State of Iowa
1935

SCHOOL LAWS

From the Code of 1935

with

NOTES, FORMS, ANNOTATIONS AND DECISIONS

for

Use and Government of Directors and School Officers

AGNES SAMUELSON
Superintendent of Public Instruction

Prepared by
FRED L. MAHANNAH
Deputy

Published by
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PREFACE

This 1935 edition of the school laws of Iowa comprises relevant sections of the state constitution and the text of all provisions of statute in force and effect July 4, 1935, that apply to schools, school officers, teachers, pupils, patrons, or other officers who have duties or responsibilities in connection with the public school system.

It also contains decisions of the superintendent of public instruction in typical cases that have been before that officer on appeal since the year 1868. In addition, it contains a number of legal forms not ordinarily found in school officers' pads, with suggestions on appeal procedure.

Where provisions relating to the same or closely associated subject matter do not appear in consecutive order in the text of the law, cross references are used to trace all the provisions of school statutes that relate to such matter. Where an issue growing out of a particular section has been before the supreme court, a brief syllabus of the court's decision is placed under the section. A careful study of these syllabi is necessary if one is to know the construction to place on a given provision of law. Notes are inserted under certain sections to clarify their meaning or application.

The sections appear in numerical order, but certain section numbers have one of the first seven letters of the alphabet appended to indicate the general assembly by which enacted, the letter "a" indicating the 41st G. A., "b" the 42nd, "c" the 43rd, "d" the 44th, "e" the 45th, "f" the 45th Extra, and "g" the 46th. Sections to which one of these letters is appended do not necessarily appear in alphabetical order.

The county superintendent is the agency through which the school laws are distributed to the school officers. Any school officer may obtain a copy by applying to his local county superintendent. The copy issued to a school officer, however, is considered to be the property of the district and the statute, as set out in section 4216-c31, requires that he turn the copy over to his successor in office.

School officers should endeavor to acquaint themselves with the legal provisions designed to regulate and control the schools entrusted to their care, to the end that there may be a suitable and harmonious administration of school affairs throughout the state.

Correspondence from school officers, patrons, and teachers relating to school management or control or the interpretation of school law when addressed to the superintendent of public instruction will receive prompt and courteous attention.

AGNES SAMUELSON
Superintendent of Public Instruction

September 12, 1935

CONSTITUTION OF THE STATE OF IOWA

ARTICLE I.

BILL OF RIGHTS.

Religion. SEC. 3. The General Assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or the maintenance of any minister, or ministry.

See 4258, Bible in public schools; 5256, use of public money for sectarian purposes prohibited; 13252-f2, questioning teacher as to religious affiliations prohibited.

1. Use of public building for worship. This section is not violated by the casual use of a public building as a place for offering prayer and doing other acts of religious worship. *Moore v Monroe*, 64-367; 20 NW 475.

2. Use of schoolhouse for worship. The use of a schoolhouse for the purpose of religious worship, when authorized by a vote of the electors of the district, is not prohibited. *Davis v Boget*, 50-11.

3. Use of Bible in schools. The statute allowing the Bible to be used in public schools, with the provision that no pupil shall be required to read it contrary to the wishes of his parent or guardian, is not unconstitutional. *Moore v Monroe*, 64-367; 20 NW 475.

4. Use of foreign language in schools. The prohibition against the teaching, in other than the English language, of secular subjects in public and private schools in named grades, is not subject to the vice (1) of violating inalienable rights, (2) of prohibiting the free exercise of religion, (3) of constituting class legislation, or (4) of abridging the privileges or immunities of citizens of the United States. *State v Bartels*, 191-1060; 181 NW 508.

5. Diversion of public taxes. Public taxes may not be legally diverted to the maintenance of a school which is under sectarian management. *Knowlton v Baumhover*, 182-691; 166 NW 202.

6. Exemption of church property. The statute exempting church property from taxation is not in conflict with this section. *Trustees of Griswold Coll. v State*, 46-275.

Religious test—witnesses. SEC. 4 (Art. I). No religious test shall be required as a qualification for any office, or public trust, and no person shall be deprived of any of his rights, privileges, or capacities, or disqualified from the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion; and any party to any judicial proceeding shall have the right to use as a witness, or take the testimony of, any other person not disqualified on account of interest, who may be cognizant of any fact material to the case; and parties to suits may be witnesses, as provided by law.

See sections 13252-f1 to -f3, questioning teacher as to religious affiliation prohibited.

ARTICLE II.

RIGHT OF SUFFRAGE

Electors. SEC. 1. Every white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of this State six months next preceding the election, and of the County in which he claims his vote sixty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law.

The above section was amended in 1868 by striking the word "white" from the first line thereof. See first amendment of 1868.

For qualifications of electors, see also amendment 19, U. S. constitution.

See 676 and 4216-c17, where registration of voters is required; chapter 40, general election laws that are also applicable to regular or special school elections; chapter 41, how to canvass votes; 927 and 4216-c34, absent voters laws applicable to what school elections; 4216-c12, right to vote; chapter 211-C1, school election laws.

1. Nature of right of suffrage. The right of suffrage is not a natural or personal right, and does not come within the scope of constitutional guaranties as to equal privileges. *Shaw v Marshalltown*, 131-128; 104 NW 1121.

1a. Reception of illegal votes—when immaterial. *Strawn v Ind. Sch. Dist.*, 199-1078; 203 NW 12.

