defendants appeal. Affirmed.

MAYES, J.: The town of Bogue Chitto composes a separate school district, and the appellants are the trustees thereof and teachers therein. This controversy grows out of the attempted enforcement of a certain rule, adopted by the teachers of the school and ratified by the trustees, by which it is required that all pupils of the school shall remain in their homes and study from 7 to 9 p. m., and the rule provides that any pupil who shall violate it shall be punished, either corporally or otherwise, in the discretion of the teacher.

Henry Germany, a minor about 16 years of age and living with his father in the town of Bogue Chitto, was attending this school. Some time during October, 1908, between the hours of 7 and 9 p. m., the father attended religious services held near by in the town of Norfield, and took with him his son Henry, which the teachers considered a violation of the above rule. On the son's returning to school, the teachers in pursuance of the purpose to enforce this rule, undertook to punish him for this breach of their rule, and gave him his choice of submitting to corporal punishment or confinement in the schoolroom for forty minutes during the noon hour for the period of five days. Under these facts, and being guilty of no other breach of the school law, young Germany refused to submit to either of the proposed punishments, whereupon the school authorities compelled him to withdraw from the public school. When this was done, the father, individually and as next friend for the son, filed this suit in the chancery court, alleging that the adoption of the rule is beyond the lawful power of either the trustees or the teachers, and constitutes a usurpation of authority not conferred upon them by law. The bill prayed for an injunction against the trustees and teachers enforcing this rule, and also prayed that they be required to reinstate young Germany in the school during the pendency of the suit and prohibited from inflicting any punishment because of his infraction of the rule. The answer admits the adoption of the rule and its proposed enforcement, and the question being submitted to the chancellor on a motion to dissolve this injunction, the motion was overruled, and the injunction retained, from which judgment an appeal is prosecuted.

The sole question presented by the record is as to the power of the school authorities to make and enforce this rule. The first contention is that the chancery court is without jurisdiction to entertain this proceeding, and section 4503, code of 1906, is cited as authority for this contention. That section is as follows: "In all controversies arising under the school law, the opinion and advice of the county superintendent shall first be sought, from whose decision an appeal may be taken to the state board of education upon a written statement of the facts, certified by the county superintendent or by the secretary of the trustees." And again section 4487 provides: "The board of education shall decide all appeals from decisions of county superintendents, or from the decisions of the state superintendent; but all matters relating to appeals shall be presented in writing, and the board's decision shall be final." It is argued that under

these two sections all controversies which in any way involve any question connected with the government of the schools must be first submitted to the county superintendent, and from his decision an appeal can be taken to the state board of education; but, where the state board of education decides it, the decision is final. And, say counsel for appellant, since the legislature has provided this exclusive forum to settle all school controversies, and the appellee have not availed themselves of this forum, they have no standing in any court.

This argument may be sound when applied to any controversy arising over any matter coming within the scope of the powers delegated by law to the school authorities; but the school authorities are not exempted from a supervision by the courts by virtue of sections 4503 and 4487 of the code of 1906, constituting the county superintendent and the state board of education the arbiters of controversies arising under the school law, in any case where the school authorities are acting beyond the scope of their power and in violation of law. Whenever a question arises as to whether or not the power of the school authorities to make a certain rule or regulation is reasonably within the scope of the power conferred on them by law, the question is undoubtedly subject to inquiry by the courts. This was expressly held in the case of *Kinzer v. Toms*, 129 Iowa 441, 105 N. W. 686, 3 L. R. A. (N. S.) 496, and in that case the court was construing a statute very similar to the provisions of the statute now under consideration. Many other authorities to the same effect are cited in the brief of counsel for appellee, to which we here refer. In the case of *Perkins v. School District*, 56 Iowa 476, 9 N. W. 356, where the statute provided that in any controversy with the school directors an appeal should be taken to the county superintendent, and thence to the superintendent of public instruction, where a controversy arose as to the power of the school directors to make a certain order, the court said: "The courts of the State are the arbiters of all questions involving the construction of the statutes conferring authority upon officers and jurisdiction upon special tribunals. It was certainly never the intention of the legislature to confer upon school boards, superintendents of schools, or other officers discharging quasi judicial functions, exclusive authority to decide questions pertaining to their jurisdiction and the extent of their power. All such questions may be determined in the courts of the State. Hence, when the rights of a citizen are involved in the exercise of authority by a school officer, the courts may determine whether such authority was lawfully exercised."

We are not concerned in this case with what powers the legislature of the State may confer upon trustees and teachers of public schools; but we are now only concerned with the powers which it has conferred upon them. As to the trustees, their powers and duties are clearly pointed out in section 4525, code of 1906, which are: "(a) To prescribe and enforce rules, not inconsistent with law or those prescribed by the state board of education, for their own government and government of schools," etc. "(f) To suspend and expel pupils for misconduct." By these sections it is seen that the trustees have a limited, and not absolute, authority in making and enforcing rules for the government of the schools, and the teachers' authority in this particular is narrower than is that of the trustees. The trustees can make and enforce a rule inconsistent with the law. The power to do this is expressly prohibited in paragraph "a," section 4525 (4006). Certainly a rule of the school, which invades the home and wrests from the parent his right to control his child around his own hearthstone, is inconsistent with any law that has yet governed the parent in this State, and the writer of this opinion dares hope that it will be inconsistent with any law that will ever operate here so long as liberty lasts, and children are taught to revere and look up to their parents. In the home the parental authority is and should be supreme, and it is a misguided zeal that attempts to wrest it from them. By section 4623, code of 1906, the teachers are given authority "to enforce the rules and regulations prescribed for schools, and to hold pupils to a strict account for disorderly conduct on the way to and from school, on the playgrounds, or during recess, and suspend, for good cause, any pupil from school, and report such suspension to the board of trustees for review," etc. These sections contain all the power the legislature has seen fit to give to the trustees or teachers. It may not be easy to say with exact precision what rules may or may not be adopted and enforced by the school authorities for the government of a school. With the general powers we are not here concerned. We are simply called upon to decide this concrete case, and unhesitatingly say that the rule attempted to be enforced is a nullity and beyond the power of the trustees to adopt or the teachers to enforce.