I QUALIFICATION OF VOTERS

2. Power of legislature. The legislature can not add to or take from the qualifications of this section. *Edmonds v Banbury*, 28-267. In re Application of *Carragher*, 149-225; 128 NW 352.

3. Women as qualified electors under federal amendment. The nineteenth amendment to the federal constitution:

Automatically amended the constitution of Iowa by striking out the word "male" in this section, and

Automatically caused our statutory declaration that "All qualified electors of the state * * * are competent jurors * * *" (§10842) to take on an enlarged meaning commensurate with the enlarged scope of our automatically amended constitution. *State v Walker*, 192-823; 185 NW 619.

4. Woman as voter under prior statutes. For cases dealing with the right of a woman to vote under statutes prior to the nineteenth amendment to the federal constitution, see *Coggeshall v D. M.*, 138-730; 117 NW 309; in re Application of *Carragher*, 149-225; 128 NW 352; *Chambers v Board*, 172-340; 154 NW 581; *Younker v Susong*, 173-663; 156 NW 24; *Hutchins v City*, 176-189; 157 NW 881; *McEvoy v Christensen*, 178-1180; 159 NW 179; *Sears v City*, 183-1104; 166 NW 700; *State v Snyder*, 184-42; 168 NW 243.

5. Residence—intent. Testimony by a party who claims to be a legal voter in a certain precinct, as to his intent in the matter of residence, is, of course, not conclusive as to the fact of residence. *State v Mohr*, 198-89; 199 NW 278.

6. Residence of wife. The residence of a wife for voting purposes is, presumptively, the same as the residence of her busband. *State v Mohr*, 198-89; 199 NW 278.

7. Citizenship. A strong presumption of citizenship arises from the fact that the party has voted, held office, or otherwise performed the functions and exercised the rights of citizenship. *State v Chamberlin*, 180-685; 163 NW 428.

8. Naturalization. The adoption by a citizen of the United States of a foreign-born minor does not ipso facto naturalize such minor. *Powers v Harten*, 183-764; 167 NW 693.

9. Residence in county. The constitutional requirement that a citizen shall have resided in the county in which he proposes to

vote, for 60 days preceding the election, is an absolute requirement —just as absolute as the requirement that he shall have reached the age of 21 years. *Taylor v Ind. Sch. Dist.*, 181-544; 164 NW 878.

10. Change of residence. A citizen who wholly abandons his residence in one county with no intention to return thereto, and, with his family, moves to another county with the good-faith intention to there take up his home, becomes a resident of such latter county at once, upon his arrival at his intended abiding place, even though, for reasons not under his control, he was temporarily unable to fully consummate said latter intention by physically remaining in said latter county. *Taylor v Ind. Sch. Dist.*, 181-544; 164 NW 878.

11. Intention to return. If a person has actually removed to another place with the intention of remaining there for an indefinite time, and making it a place of fixed residence or present domicile, it is to be regarded as his domicile, notwithstanding he may entertain a floating intention to return at some future time. The place where a married man's family resides is generally to be considered his domicile. *State v Groome*, 10-308.

12. General rule on residence. One's voting residence is at the place which he treats as his home and to which he intends at all times to return when not employed at other places. *Taylor v Ind. Sch. Dist.*, 181-544; 164 NW 878.

13. Sojourning for education. Where a student entered the state university at Iowa City while still a minor, making his father's home in another county his residence during vacations, and receiving support from his father, without having any definite intention of making Iowa City his home after graduation, held, that he was not a resident of the county in which he was attending school, so as to be entitled to vote there on coming of age. *Vanderpoel v O'Hanlon*, 53-246; 5 NW 119.

14. Persons in military service. A statute providing that citizens of the state in the military service should have a right to vote at all elections authorized by law, whether at the time of voting they were within or without the state, and providing for the opening of polls and holding of elections wherever a regiment or battalion of Iowa troops was stationed, is not unconstitutional. *Morrison v Springer*, 15-304.

15. Registration law. The legislature has the power to regulate the exercise of the right of suffrage and to provide a method for determining whether persons offering to vote possess the required qualifications. A registration law is therefore not unconstitutional. *Edmonds v Banbury*, 28-267; *Lane v Mitchell*, 153-139; 133 NW 381.

II Right of Elector to Freedom of Choice

16. Confining elector to official ballot. A qualified elector has the constitutional right to freely vote for whom he pleases. This right can not be taken away or abridged by a statutory provision that, in voting, he shall choose between the candidates whose names are printed on the official ballot. *Barr v Cardell*, 173-18; 155 NW 312.

17. Primary election. The statute providing for primary elections in cities adopting the commission form of government is not unconstitutional as depriving the electors of the power to vote for the candidates of their choice. *Eckerson v Des Moines*, 137-452; 115 NW 177.

18. Qualification for holding office. Only those who are qualified electors are capable of holding office unless by special provision. *State ex rel v VanBeek*, 87-569; 54 NW 525.

19. Elector defined. Prior to the nineteenth amendment to the federal constitution, the term, "elector", unqualified and unexplained, meant a constitutional elector—a male person. *McEvoy v Christensen*, 178-1180; 159 NW 179; *Sears v City*, 183-1104; 166 NW 700.

20. Appointment of police commissioners. The provision as to appointment of police commissioners from different political parties is not unconstitutional as interfering with freedom of elections or

the rights of electors. The office not being one provided for by the constitution, but municipal in character, the legislature may regulate the qualifications for such office. *State v Sargent*, 145-298; 124 NW 339.