The case of *Dritt v. Snodgrass* (66 Mo., 286, 27 Am. Rep., 343) is an authority very much in point here. In that case the school directors adopted a rule prohibiting pupils from attending social gatherings, and the court said: "The directors of a school district are invested with the power and authority to make and execute all needful rules and regulations for the government, management, and control of such school as they may think proper, not inconsistent with the laws of the land. Under the power

thus conferred, the directors are not authorized to prescribe a rule which undertakes to regulate the conduct of the children within the district, who have a right to attend the school, after they are dismissed from it and remitted to the custody and care of the parent or guardian. They have the unquestioned right to make needful rules for the control of the pupils while at school, and under the charge of the person or persons who teach it, and it would be the duty of the teacher to enforce such rules, when made. While in the teacher's charge, the parent would have no right to invade the schoolroom and interfere with him in its management. On the other hand, when the pupil is released and sent back to its home, neither the teachers nor directors have the authority to follow him thither, and govern his conduct while under the parental eye. It certainly could not have been the design of the legislature to take from the parent the control of his child while not at school, and invest it in a board of directors and teacher of a school. If they can prescribe a rule which denies to the parent the right to allow his child to attend a social gathering, except upon pain of expulsion from a school which the law gives him the right to attend, may they not prescribe a rule which would forbid the parent from allowing the child from attending a particular church, or any church at all, and thus step in loco parentis and supersede entirely parental authority? For offenses committed by the scholar while at school he is amenable to the laws of the school; but under the charge of the parent or guardian he is answerable alone to him. A person teaching a private school may say upon what terms he or she will accept scholars, and may demand, before receiving a scholar to be taught, that the parent shall surrender so much of his or her parental authority as not to allow the scholar during the term to attend social parties, balls, theaters, etc., except on pain of expulsion. This would be a matter of contract, and no one has a right to send a scholar to such a school except on the terms prescribed by those who teach it. This is not so in regard to public schools, which every child within school age has a right, under the law, to attend, subject, while so attending, to be governed by such needful rules as may be prescribed. When the schoolroom is entered by the pupil, the authority of the parent ceases, and that of the teacher begins. When sent to his home, the authority of the teacher ends, and that of the parent is resumed. For his conduct when at school he may be punished, or even expelled, under proper circumstances. For his conduct when at home he is subject to domestic control. The directors, in prescribing the rule that scholars who attend a social party should be expelled from school, went beyond their power and invaded the right of the parent to govern the conduct of his child when solely under his charge."

It may be that the school authorities would have a right to make certain regulations and rules for the good government of the school, which would extend and control the child even when it has reached its home; but, if that power exists, it can only be done in matters which would per se have a direct and pernicious effect on the moral tone of the school, or have a tendency to subvert and destroy the proper administration of school affairs. We shall not undertake in this opinion to say in what such things shall consist in order to justify a regulation of the school that may reach in the home and have its effect there. When such a case comes before the court, it will be time enough to decide how far this authority may be extended.

The distinguished chancellor was eminently correct in the decree establishing the supremacy of the mother and father in their own home as regards the control of their children, thereby sustaining the injunction, reinstating young Germany in the school, and declaring the regulation a nullity.

Affirmed.

XVIII. Ohio.

[Board of Education of Sycamore et al. v. State ex rel. Wickham (supreme court of Ohio, Mar. 30, 1909), 88 N. E., 412.]

1. MANDAMUS—DUTY—DISCRETION.

Mandamus will lie to compel the performance of an act which is clearly shown to be especially enjoined by law as a duty resulting from an office, trust, or station. But it will not lie to control discretion unless it be clearly shown that the refusal by the one occupying the trust or station to perform the desired act is an abuse of discretion. State ex rel. Milhoof v. Board of Education, 76 Ohio St., 297; 81 N. E., 508, approved and followed.

2. SCHOOLS AND SCHOOL DISTRICTS—BOARD OF EDUCATION—RULES.

The statutes of the State relating to education which give the control and management of the public schools to the boards of education of the several districts authorize such boards to establish rules and regulations for the government of the schools, and, so far as rules so established are reasonable, and fairly calculated to insure good government and promote the ends of education, will be sustained by the courts.

3. SCHOOLS AND SCHOOL DISTRICTS—RULES—REASONABLENESS.

A rule which provides for the proper examination at the end of the school year of pupils jointly by the teacher of the grade in which such pupils have been students and the superintendent of the schools, and for the promotion of pupils to the next higher grade upon the recommendation of such teacher and superintendent, the same being based on merit, is a reasonable rule.

4. SCHOOLS AND SCHOOL DISTRICTS—PUPILS—PROMOTION.

A pupil who has favorably passed examination, and been given a proper certificate authorizing him to enter the next higher grade, is without right, in the absence of authority from the board of education, to omit such grade to which he has been promoted and passed to a higher one.

5. SCHOOLS AND SCHOOL DISTRICTS—PUPILS—PROMOTION.

Where, by direction of the parent of the pupil thus promoted, the pupil without authority of the board enters the room of such higher grade for the purpose of remaining there, it is the right and duty of the superintendent to refuse to allow the pupil to remain and direct him to go to the room of the grade to which he has been promoted.

6. MANDAMUS—BOARD OF EDUCATION—PROMOTION OF PUPIL.

In the absence of any showing that application had been made to the board for permission to the pupil to enter such higher grade, and in the absence of showing that the board had before it a report of its superintendent recommending the promotion of the pupil to such higher grade, mandamus will not lie to compel the board to order such promotion, even though it be shown that the pupil was, at the time of such attempted entry, in fact fitted to enter such grade.

Error to circuit court, Wyandot County.

Mandamus by the State on the relation of W. H. Wickham, against the Board of Education of Sycamore and others. Judgment for relator, and defendants bring error. Reversed.

The cause to be here reviewed was tried on appeal at the January term, 1908, of the circuit court of Wyandot, upon pleadings embracing petition (filed in the common pleas September 23, 1907), answer, and reply; the action being in mandamus brought by the State ex rel. W. H. Wickham against the board of education of the Sycamore village district, F. J. Remington, and Fred Teal to obtain the issue of a writ of mandamus to compel the board to promote a son of the relator, one Terry Wickham, to enter the seventh grade of the village schools, and the teachers, Remington and Teal, to receive relator's son into said grade, and commanding them to give him instruction in the prescribed work of said grade.