21. Election defined. The term "election" as here used, means the choice of persons for public offices made by the people, and does not apply to votes of the electors in district townships in the levy of a school tax at a district meeting, or in a city authorizing the issuance of municipal bonds. *Seaman v Baughman*, 82-216; 47 NW 1091; *Hutchins v Des Moines*, 176-189; 157 NW 881.

22. Additional elections. As this section designates the precise qualifications of electors it necessarily disqualifies others from exercising the elective franchise, and if the legislature provides for elections other than those expressly referred to in the constitution, the electors must be as here specified. *Coggeshall v Des Moines*, 138-730; 117 NW 309; *Taylor v Ind. Sch. Dist.*, 181-544; 164 NW 878.

23. School teachers. Adult, unmarried school teachers become "residents" of the county in which they teach when the employment is entered upon with the good faith intention of making the place of employment their permanent home or residence so long as the employment continues. *Dodd v Lorenz*, 210-513; 231 NW 422.

24. Residence — evidence — sufficiency. *Willis v Sch. Dist.*, 210-391; 227 NW 532.

ARTICLE VII.

STATE DEBTS

Losses to school funds. SEC. 3. All losses to the permanent, School, or University fund of this State, which shall have been occasioned by the defalcation, mismanagement or fraud of the agents or officers controlling and managing the same, shall be audited by the proper authorities of the State. The amount so audited shall be a permanent funded debt against the State, in favor of the respective fund, sustaining the loss, upon which not less than six per cent. annual interest shall be paid. The amount of liability so created shall not be counted as a part of the indebtedness authorized by the second section of this article.

ARTICLE XI.

MISCELLANEOUS.

Indebtedness of political or municipal corporations. SEC. 3. No county, or other political or municipal corporation shall be allowed to become indebted in any manner, or for any purpose, to an amount, in the aggregate, exceeding five per centum on the value of the taxable property within such county or corporation—to be ascertained by the last State and county tax lists, previous to the incurring of such indebtedness.

See 4190, indebtedness cannot be incurred by the board; 4353 et seq., statutory limit of indebtedness with procedure when in excess of one and one-fourth per cent; 4406, board empowered to issue bonds on vote of electors; 6238, statutory limit of indebtedness if board is to submit proposition to electors on the board's own motion; 7109, actual value of taxable property, how ascertained.

I WHAT CONSTITUTES INDEBTEDNESS

(a) In general

1. Scope of inhibition. The constitutional inhibition applies to indebtedness incurred in any manner or for any purpose. It applies to indebtedness already due as well as that to become due. *Grant v Davenport*, 36-396; *French v Burlington*, 42-614; *McPherson v Foster*, 43-48; *Council Bluffs v Stewart*, 51-385; 1 NW 628; *Reynolds v Lyon Co.*, 121-733; 96 NW 1096.

2. Provision mandatory. This provision of the constitution is mandatory. *Nash v Council Bluffs*, 174 Fed 182.

3. Indebtedness of citizens. The citizens and the corporation are not one and the same so that the indebtedness imposed upon citizens for such purposes is an indebtedness of the corporation. The property of a citizen may by reason of his being within the limits of several municipal corporations, as for instance, a county and city and school district, be subjected to indebtedness in the aggregate beyond the constitutional limitations. *Tuttle v Polk*, 92-433; 60 NW 733.

3-a1. What constitutes a debt. A contract between an architect and a municipal corporation, which contract imposes a financial obligation on the corporation only in case the corporation enters into a further contract for the erection of the building which the architect has planned, is properly classified as a liability of the corporation's from the moment the building contract is entered into. *Holst v Cons. Ind. Sch. Dist.*, 203-288; 211 NW 398.

3-a2. Construction of contract. The specific amount for which a municipal corporation obligates itself in a written contract for the construction of a schoolhouse in return for the contractor's agreement to "provide all the material and perform all of the work," etc., is in no wise lessened by a contract clause that said price "includes five thousand dollar figure for millwork." *Holst v Cons. Ind. Sch. Dist.*, 203-288; 211 NW 398.

4. Nature of indebtedness. An indebtedness, strictly speaking, can not be created except by contract, either express or implied, and the indebtedness prohibited by the constitution is such as is created by the voluntary action of both the debtor and creditor. *Thomas v Burlington*, 69-140; 28 NW 480.

5. For a general discussion of the meaning of "indebtedness", as used in this section of the constitution, see: *Swanson v Ottumwa*, 118-161; 91 NW 1048.

6. Indebtedness based on contingency. This section applies to an indebtedness which depends on some contingency before a liability is created; but it must appear that such contingency is sure to take place, irrespective of any action taken or option exercised in the future. *Burlington Water Co. v Woodward*, 49-58.

(b) Particular kinds of obligations

7. Outstanding warrants and bonds. Outstanding warrants as well as bonds constitute an indebtedness. *Council Bluffs v Stewart*, 51-385; 1 NW 628.

8. Contract of guaranty. A contract of guaranty by a municipal corporation is an indebtedness and when beyond the constitutional limit is void. *Carter v Dubuque*, 35-416.

9. Assuming liability of a contractor. Where the city assumes liability to the contractor for cost of street improvement, such liability becomes the indebtedness of the city. *Allen v Davenport*, 107-90; 77 NW 532.

10. Compromise — balance in favor of city. In case of a compromise where the city receives one sum of money, and issues its certificate for a smaller sum, such warrant is not void as incurring an indebtedness in excess of the constitutional limitation. *Hintrager v Richter*, 85-222; 52 NW 188.

11. Judgment against a corporation. A judgment against a municipal corporation is not a creation of indebtedness but only evidence of a pre-existing indebtedness and a corporation should plead the fact that the indebtedness is in excess of the constitutional limit. If this fact is not pleaded and made a ground of defense it cannot be urged as a defense in a mandamus proceeding to compel the levying of a tax to pay the judgment.

Aetna Life Ins. Co. v Lyon Co., 44 Fed 329; *Edmundson v Ind. Sch. Dist.*, 98-639; 67 NW 671.

12. Judgment in excess of limit. The fact that warrants issued in excess of the constitutional limit are included in a judgment against a city does not alone impair its validity. That is a matter of defense. But parties cannot by acquiesence in a judgment for an indebtedness in excess of the constitutional limit give greater validity to such judgment than possessed by the indebtedness on which it was based. If only a part of the indebtedness is invalid, the judgment is not invalid in toto. *Rankin v Chariton*, 160-265; 139 NW 560; 141 NW 424.

13. Interest on bonds. The constitutional limit does not relate to interest and coupons upon bonds legally issued, and although they may swell the total indebtedness to a sum in excess of the constitutional limit they will be valid. *Durant v Iowa Co.*, Woolworth 69.

14. Option to purchase waterworks. An ordinance of a city authorizing the erection of waterworks by a private company, with the provision that the city might, at its option, purchase them in the future on certain terms, is not the incurring of an indebtedness. *Burlington Water Co. v Woodward*, 49-58.

15. Option to purchase real estate. An option to purchase real estate under which the city is not obligated to make additional payments, except as it voluntarily elects to do so, does not constitute an indebtedness. *Windsor v Des Moines*, 110-175; 81 NW 476.

(c) Obligations maturing by installments

16. Yearly payments. The indebtedness here contemplated is different from an obligation to pay. A contract under which a certain sum within the constitutional limit was to be paid each year would be valid, although the entire amount of the obligation of the contract was greatly in excess of the constitutional limit. *Hintrager v Richter*, 85-222; 52 NW 188; *Creston Waterworks Co. v Creston*, 101-687; 70 NW 739.

17. Rentals for hydrants. A contract by a city to pay rentals for fire hydrants at stated times in the future is one for a current expenditure and does not create an indebtedness. *Centerville v Fidelity Trust & Guar. Co.*, 118 Fed 332.

18. Water supply by year. A contract by a city with a water company for a supply of water for fire protection to be furnished from year to year does not create an indebtedness within this constitutional provision. *Creston Waterworks Co. v Creston*, 101-687; 70 NW 739.

19. Erection of public improvement. There is a distinction between a contract to procure light for a city and its inhabitants and a contract for the construction of an electric light plant. A contract for the latter purpose, by which time a payment is postponed to a later date and no special levy for the purpose of erecting such works is authorized, creates a municipal indebtedness. Such a purpose is not one for which the city may anticipate its general revenues. *Windsor v Des M.*, 110-175; 81 NW 470.

20. Erection of waterworks. The provisions of the code with reference to contracting for the erection of waterworks, contemplate the levying of a special tax to be paid in installments in the future and an appropriation of the proceeds of such tax to the erection or procuring of waterworks, and do not involve the assumption of any indebtedness on the part of the city. *Swanson v Ottumwa*, 118-161; 91 NW 1048; *Contra Ottumwa v City Water Supply Co.*, 119 Fed 315; *City Water Supply Co. v Ottumwa*, 120 Fed 309.

(d) Obligations payable from existing funds or anticipated revenues

21. Debts payable from cash on hand. If the corporation has money in its treasury to meet its indebtedness, the issue of warrants to any amount, however great, over the constitutional limit, will not be a violation of such provisions. *German Ins. Co. v Manning*, 95 Fed 597; *Dively v Cedar Falls*, 27-227.

22. Existing appropriation. If warrants are only drawn where there is an existing appropriation to meet them, the amount of the

outstanding indebtedness of a city is immaterial. *Windsor v Des M.*, 110-175; 81 NW 476.

23. Money on hand or in prospect. If the city has on hand or in prospect at the time of the issue of warrants, funds with which to meet them without trenching on the rights of creditors for current expenses of the city, such warrants are valid although such funds may afterwards have been wrongfully applied to other purposes. *Phillips v Reed*, 107-331; 76 NW 850; 77 NW 1031; *Phillips v Reed*, 109-188; 80 NW 347.

24. Burden of proof. The burden of proof is upon the corporation to prove that the warrants relied upon by it as constituting a part of the indebtedness of the corporation exceeded the cash in the treasury available for their payment. *German Ins. Co. v Manning*, 95 Fed 597.

25. Debts payable from current revenues. Obligations for ordinary current expenses which, together with other like expenses, are within the limit of the current revenue and such special taxes as the municipality may legally and in good faith have levied, do not constitute an indebtedness within the meaning of the constitutional provision. *Grant v Davenport*, 36-396; *French v Burlington*, 42-614; *Tuttle v Polk*, 92-433; 60 NW 733; *Cedar Rapids v Bechtel*, 110-196; 81 NW 468.

26. Anticipation of revenues. Obligations incurred in anticipation of revenues yet to be collected and those incurred in anticipation of or reliance upon a special fund pledged to their payment are not to be regarded as "debts" in applying the constitutional limitation. *Swanson v Ottumwa*, 118-161; 91 NW 1048.

27. Current revenues—judgment creditor. A city has a right to obtain and apply its current revenues to the payment of its ordinary and current expenses, even as against a judgment creditor. *Grant v Davenport*, 36-396.