It was averred, among other things, in substance, in the petition that the school in the district is what is known as a graded school, consisting of eight grades in which the common branches of study are taught, and high school; that the defendant Fred Teal is employed by the board as teacher in the seventh grade; that by the course of study prescribed by the board it was required that certain studies be pursued and a certain degree of proficiency attained therein by pupils before they take up the work in the next higher grade; that Terry Wickham, having made the necessary proficiency in the preceding grades, and having been examined by Fred Teal, the teacher in the seventh grade, and by Remington, superintendent of the schools, and having been found proficient and well qualified in the work prescribed for the preceding grades, applied for admission into the seventh grade at the beginning of the present school year, and, although he was pronounced proficient by his teacher and superintendent in the preceding work and found qualified for the work of the seventh grade, he was informed that by some pretended rule emanating from the board he was precluded from taking up the work of the seventh grade, and the teacher was not allowed to give him instruction in said work. Relator does not know the exact nature of the pretended rule, but this boy, although qualified, was refused admittance into said grade and in effect expelled from it. The said rule of the board which denies the right of relator to have his child receive instruction in the proper grade is unreasonable and beyond the authority of the board, is unlawful and an abuse of the discretionary powers of the board, and, as a citizen of such district and a taxpayer therein, relator has a right to have his son receive instruction in the seventh grade, which right is unlawfully withheld from him by the board. Then follows the prayer as before referred to.

The answer, admitting certain of the averments of the petition not necessary to be here repeated, denied others, and alleged the age of the boy to be eight years, and as a second defense averred that prior to the year 1903 the board, pursuant to the statutes of the State, made and published rules and regulations for the government of its appointees and the pupils, setting out in the answer in extenso said rules, among which rules were the following, given here in substance:

The schools of the village to consist of four departments, the first primary to include the first, second, and third years; the second primary the fourth, fifth, and sixth years; the grammar school the seventh and eighth years; the high school the freshman, sophomore, junior, and senior years. The school year to open on the first Monday of

September unless otherwise ordered, and continue thirty-four weeks. The course of study for the several grades as provided: That of the fifth grade as follows:

"Reading—Fifth Reader. Arithmetic—Part III, and supplementary work: Writing—Copybooks 4 and 5. Drawing—Book No. 4. Spelling—To lesson 50, Part II. Written exercises continued. Language—Part III and supplementary exercises. Geography—Elementary, completed and reviewed. Physiology—The House I Live In."

That of the sixth grade as follows:

"Reading—Sixth Reader six months. Seventh Reader two and one-half months. Arithmetic—Modern Practical to Common Fractions. Writing—Copybooks 5 and 6. Drawing—Book No. 5. Spelling—To lesson 150. Written exercises. Language—Elements of Grammar and Composition Part I. Geography—Natural Advances, through United States. Physiology—The House I Live In, completed."

That of the seventh grade as follows:

"Reading—Seventh Reader, four months. History—Eggleston's First Book, four and one-half months. Arithmetic—To Compound Interest. Writing—Copybooks 6 and 7. Spelling—Book completed. Written exercises using Spelling Blanks. Language—Parts II and III. Geography—Completed from United States. Physiology—Overton's Intermediate."

That among the rules so provided for the promotion of pupils from one grade to the next higher or succeeding grade were the following: "Promotions shall be made on the basis of fitness only; and not on account of the size or age of the pupil, or the wishes of the parents. Due credit will be given, however, to the diligence, punctuality, habits of study, and general conduct of the pupil. Pupils will be promoted at the close of the school year, if they have obtained an average of 75 per cent with not less than 60 per cent in any branch. Pupils, whose general average is fair, but who have fallen below 60 per cent in any one branch, may be promoted conditionally and given an opportunity to make up the deficiency. No pupil shall be promoted during the year except upon the approval of the board and with the recommendation of the teacher and superintendent."

As to pupils the following: "(1) Pupils, between the ages of 6 and 21 years, residing in the district, are entitled to attend the schools, receive like instruction and be promoted from grade to grade on the grounds of merit and proficiency only. * * * (2) Pupils are required to be regular and punctual in attendance, to be diligent in their studies, to conform to the rules and regulations of the school, to obey the directions of the teachers and superintendent, to be respectful and courteous at all times to teachers and kind and obliging to schoolmates."

As to superintendent the following: "(1) The superintendent shall act under the advice and direction of the board of education and shall have and exercise complete supervision over the public schools, and he shall see that all the rules and regulations of the board of education are enforced. * * * (4) He shall direct as to the classification, examination, and promotion of all pupils."

Also, as to the examination of pupils the following: "Pupils shall be examined at such times and in such manner as the superintendent may direct. Ordinarily, there will be three regular examinations each year; but there shall be given, in all grades above the third, at least one written review lesson or test in each branch every month. From these written tests no one will be excused. Any pupil, who is absent from the regular examination, shall not be permitted to go on with his class until he shall have given a satisfactory excuse for his absence and passed a satisfactory special examination. For all such examinations or tests a uniform style of paper shall be used. Such manuscripts as the teacher may see fit to retain shall be kept on file, where they may be referred to and examined by any who may desire. The teacher shall make and record a careful estimate of the work of each of their pupils in every branch of study pursued. The standing of each pupil shall be determined from the daily recitations, reviews, tests and examinations in such manner as the superintendent may direct."

All of these rules were well known to relator and to his son Terry at and prior to the commencement of the action.

The school term for the year 1906 commenced the first Monday of September and continued thirty-four weeks, closing May 16, 1907, during all of which time Terry was a pupil in the fifth grade. At the conclusion of the term, he, together with all other pupils in that grade, as provided by the rules, was duly examined by the teacher of that grade and the superintendent for promotion to the sixth grade, which teacher and superintendent had the sole authority to examine said pupils for presentation to the sixth grade, but had no authority to examine for promotion of said pupils to the seventh grade. The said Terry duly passed the examination, and was promoted to the sixth grade, authorizing him to enter that grade as a pupil at the opening of the school in September following, and a certificate issued to him as follows: "The Sycamore Public Schools. Terry Wickham, for proficiency in study, is promoted to the