28. Burden of proof. When it is claimed that obligations to be paid out of the general revenues are not to be included under the general indebtedness, the burden is on the city to show that the amounts to be paid will be covered by the current revenues. *Windsor v Des M.*, 110-175; 81 NW 476.

(e) Funding bonds

29. Funding judgment. A municipal corporation already indebted beyond the constitutional limit may issue bonds for the purpose of funding an outstanding judgment which is valid. The issue of such bonds does not increase the indebtedness. *Jamison v Ind. Sch. Dist.*, 90 Fed 387; *Sioux City v Weare*, 59-95; 12 NW 786; *Heins v Lincoln*, 102-69; 71 NW 189; *Thompson v Ind. Dist.*, 102-94; 70 NW 1093.

30. Funding outstanding bonds. The issuance of bonds in excess of the constitutional limitation to be exchanged for outstanding bonds which are valid, upon the surrender and cancellation of the same, does not create an indebtedness but merely changes its form. *Ind. Sch. Dist. v. Rew*, 111 Fed 1; *Fairfield v Rural Ind. Sch. Dist.*, 116 Fed 838; *Heins v Lincoln*, 102-69; 71 NW 189.

31. Bonds exchanged for invalid bonds. New bonds issued in exchange for bonds which were in excess of the constitutional limit of indebtedness when issued are subject to the constitutional objection. *Reynolds v Lyon*, 97 Fed 155; *Salmon v Rural Ind. Sch. Dist.*, 125 Fed 235.

32. Bonds sold to retire other bonds. The issuance of bonds in excess of the constitutional limitation for the purpose of taking up valid outstanding bonds with the proceeds of the sale is not justified where the new bonds are issued as binding obligations without a cancellation or surrender of the old ones. By such an arrangement a new debt is for the time being created. *Doon Tp. v Cummins*, 142 US 366; *Heins v Lincoln*, 102-69; 71 NW 189; *Reynolds v Lyon Co.*, 121-733; 96 NW 1096.

(f) Taxation as an indebtedness

33. Tax and indebtedness distinguished. A tax, in the legal sense, is not a debt within the meaning of the constitutional provision limiting municipal indebtedness. *Grunewald v Cedar Rapids*, 118-222; 91 NW 1059.

34. No limitation on taxation. The constitutional provision does not impose a limitation upon taxation, but only a limitation upon indebtedness of the corporation. *Swanson v Ottumwa*, 118-161; 91 NW 1048; *Contra Ottumwa v City Water Supply Co.*, 119 Fed 315; *City Water Supply Co. v Ottumwa*, 120 Fed 309.

35. Obligations payable out of a tax. The fact that certificates, warrants or bonds are issued, payable out of the proceeds of a tax, and not out of the treasury of the corporation, does not render the arrangement one involving municipal indebtedness. *Swanson v Ottumwa*, 118-161; 91 NW 1048; *Contra Ottumwa v City Water Supply Co.*, 119 Fed 315; *City Water Supply Co. v Ottumwa*, 120 Fed 309.

36. Certificates of assessments. Contracts for street improvements to be paid for by certificates of assessments on abutting property are not to be considered as involving municipal indebtedness, even if any deficiency is to be paid out of a fund raised by taxation. *Davis v Des M.*, 71-500; 32 NW 470; *Tuttle v Polk*, 92-433; 60 NW 733; *Clinton v Walliker*, 98-655; 68 NW 431; *Corey v Ft. Dodge*, 133-666; 111 NW 6.

37. Restraining tax. It is not ground for restraining the collection of a tax that, when collected, it will be applied to an unconstitutional indebtedness. *Strohm v Iowa City*, 47-42.

38. Recovery of taxes. In case the city has unlawfully collected taxes, an action to recover back taxes thus unlawfully collected will not be defeated by reason of the indebtedness of the city beyond the constitutional limit. *Thomas v Burlington*, 69-140; 28 NW 480.

II Computing Indebtedness

39. "Taxable property" defined. In determining whether a bond issue of a county for highway purposes exceeds the permissible percentage "on the actual value of the taxable property within such county", moneys and credits must be included and added to the actual value of the real and personal property other than moneys and credits. *McLeland v Marshall Co.*, 201 NW 401; 203 NW 1.

39-a1. "Taxable property" defined. "Taxable property" embraces "moneys and credits" within the meaning of this section. *Mack v Ind. Sch. Dist.*, 200-1190; 206 NW 145.

40. Property considered. All property within the corporate limits, whether subject to assessment for city purposes or not, is to be taken into account in determining whether the indebtedness exceeds the five per cent limit. *Windsor v Des M.*, 110-175; 81 NW 476.

40-a1. Tax as asset. In the marshaling of the assets and liabilities of a municipal corporation on the issue whether the debts of the corporation are in excess of constitutional limitation, a duly levied and collectible tax must be deemed a municipal asset, in the absence of proof showing the definite purpose of the tax and, if for current expenses, that legal obligations have been or necessarily will be created, sufficient to offset said tax fund. *Holst v Cons. Ind. Sch. Dist.*, 203-288; 211 NW 398.

41. Valuation of property. The valuation furnishing the basis for determining whether the limit of indebtedness has been exceeded is the aggregate value of all the property, real and personal, returned by the assessor for taxation and not the taxable value of twenty-five per cent of the actual value as provided in the code. *Nash v Council Bluffs*, 174 Fed 182; *Halsey v Belle Plaine*, 128-467; 104 NW 494; *Miller v City*, 188-514; 176 NW 373.