sixth grade. [Signed] F. J. Remington, superintendent. May Gibbs, teacher: May 22, 1907." This card of promotion was received, accepted, and retained by the son with the consent of relator. At the opening of the schools in September, 1907, the son without the knowledge or consent of the board or superintendent wrongfully and in violation of rule went into the seventh grade of the school in a different room from that of the sixth, and undertook to take lessons in said seventh grade, that after remaining there, without the knowledge or consent of the board, until Friday morning of that week, the superintendent informed him that he had not been promoted to the seventh grade, but had been promoted to the sixth, and requested him to enter the sixth grade. The pupil immediately left the school and did not return, and shortly thereafter this suit was commenced by the father, and the board had no knowledge of what had transpired as above set forth until after the service of the writ herein. The reply admitted that the board published the manual as alleged, and relator had some knowledge of what it contained, but denied that his son or the superintendent or teachers well knew the same, admitted that what is alleged in the answer, as to the organization, the school year, fifth grade, sixth grade, seventh grade, and promotion is all found in the manual; also that in the school year commencing on the first Monday in September, 1906, the son was a pupil in the fifth grade and received his certificate of promotion set out in the answer, and that he kept the card with the consent of the relator; also, that at the opening of the school on the first Monday in September, 1907, he went into the seventh grade in a room different from the sixth, and remained there until Friday, when expelled as in the petition alleged, and denies all other allegations of the second defense. Then, as a new matter, it is alleged that during the summer vacation, the son was under the tutorship of a competent instructor and completed all the work prescribed for the sixth grade and nearly all of that for the seventh, and his fitness for entering the seventh grade is all and more than is called for by any proper regulation of the school. Before filing answer by the board a motion to make the petition more definite and certain was overruled. Answer being filed a general demurrer to the second defense was then interposed and sustained. A demurrer to the reply was also sustained.

The cause was tried in the circuit court and submitted January 8, 1908, and taken under advisement. The court then ordered that Mr. R. J. Kiefer, superintendent of schools at Upper Sandusky, examine the pupil as to his fitness at that time to enter the seventh grade. On February 14, following the report of the examiner holding the pupil then qualified for doing the work of the seventh grade having been filed, and the examiner having explained and reenforced his report and conclusion by oral testimony in open court, the court found the issues for the relator and that he was entitled to a peremptory writ, and rendered judgment accordingly, commanding the board forthwith to admit the pupil to the seventh grade of the school, and ordering the school district to pay the costs, including a fee of \$20 allowed Mr. Kiefer for his services rendered.

The defendants below bring error. Facts are stated in the opinion.

SPEAR, J. (after stating the facts as above): There was considerable conflict of testimony as to a number of minor matters concerning which the parties were at issue. It was shown that the boy was instructed during the summer vacation of 1907 by his parents, both of whom had been teachers, with the purpose of fitting him for admission to the seventh grade, and at one time, Remington, the superintendent, was called into his office by the relator and requested to put questions to the boy, which he did. At the conclusion of the talk, as testified by the relator, he spoke of that being the work of the seventh year, and they were practically over it, and the superintendent said the boy ought to go there, and it would be easy for him. This expression of opinion is denied on the stand by Remington, who adds that he was in the office not more than four or five minutes, and did not go in for the purpose of making an examination. The relator, although he disclaimed in his petition knowledge of the board's rules, on the stand admitted that he had once been a member of the board of education, and was somewhat familiar with the current rules. He had easy access to them. The boy was examined to some extent with other pupils by Remington the day before he left the seventh-grade room, and there is sharp conflict as to the extent of that examination and as to what the superintendent said to the boy and to the teacher, Teal, as to the boy's proficiency; the boy putting it that Remington said the work would be easy for him in the seventh grade and the superintendent denying it, and giving his opinion that the boy was not qualified for that grade, which opinion he reported to the board at its meeting Thursday evening. To some extent Teal corroborates the statements of the boy respecting Remington's expression of opinion. It is not shown, however, that Teal examined the boy at all except that he heard some or all of the lessons during the four days he was in the seventh-grade room. There is no conflict respecting the proposi-

tion that the boy went to the seventh-grade room by the direction of his father and without any authority to go there by the board or knowledge on the part of the board or of the superintendent prior to his seeing the boy in that room. The appearance of the boy in the room of the seventh grade with his books can not reasonably be treated as an application for promotion to that grade, since such an application should be made to the board when in session, and the evidence furnishes no support for the allegation of the petition that the boy applied for admission to the seventh grade. No request was made to either the board or superintendent, the boy testifies, for leave to go into that room. He also says that, when Mr. Remington found him there Friday morning, he directed him to go into the sixth grade, but that, in obedience to his father's direction, he took his books and went home. The superintendent testifies that he did not expel any from the seventh-grade room, and there is nothing in the testimony which warrants the conclusion that the boy was expelled from the seventh-grade room as alleged in the petition, except in the sense that he was directed to go to the sixth-grade room to which he had been promoted.

The testimony also shows that, when in the fifth grade, the boy was 7 years of age, although the age of scholars generally was from 10 to 12, averaging 11 years. The teacher in the fifth grade, Miss Gibbs, testifies that her examination of the boy at the end of the spring term of 1907 showed that his work was exceedingly good in some branches, and in other branches not quite so good. She spoke to him concerning his writing and as to mathematics, in which his work was not as high as that of quite a number of the class who were promoted to the sixth grade, and advised that he had best do some work at home to perfect himself in those branches. None were promoted from the fifth grade to the seventh that year. It had been done in former years, but only by direction of the board and the superintendent. In her judgment the boy was not then qualified to enter the seventh grade. She had no personal knowledge of his proficiency after that. It appears that the superintendent reported to the board at its meeting Thursday evening (a meeting which he had expected would be held Tuesday evening) that he had made a test of three children, including Terry, and that they were not qualified to enter the seventh grade. The board took no action and gave no authority in any way for the boy to be promoted to the seventh grade. Testimony was given by two or three persons who then were or had been teachers, besides Mr. Kiefer, to the effect that they had examined the boy shortly after he left the school, and found him in their judgment qualified to enter the seventh grade. These references to the evidence are made not with a view of reviewing all of it, nor for the purpose of attempting to weigh those parts which are in conflict, but for the purpose only of indicating the character of the case presented. It suffices, as conclusion, to say that the trial court's judgment imports a finding that upon the whole evidence the boy was qualified to enter the seventh grade both at the time he attempted to enter and at the time of the trial. It appears affirmatively and there is no conflict in respect to it that no request was made of the board, either by the relator or the son, for the latter's promotion to the seventh grade, and each knew that his promotion card entitled him to enter only the sixth grade, also that at least the father knew that the rules gave authority for promotion to pass over the sixth grade to the board and to the board only. It is also shown without denial that the board did not have presented to it at any time a recommendation from the superintendent, or even from a teacher, to the effect that the pupil was qualified for entrance to the seventh grade, but, on the contrary, as hereinbefore stated, did have before it the expressed opinion of the superintendent that he was not so qualified.

It is manifest from the whole record that the circuit court acted upon the belief that the question whether or no the pupil was fitted to enter the seventh grade, and should have been promoted from the fifth to the seventh, was rightfully to be determined by the court rather than by the school authorities. But is this the law? Section 4017, revised statutes, provides that the board shall have the management and control of all the public schools in the district. Section 3985 makes provision for the adoption of rules and regulations, as follows: "The board of education of each district shall make such rules and regulations as it may deem necessary for its government and the government of its appointees and the pupils of the schools; and no meeting of a board of education not provided for by its rules or by-laws shall be legal unless all the members thereof have been notified as provided for in section thirty-nine hundred and seventy-eight." Following this authority, the board had made and promulgated rules and regulations as hereinbefore given. These rules seem to well cover the case in hand and to be appropriate to the objects intended. To us they appear reasonable, and quite well calculated to secure, in their application to the great body of pupils, a good school government, with as liberal treatment to the individual pupil as proper discipline will permit. The right of the pupil between the ages of 6 and 21 years residing in the district to attend the schools, receive like instruction with others, and be promoted

from grade to grade on the grounds of merit and proficiency only is provided for, the pupils on their part to conform to the rules and regulations of the school and obey the directions of the teachers and superintendent. The superintendent is to act under the advice and direction of the board, have complete supervision of the school, and see that all the rules and regulations of the board are enforced. He is also to direct as to the classification and examination, and, under the advice of the board, to the promotion of pupils. Abundant examinations are provided for, the manuscript to be kept on file for inspection of any who desire, and the standing of each pupil to be determined from the daily recitations, reviews, tests, and examinations in such manner as the superintendent may direct.

The complaint in the present case is that the application of some of these rules to this pupil worked an injustice, in that it denied him the right secured by section 4013, revised statutes, to freely enter the school of the district, and thereby deprived him of a right of promotion which because of his advanced proficiency he was entitled to enjoy, viz, to be promoted from the fifth to the seventh grade on the ground of merit. But who is empowered to judge of the merit and the proficiency? Is it the father of the child or the school authorities? The trial court seems to have assumed that in the first instance it is the father, and finally the court. If the father in the first instance had not the right to determine the matter and direct his boy to refuse to go to the sixth-grade room to which the school authorities had promoted him, but go to the seventh-grade room and insist on remaining there, it is difficult to see how the court could have any power to interfere when asked to deal with a situation in which the parent undertook to do as in this case, viz, override the school authorities in the management of the school. It is insisted in argument with great force and eloquence that the evidence conclusively shows that the boy was abundantly qualified to enter the seventh grade. The court, giving effect to all the evidence presented, so found, and we are not inclined to question that finding except to say that it was irrelevant to the real issue in the case. But the question is not what in fact were the qualifications of the boy, but what was the duty of the board on that Thursday evening when the situation as to the three pupils was called to its attention. The boy may have been qualified. Indeed, it appears from the whole case that the pupil was mentally a precocious boy. Whether it was best for the boy that he be thus crowded we need not inquire, though that consideration is sought to be impressed upon us pro and con. People, including educators, differ respecting the comparative harm likely to come to a child by untoward cramming and crowding on one hand, or, on the other hand, being kept back in his studies, with the probable resulting opportunity to acquire a habit of idling and wasting time, and probably will continue to differ to the end of time. As yet no better solution of the problem seems to have been made than to leave its determination to the parents, who presumably have more than any others the good of the child at heart. But, though this conclusion be accepted, it would not justify the claim on the part of the parent to insist upon his way in the face of contrary opinion and decision on the part of the school authorities. In the light of the facts as they appear, what duty devolved on the board at the commencement of the proceeding in mandamus which it had refused to perform? We are unable to perceive any. It is to be emphasized that no application had been made to the board requesting it to set aside the proper action of the superintendent and the teacher of the fifth grade as to the promotion of the relator's son, and direct an order of promotion to the seventh grade. It had before it at the only meeting which the record shows was held at which its attention was at all called to this boy the information that he had gone to the seventh-grade room without authority, and the opinion and recommendation of its superintendent that the pupil was not qualified for entry to that grade. No abuse of discretion is apparent in its refusal to act. Indeed, the refusal was the natural and proper result of the facts as they then appeared to the board.

We are of opinion that the initial error occurred in the common pleas in overruling defendant's motion to make the petition more definite, and later in sustaining the demurrer of relator to the second defense of the answer. It is not, however, necessary to elaborate this feature, since the case is susceptible of final disposition on the merits as made on the uncontradicted evidence. Substantially all of the testimony offered by relator was objected to and proper exception saved. By the testimony of the relator and his son it was made clear that the pupil was sent to the room of the seventh grade by his father and without permission of the school authorities. In other words, it was shown that he was an intruder. The willingness, if it existed at any time, of the superintendent that the boy should go to that room, could not avail, as the rule respecting promotions provided that they are to be made only, as conditions precedent, on the approval of the board based upon the recommendation of the teacher and superintendent. The testimony showed that neither condition obtained. The superintendent was a subordinate of the board, and any action on

his part in regard to promotion, as well as other matters, was required to be "under the advice and direction of the board." The duty, therefore, to "see that all the rules and regulations of the board are enforced," required him, without reference to any expression of individual opinion that he may have given as to the boy's proficiency, to direct the boy to go to the room of the grade to which he had been promoted. So soon as this condition was shown, it became the duty of the court to arrest the evidence and dismiss the relator's petition. It should be borne in mind, as an obvious and controlling fact, that the statutes impose the duty of the regulation and conduct of all public schools upon the boards of education and not upon the courts, and interference by the courts with the discharge of those duties should not be lightly entered upon. If every little neighborhood dispute which develops a difference of opinion with respect to the promotion of a pupil, or some other controversy between parent and teacher of no greater seriousness, is to be rushed into the courts, the natural effect will be to unduly crowd the dockets and to impede the important and useful litigation necessarily demanding the attention of the courts.