42. Tax lists. The tax lists are not made until after the equalization in June, and are not completed until after the levy of taxes in September. And where a tax was voted in May, which was in excess of the five per cent limit as based upon the tax list of the previous year, held, that it was not proper to consider the assessor's lists of the current year as showing that such tax was not in excess of the constitutional limit. *Wilkinson v Van Orman*, 70-230; 30 NW 495.

43. Omitted property. Where it appeared that certain lands included in the tax list were not

valued therein, and that the taxes thereon were marked paid, held, that evidence as to the value of such lands was admissible, to show the indebtedness of the corporation subject to the right of defendant to show the rate per cent of the taxes and the amount paid, and thus ascertain the assessed value. *Wormley v District Tp.*, 45-666.

44. Cash on hand. Outstanding bonds and warrants should be reduced by the amount of available cash on hand in determining the actual debt. *Miller v City*, 188-514; 176 NW 373.

45. Outstanding current warrants offset by current taxes. In determining the constitutional limit of indebtedness of a municipal corporation, outstanding warrants representing expenses for the current year are not deemed a "debt", when the current and collectible taxes for such current year are ample to pay such warrants. *Trindle v Cons. Ind. Sch. Dist.*, 202 NW 377.

46. Available assets—taxes levied. In ascertaining the whole resources of a city, taxes levied should be regarded as available assets up to the time of the annual tax sale, but after that period the burden is on the city to show that such taxes have any value which can be counted as available for the purpose of meeting a proposed indebtedness. *French v Burlington*, 42-614.

47. Uncollected taxes. In ascertaining the entire indebtedness with reference to the constitutional limitation, uncollected taxes and the levy for the current year will not be taken into account as reducing such indebtedness (explaining French v Burlington, 42-614). *Council Bluffs v Stewart*, 51-385; 1 NW 628.

48. Anticipation of ordinary revenues. The right to anticipate ordinary revenues does not extend beyond the current year, nor can it be exercised as to such revenues for any purpose beyond the payment of ordinary expenses. *Swanson v Ottumwa*, 118-161; 91 NW 1048; See *Windsor v Des M.*, 110-175; 81 NW 476.

49. Anticipation of special revenues. A city may anticipate special revenues to be derived by some fixed and definite plan of special taxation extending over a period of years to meet some extraordinary expenditure. *Swanson v Ottumwa*, 118-161; 91 NW 1048; See *Windsor v Des M.*, 110-175; 81 NW 476.

50. Void bonds as indebtedness. Where bonds are void because issued in excess of the constitutional limitation, they are not to be considered in estimating the amount of indebtedness, and the fact that subsequently these bonds have been paid by money obtained from the selling of another series of void bonds which have since been repudiated will be immaterial. *Ashuelot Nat. Bank v Lyon Co.*, 81 Fed 127; *Lyon Co. v Ashuelot Nat. Bank*, 87 Fed 137; *German Ins. Co. v Manning*, 95 Fed 597.

51. Void warrants as indebtedness. The amount of outstanding illegal warrants cannot be taken into account in determining whether bonds are in excess of the limitation of indebtedness, even though the proceeds of the bonds are used in extinguishing such warrants. *Keene Five Cent Sav. Bank v Lyon Co.*, 97 Fed 159.

51-a.—Computation of assets and liabilities. In the marshaling of the assets and liabilities of a municipal corporation on the issue whether the debts of the corporation are in excess of constitutional limitation, collected and uncollected taxes and tuition due the municipality cannot be deemed an asset when it is shown that the current expenses of the municipality will consume the entire amount of said taxes and tuition; otherwise as to municipal property available for sale. *Trepp v Sch. Dist.*, 213-944; 240 NW 247.

51-b. Tax list conclusive. On the issue whether the indebtedness of a municipal corporation exceeds the constitutional limitation, the court cannot add other property to the "last state and county tax list". *Trepp v Sch. Dist.*, 213-944; 240 NW 247.

51-c. Unconstitutional municipal indebtedness not curable. The legislature has no constitutional power to authorize a tax levy or a bond issue to pay, in whole or in part, a constitutionally prohibited indebtedness. More concretely, if

a municipality creates an indebtedness which is in part valid, and in part constitutionally invalid, the invalid part may not be cured (1) by the voting of a tax to pay or reduce the indebtedness, or (2) by the issuance of bonds, and the application of the proceeds thereof to the same purpose. *Trepp v Sch. Dist.*, 213-944; 240 NW 247.

51-d. Partly void warrants. There can be no recovery on municipal warrants given in payment of part of a total purported indebtedness, part of which is void because in excess of constitutional debt limitation. In other words, recovery, in so far as permissible, must be had in some proceedings other than on said warrants. *Trepp v Sch. Dist.*, 213-944; 240 NW 247.

III Invalidity of Portion of Indebtedness

52. Portion within limit valid. If a part of the indebtedness created by the issuance of bonds is in excess of the constitutional limit, the portion within the limit will be valid and enforced, while the portion beyond the limit will be held void. *McPherson v Foster*, 43-48; *Reynolds v Lyon Co.*, 121-733; 96 NW 1096; See *Anderson v Orient Fire Ins. Co.*, 88-579; 55 NW 348.

53. Proceeds used to pay valid debts. Bonds issued in excess of the constitutional limitation may be enforced to the extent that their proceeds were used in paying off valid prior indebtedness. *Aetna Life Ins. Co. v Lyon Co.*, 95 Fed 325; *Everett v Ind. Sch. Dist.*, 102 Fed 529; 109 Fed 697.