It is insisted by relator's counsel that the board of education was composed of uneducated men, and hence was not qualified to judge of the merits of the pupil for promotion. We can not know about that. It is enough to know that the statutes impose the duty on such boards, they having the aid afforded by the teachers and superintendent, and, if in any instance they are not qualified for the performance of such duty, it would become the voters of the district to elect men who would be qualified.

These conclusions require the reversal of the judgment of the circuit court and the dismissal of the petition at the costs of the relator, which judgment will be accordingly entered.

Reversed.

CREW, C. J., and SUMMERS, DAVIS, SHAUCK, and PRICE, JJ., concur.

XIX. Oklahoma.

[School Board Dist. No. 18, Garvin County, et al. v. Thompson et al. (supreme court of Oklahoma, May 13, 1909), 103 P., 578.]

1. PARENT AND CHILD—DUTIES OF PARENT.

At common law the principal duties of parents to their legitimate children consisted in their maintenance, their protection, and their education. While the municipal laws took care to enforce these duties, yet it was presumed that the natural love and affection implanted by Providence in the breast of every parent had done so more effectually than any law. For this reason the parent, and especially the father, was vested with supreme control over the child, including its education. Except where modified by statute, that authority still exists.

2. SCHOOLS AND SCHOOL DISTRICTS—PUPILS—COURSES OF STUDY.

The school authorities of this State have the power to classify and grade the scholars in their respective districts and cause them to be taught in such departments as they may deem expedient. They may also prescribe the courses of study and text-books for the use of the schools, and such reasonable rules and regulations as they may think needful. They may also require prompt attendance, respectful deportment, and diligence in study. The parent, however, has a right to make a reasonable selection from the prescribed course of study for his child to pursue, and this selection must be respected by the school authorities, as the right of the parent in that regard is superior to that of the school officers and the teachers.

Appeal from district court, Garvin County; R. McMillan, judge.

Mandamus by J. B. Thompson and others against School Board District No. 18, Garvin County, and others. Judgment for plaintiffs, and defendants bring error. Affirmed.

KANE, C. J.: This was an action in mandamus, commenced in the district court of Garvin County by the defendants in error to compel the school authorities of the city of Paula Valley, in said county, to reinstate their children in the public schools, from which they were expelled for the reason that under direction of their parents they refused to take singing lessons, which it seems were a part of the prescribed course of study in said schools. The school board and teachers of the schools were informed by the appellees that they did not wish their children to take singing lessons, that they would not supply them with the necessary singing books to do so, and requested them to excuse their children from this branch of the regular course. The school authorities refused to grant the request of appellees, and the appellees refused to furnish the singing books, and the children refusing to participate in the singing exercises, were expelled. It is agreed by both sides that, when boiled down, the only question really involved in this case is whether a patron of the public schools may make a reasonable selection from a course of study prescribed by the proper school authorities for his child to pursue, in opposition to a rule prescribed by such authorities requiring the child to take all the studies in such course. The trial court decided this

question in favor of the appellees, and the appellants, not being satisfied with the judgment, bring the case to this court by petition in error.

There is some conflict as to the power to suspend or expel pupils for failure to participate in certain required studies or exercises if the parents of the pupil request that the child be excused; but it seems to us that the weight of authority and the better reasoning sustain the judgment of the trial court. At common law the principal duties of parents to their legitimate children consisted in their maintenance, their protection, and their education. These duties were imposed upon principles of natural law and affection laid on them not only by nature herself, but by their own proper act of bringing them into the world. It is true the municipal law took care to enforce these duties, though Providence has done it more effectually than any law by implanting in the breast of every parent that natural insuperable degree of affection which not even the deformity of person or mind, not even the wickedness, ingratitude, and rebellion of children, can totally suppress or extinguish. (1 Lewis' Blackstone, sec. 447.) The statutes of Oklahoma defining the relation between parent and child are in the main declaratory of the common law. Section 3763, Wilson's Rev. & Ann. St., 1903, provides that the parent entitled to the custody of a child must give him support and education suitable to his circumstances. Section 3769, Wilson's Rev. & Ann. St., 1903, provides that: "The authority of a parent ceases, first, upon the appointment by a court of a guardian of the person of the child; second, upon the marriage of the child; third, upon its attaining majority." Section 3768, Wilson's Rev. & Ann. St., 1903, provides that: "The abuse of parental authority is the subject of judicial cognizance in a civil action in the district court brought by the child, or by its relatives within the third degree, or by the officers of the poor where the child resides; and when the abuse is established the child may be freed from the dominion of the parent, and the duty of support and education enforced."

Counsel for plaintiff in error states in his brief that the only law in this State that would seem to recognize the old common law is to be found in the chapter on parent and child, the chapter from which the foregoing sections are taken; but he contends the old common-law idea that the parent has the exclusive control over the education of the child has long since been abandoned. We must find warrant for this statement in the statutory law of the State in order to agree with counsel in this contention. At common law the parent, and especially the father, was vested with supreme control over the child, including its education, and, except where modified by statute, that authority still exists in the parent. (Board of Education of Cartersville et al. v. Purse, Next Friend, et al., 101 Ga. 422, 28 S. E. 896, 41 L. R. A. 593, 65 Am. St. Rep. 312.) It is true that with the organization of the common school system throughout the State statutes have been passed modifying more or less the authority of the parent over the child in school matters. Before statehood the general control and management of the schools of this jurisdiction was under the general supervision and management of the superintendent of public instruction, and the district schools were under the immediate control of the district school boards. The district school boards, in so far as the branches of study to be followed in such schools after they had complied with the law requiring the studying of certain branches, might substitute any other studies that might be determined upon by them. The board was authorized under the statute to suspend from school pupils who were guilty of immoral conduct and continued violation of the rules of the school.

It is admitted that these laws in so far as they are not repugnant to the constitution of the State nor locally inapplicable, are still in force; but counsel for plaintiff in error contends that, no matter what the rule may have been under the old territorial laws, there can now be no doubt that under sections 308, 311, 312, 313, and 314, Bunn's Ann. Const., the management of the public schools is absolutely turned over to the legislature of the State, and that the compulsory education clause of the constitution absolutely destroys the old common-law doctrine that the parent had the entire control over the education of his child, and that the uniform text-book law of the State absolutely places the course of study that is to be used in all the public schools in this State in the hands of a text-book commission. The sections of the constitution referred to by counsel provide: (1) That the legislature shall establish and maintain a system of free public schools wherein all the children of the State may be educated; (2) that it shall provide for the compulsory attendance at some public or other school, unless other means of education are provided, of all the children in the State who are sound in mind and body, between the ages of 8 and 16 years, for at least three months in each year; (3) that the supervision of instruction in the public schools shall be vested in a board of education, whose powers and duties shall be prescribed by law; and (4) that the legislature shall provide a uniform system of text-books for the common schools of the State. To our mind the right of the board of education to prescribe the course of study and designate the text-books to be used does not carry with it the

absolute power to require the pupils to study all of the branches prescribed in the course in opposition to the parents' reasonable wishes in relation to some of them. In *Morrow v. Wood*, 35 Wis. 59, 17 Am. Rep. 471, Mr. Justice Cole, in discussing a similar proposition, says: "It is unreasonable to suppose any scholar who attends school can or will study all the branches taught in them. From the nature of the case some choice must be made and some discretion be exercised as to the studies which the different pupils shall pursue. The parent is quite as likely to make a wise and judicious selection as the teacher."

It is no argument in favor of limiting the common-law authority and control of parents over their children to say that the exercise of such power may result disastrously to the proper discipline, efficiency, and well-being of the schools. It is to be presumed that a normal reasonable man will exercise such authority in a reasonable way. In *Morrow v. Wood*, supra, Mr. Justice Cole, upon this proposition, says: "We do not intend to lay down any rule which will interfere with any reasonable regulation adopted for the management and government of the public schools or which will operate against their efficiency and usefulness. Certain studies are required to be taught in the public schools by statute. The rights of one pupil must be so exercised, undoubtedly, as not to prejudice the equal rights of others; but the parent has the right to make a reasonable selection from the prescribed studies for his child to pursue, and this can not possibly conflict with the equal rights of other pupils. * * * And how it will result disastrously to the proper discipline, efficiency, and well-being of the common schools, to concede this paramount right to the parent to make a reasonable choice from the studies in the prescribed course which his child shall pursue, is a proposition we can not understand. The counsel for the plaintiff so insist in their argument, but, as we think, without warrant for the position." In *State v. School District No. 1, Dixon County, et al.*, 31 Neb. 552, 48 N. W. 393, the supreme court of Nebraska had the same question before it. Mr. Justice Maxwell, who wrote the opinion of the court, used the following language: "Now who is to determine what studies she shall pursue in school? A teacher who has a mere temporary interest in her welfare, or her father, who may reasonably be supposed to be desirous of pursuing such course as will best promote the happiness of his child? The father certainly possesses superior opportunities of knowing the physical and mental capabilities of his child. It may be apparent that all the prescribed course of studies is more than the strength of the child can undergo; or he may be desirous, as is frequently the case, that his child while attending school should also take lessons in music, painting, etc., from private teachers. This he has a right to do. The right of the parent therefore to determine what studies his child shall pursue is paramount to that of the trustees or teacher. Schools are provided by the public in which prescribed branches are taught, which are free to all within the district between certain ages; but no pupil attending the school can be compelled to study any prescribed branch against the protest of the parent that the child shall not study such branch, and any rule or regulation that requires the pupil to continue such studies is arbitrary and unreasonable. There is no good reason why the failure of one or more pupils to study one or more prescribed branches should result disastrously to the proper discipline, efficiency, and well-being of the school. Such pupils are not idle, but merely devoting their attention to other branches; and so long as the failure of the students, thus excepted, to study all the branches of the prescribed course, does not prejudice the equal rights of other students, there is no cause for complaint."

The same question was also decided by the supreme court of Illinois in the case of *Trustees of Schools v. People*, 87 Ill. 303, 29 Am. Rep. 55. In that case Mr. Chief Justice Scholfield, who delivered the opinion of the court, says: "But no attempt has hitherto been made in this State to deny, by law, all control by the parent over the education of his child. Upon the contrary, the policy of our law has ever been to recognize the right of the parent to determine to what extent his child shall be educated, during minority, presuming that his natural affections and superior opportunities of knowing the physical and mental capabilities and future prospects of his child will insure the adoption of that course which will most effectually promote the child's welfare. The policy of the school law is only to withdraw from the parent the right to select the branches to be studied by the child, to the extent that the exercise of that right would interfere with the system of instruction prescribed for the school, and its efficiency in imparting education to all entitled to share in its benefits. No particular branch of study is compulsory upon those who attend school; but schools are simply provided by the public in which prescribed branches are taught, which are free to all within the district between certain ages. In most primary schools it would be both absurd and impracticable to require every pupil to pursue the same study at the same time. Discrimination and preference between different branches of study, until some degree of advancement is attained, is inevitable, and, afterwards,

a due regard for the interests of the child will always require it, in greater or less degree. It is not claimed that every pupil attending the high school must pursue every study taught therein, and, manifestly, in the absence of legislation expressly requiring this, a regulation to that effect would be regarded as arbitrary and unreasonable, and could not therefore receive the sanction of the courts. Conceding that all the branches of study decided to be taught in the school shall not necessarily be pursued by every pupil, we are unable to perceive how it can, in any wise, prejudice the school, if one branch rather than another be omitted from the course of study of a particular pupil." Further, upon the same question, the learned chief justice says: "It is possible that a father may have very satisfactory reasons for having his son perfected in certain branches of education to the entire exclusion of others; and so long as, in exercising his parental authority in making the selection of the branches he shall pursue, none others are affected, it can be of no practical concern to those having the public schools in charge."

The foregoing cases, it seems to us, state the true rule, and there are no provisions in our constitution or laws that make it inexpedient to apply it here. Our laws pertaining to the school system of the State are so framed that the parent may exercise the fullest authority over the child without in any wise impairing the efficiency of the system. The only decided departure from the common-law rule is the section of our constitution providing for the compulsory attendance at some public or other school, unless other means of education are provided, of all the children of the State who are sound in mind and body, between the ages of 8 and 16 years, for at least three months in each year. Blackstone says that the greatest duty of parents to their children is that of giving them an education suitable to their station in life; a duty pointed out by reason, and of far the greatest importance of any. But this duty at common law was not compulsory; the common law presuming that the natural love and affection of the parents for their children would impel them to faithfully perform this duty, and deeming it punishment enough to leave the parent, who neglects the instruction of his family, to labor under those griefs and inconveniences which his family, so uninstructed, will be sure to bring upon him. (Lewis' Blackstone, book 1, sec. 451.) Our constitution provides for compulsory education; but it leaves the parents free to a great extent to select the course of study. They may send their children to public schools and require them to take such of the studies prescribed by the rules as will not interfere with the efficiency or discipline of the school, or they may withdraw them entirely from the public schools and send them to private schools, or provide for them other means of education.