54. Method of enforcing valid portion. In case a portion of the bonds issued is in excess of the constitutional limit, the holders of the entire series of bonds may join in maintaining a suit in equity to determine the portion of the debt which is valid and enforceable, and to have such amount apportioned between the different holders. *Aetna Life Ins. Co. v Lyon Co.*, 44 Fed 329; 95 Fed 325; *Everett v Ind. Sch Dist.*, 102 Fed 529; 109 Fed 697; *McPherson v Foster*, 43-48.

55. Burden of proof. If it is claimed that a part of the bonds issued is valid, for instance, because the proceeds were applied to a legal debt, the burden of showing that fact is upon the holder of the bonds. *Aetna Life Ins. Co. v Lyon Co.*, 82 Fed 929; *Holliday v Hilderbrandt*, 97-177; 66 NW 89; *Ind. Dist. v Society for Savings*, 98-581; 67 NW 370.

56. Limitation of action. The limitation against an action for the valid portion of the obligation commences to run only from the maturity of the bonds. *Aetna Life Ins. Co. v Lyon Co.*, 95 Fed 325; *Everett v Ind. Sch. Dist.*, 109 Fed 697.

57. No right of subrogation. Holders of bonds, however, which are invalid because in excess of the constitutional limitation are not entitled to subrogation to the rights of creditors whose claims have been paid from the proceeds of such bonds. *Aetna Life Ins. Co. v Lyon Co.*, 95 Fed 325.

58. Paving contract. A paving contract, obligating the city to pay the cost of paving certain street intersections, is not wholly void, although the city is already indebted beyond its constitutional limit, and the contractor may take advantage of any portion of the contract which the city had power to make. *Ft. Dodge Elec. L. & P. Co. v Ft. Dodge*, 115-568; 89 NW 7.

IV Rights and Duties of Holders of Municipal Obligations

59. Bona fide holder not protected. Bonds issued in excess of the constitutional limit are void without regard to the good faith and want of notice of the holder. *McPherson v Foster*, 43-48; *Mosher v Ind. Sch. Dist.*, 44-122; *First Nat. Bank v. District Tp.*, 86-330; 53 NW 301.

60. Nonnegotiable order. An order or warrant issued in excess of the constitutional limitation is void. Such order not being negotiable, a bona fide holder will acquire no rights thereunder. *National State Bank v Ind. Dist.*, 39-490.

61. Judgment bonds. Bonds issued in payment of a judgment recovered on debts contracted in excess of the constitutional limit are valid in the hands of innocent

holders. *Sioux City & St. P. R. Co. v Osceola Co.*, 45-168; *Sioux City & St. P. R. Co. v Osceola Co.*, 52-26; 2 NW 593.

62. Negotiable refunding bonds. Negotiable refunding bonds, authorized by statute to be issued in exchange for valid outstanding evidences of indebtedness in the hands of purchasers for value before maturity, will be presumed to have been so issued, and not to have increased the indebtedness of the corporation. *Lyon Co. v Keene Five Cent Sav. Bank*, 100 Fed 337.

63. Purchase money used to pay debts. The action of the bondholder who can show that the money advanced by him was used in the extinguishment of valid indebtedness is properly founded on his bonds and he is not limited to an action for money had and received. His action is therefore not barred by the statute of limitations until the statutory period has run against the bonds. *Shaw v Ind. Sch. Dist.*, 62 Fed 911; *Aetna Life Ins. Co. v Lyon Co.*, 82 Fed 929.

64. Notice of constitutional inhibition. A purchaser of bonds is bound to take notice of the constitutional limitation. *Aetna Life Ins. Co. v Lyon Co.*, 82 Fed 929.

65. Notice of indebtedness. A party who becomes the creditor of a municipal corporation must at his peril take notice of the fact that its indebtedness is in excess of the constitutional limitation. *Nesbit v Ind. Dist.*, 144 US 610; (affirming 25 Fed 635); *French v Burlington*, 42-614; *Kane v Ind. Sch. Dist.*, 82-5; 47 NW 1076; *Holliday v Hilderbrandt*, 97-177; 66 NW 89.

66. Purchaser of funding bonds. A purchaser of bonds reciting their issuance for the funding of outstanding indebtedness is not chargeable with notice of the invalidity of the indebtedness refunded. *Keene Five Cent Sav. Bank v Lyon Co.*, 97 Fed 159; *Fairfield v Rural Ind. Sch. Dist.*, 116 Fed 838.

67. Notice of taxable property. The purchaser of bonds is bound to take notice of the value of the taxable property of the municipality. *Shaw v Ind. Sch. Dist.*, 62 Fed 911; *Burlington Sav. Bank v Clinton*, 111 Fed 439; *Holliday v Hilderbrandt*, 97-177; 66 NW 89.

68. Notice of rule as to payment of debts. A party who advances money to fund outstanding indebtedness is charged with the knowledge that to create a valid claim against the corporation, the money he advances must be used in payment of valid indebtedness. *Aetna Life Ins. Co. v Lyon Co.*, 82 Fed 929.

69. Recitals in bond. The purchaser of bonds is not entitled to rely on recitals therein that the debt created does not exceed the constitutional limit. *Shaw v Ind. Sch. Dist.*, 62 Fed 911; *Fairfield v Rural Ind. Sch. Dist.*, 111 Fed 453; *Salmon v Rural Ind. Sch. Dist.*, 125 Fed 235; See *Keene Five Cent Sav. Bank v Lyon Co.*, 97 Fed 159; *Fairfield v Rural Ind. Sch. Dist.*, 116 Fed 838.