Under our form of government, and at common law, the home is considered the keystone of the governmental structure. In this empire parents rule supreme during the minority of their children. After speaking of the power of parents over their children under the civil law, Judge Blackstone, in his commentaries, speaking of the corresponding power under the common law, says: "The power of a parent by our English laws is much more moderate, but still sufficient to keep the child in order and obedience. He may lawfully correct his child, being under age, in a reasonable manner, for this is for the benefit of his education. The consent or concurrence of the parent to the marriage of his child under age was also directed by our ancient law to be obtained; but now it is absolutely necessary, for without it the contract is void. And this also is another means, which the law has put into the parent's hands, in order the better to discharge his duty." (Lewis' Blackstone, book 1, secs. 452, 453.) Again, in section 453 the learned commentator says: "The legal power of a father—for a mother, as such, is entitled to no power, but only to reverence and respect—the power of a father, I say, over the persons of his children, ceases at the age of 21, for they are then enfranchised by arriving at years of discretion, or that point which the law has established, as some must necessarily be established, when the empire of the father, or other guardian, gives place to the empire of reason. Yet, till that age arrives, this empire of the father continues even after his death, for he may by his will appoint a guardian to his children. He may also delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child, who is then in loco parentis, and has such a portion of the power of the parent committed to his charge, viz, that of restraint and correction, as may be necessary to answer the purposes for which he is employed." It is clear that neither the statute nor common law gives to the teacher or school officers the exclusive authority they claim in this case over the children of the patrons of the public schools, unless they get it upon the theory that the mere act of sending the children to school amounts to a delegation of the parental authority which the law of the land places in the hands of the parent; but this contention is fully answered by Mr. Justice Cole in *Morrow v. Wood*, supra: "Whence," asks the learned justice, "did the teacher derive this exclusive and paramount authority over the child, and the right to direct his studies contrary to the wish of the father? It seems to us it is idle

to say the parent, by sending his child to school, impliedly clothes the teacher with that power, in a case where the parent expressly reserves the right to himself, and refuses to submit to the judgment of the teacher, the question as to what studies his boy should pursue."

We have made careful examination of the authorities directly in point on the question presented by the record here and have found that the courts of last resort of four States have passed squarely upon it. Three of the States, Illinois, Nebraska, and Wisconsin, sustain our views. A case from Indiana (*State v. Webber et al.*, 108 Ind. 34, 8 N. E., 708; 58 Am. Rep., 30) seems to take the contrary view. Mr. Chief Justice Hawk, who delivered the opinion of the court in *State v. Webber*, supra, based his opinion upon the fact that the parent did not assign any cause or reason why his son should not participate in the musical studies and exercises of the high school, and that therefore it may be fairly assumed that he had none. We believe the presumption ought to be the other way. There are certain virtues that may safely be attributed to the generality of mankind, among which are love of country and love of offspring. The perpetuation of the public school system of the State is probably as dear to the defendants in error as it is to the plaintiffs in error, and their interest in its efficiency, discipline, and course of study as deep. They undoubtedly approve of the entire curriculum, except the singing lessons. We think it would be a reversal of the natural order of things to presume that a parent would arbitrarily and without cause or reason insist on dictating the course of study of his child in opposition to the course established by the school authorities. A better rule, we think, would be to presume, in the absence of proof to the contrary, that the request of the parent was reasonable and just, to the best interest of the child, and not detrimental to the discipline and efficiency of the school. The school authorities of the State have the power to classify and grade the scholars in their respective districts and cause them to be taught in such departments as they may deem expedient. They may also prescribe the courses of study and text-books for the use of the schools, and such reasonable rules and regulations as they may think needful. They may also require prompt attendance, respectful deportment, and diligence in study. The parent, however, has a right to make a reasonable selection from the prescribed course of study for his child to pursue, and this selection must be respected by the school authorities, as the right of the parent in that regard is superior to that of the school officers and the teachers.

Counsel for plaintiff in error has cited several other cases to support his contention; but the ones we have heretofore noticed are all that, to our mind, are directly in point. *Donahoe v. Richards et al.*, 38 Me., 376, was a case where a pupil was expelled for non-compliance with a rule requiring a scholar to take part in the Bible exercises, although the pupil was willing to read from the "Donay" version. The parent brought an action on the case for such expulsion. It was held: That the parent could not recover, as there was no act done by which the ability of the child to render service was diminished; that the school was for the benefit and instruction of the pupil; that, if the pupil's rights have been violated, she alone was entitled to compensation. Another case often cited in support of the contention of appellant is *Spiller v. Woburn*, 12 Allen (Mass.), 127. In that case it was held that damages could not be recovered where a pupil was expelled from a public school for refusing to comply with a regulation requiring the pupils to bow their heads in morning prayer exercises, unless the parent of the pupil should request that such pupil be excused therefrom. The parent declined to make any request and directed his child not to obey the rule. It was held that the regulation was a reasonable one in the interest of quiet and decorum, and did not infringe on the religious liberty of the pupil.

It would serve no good purpose to note further this line of decisions. They are so different from the case at bar that they are valueless as authority upon the exact question involved. The difference between that class of cases and the case at bar is illustrated by *McCormick v. Burt et al.*, 95 Ill., 263, 35 Am. Rep., 163, one of the States followed by us in this opinion. In that case it was held that the expulsion of a pupil for nonobservance of a rule requiring pupils to lay aside their books during the opening exercises while the Bible is being read did not authorize an action on the case for damages where there was no allegation that the suspension was either wantonly or maliciously done. In this school no one was required to be present at such exercises unless he chose to do so; but the pupil insisted that the rule interfered with the religious convictions of himself and his father. None of this class of cases touch the identical question involved in the case at bar, although the relation of parent and child in school matters and the powers and duties of the school authorities are discussed generally.

We believe the court below reached the right conclusion, and its judgment is therefore affirmed. All the justices concur.

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