70. Lien. The statute giving to holders of bonds issued in excess of the constitutional limit a lien for material furnished by them upon a building in which it should be used, held unconstitutional, in that it was sought thereby to render the corporation liable for such improvements beyond its constitutional limit of indebtedness. *Mosher v Ind. Sch. Dist.*, 44-122.

V Estoppel

71. Conduct of officers. The corporation will not be estopped by the action or conduct of its officers from interposing the defense that the obligations are in excess of the constitutional limitation of liability. *Aetna Life Ins. Co. v Lyon Co.*, 44 Fed 329; *Farmers' Sav. Bank v Ind. Sch. Dist.*, 122-99; 97 NW 988.

72. Representations of agent. Representations of a county agent as to the validity of the debt to be refunded will not estop the county. *Aetna Life Ins. Co. v Lyon Co.*, 44 Fed 329.

73. Failure of taxpayers to object. Taxpayers of a city do not, by failure to object to the contracting of an indebtedness in excess of the constitutional limit, estop themselves from insisting upon the invalidity of such indebtness. *McPherson v Foster*, 43-48; *Farmers' Sav. Bank v Ind. Sch. Dist.*, 122-99; 97 NW 988.

74. Ratification of invalid bonds. The municipal corporation or its officers cannot render invalid bonds valid by ratification as by making payments of interest thereon. *Doon Tp. v Cummins*, 142 US 366.

VI CORPORATIONS INCLUDED

75. Special charter cities. Cities organized under special charters are subject to this constitutional provision, and it is the only limitation on the right of such cities to become indebted. *Scott v Davenport*, 34-208; *Council Bluffs v Stewart*, 51-385; 1 NW 628; *Reed v Cedar Rapids*, 136-191; 113 NW 773; *Miller v City*, 188-514; 176 NW 373.

76. School districts. This constitutional provision as to the limit of indebtedness is applicable to school districts. *Winspear v District Tp.*, 37-542; *Mosher v Ind. Sch. Dist.*, 44-122.

77. Indebtedness by park commissioners. Where a statute provided for a board of park commissioners authorizing them to levy a tax and issue bonds, held, that they had no authority to issue bonds which, in addition to the indebtedness of the city, would cause such indebtedness to exceed the constitutional limit. *Orvis v Board*, 88-674; 56 NW 294.

78. Personal liability of officers. City officials, contracting within the general scope of their jurisdiction in behalf of the city, and for a lawful purpose, do not render themselves personally liable, although the indebtedness is in excess of the constitutional limitation. *Lough v Estherville*, 122-479; 98 NW 308.

79. Actions for negligence. In an action against a city for damages by reason of negligence in the care of its streets, it is no defense that the city is already indebted beyond the constitutional limit. *Bartle v Des Moines*, 38-414; *Rice v Des Moines*, 40-638; *Thomas v Burlington*, 69-140; 28 NW 480.

80. Liability to contractor—failure to assess. This section does not prevent a city already indebted to the constitutional limit from becoming liable to a contractor for improvements, the cost of which is to be assessed to abutting owners and payment for which is to be made by special assessments, if the city fails to make valid assessments against the abutting property. The constitutional prohibition does not apply to a liability arising from such wrongful act of the city. *Ft. Dodge Elec. Lt. & P. Co. v Ft. Dodge*, 115-568; 89 NW 7.

81. Division of corporation. A school district cannot defend against payment of its equitable portion of the indebtedness of the district which has been created by division on account of the excess of indebtedness beyond its constitutional limit. *Taylor v Sch. Dist.*, 97 Fed 753.

82. Obligations prior to constitution. The adoption of the constitutional provision as to limit of indebtedness did not impair any contract previously made, although in excess of the limit imposed; but any provisions of a city charter authorizing the contracting of indebtedness in excess of the limit fixed were thereby repealed. *Scott v Davenport*, 34-208.

Oath of office. SEC. 5 (Art. XI). Every person elected or appointed to any office, shall, before entering upon the duties thereof, take an oath or affirmation to support the Constitution of the United States, and of this State, and also an oath of office.

See 1215, 1216, 4216-c28, who may administer oath.

1. Nonstatutory officer. One who is appointed treasurer of a commission created by law, no such officer of the commission being provided for by statute, is not a public officer. *State v Spaulding*, 102-639; 72 NW 288.

How vacancies filled. SEC. 6 (Art. XI). In all cases of elections to fill vacancies in office occurring before the expira-

tion of a full term, the person so elected shall hold for the residue of the unexpired term; and all persons appointed to fill vacancies in office, shall hold until the next general election, and until their successors are elected and qualified.

See 4216-c29, what constitutes a vacancy; 4216-c30, term of one elected to fill vacancy; 4223-a2, appointment by board to fill vacancy, term; 4223-b1, special election to fill vacancy, term.

1. Statutory vacancy and qualification. The constitutional provision that "all persons appointed to fill vacancies in office shall hold until the next general election" is not inconsistent with the authority of the legislature (a) to define a "vacancy" or (b) to prescribe and regulate the manner of qualifying for office. (See § § 1052, 1146.) *State ex rel v Carvey,* 175-344; 154 NW 931.

2. Tenure of appointee. This section explicitly defines and prescribes the term of office of a person who is appointed to fill a vacancy in an office where the statutes authorize the filling of such vacancy by the board of supervisors, and such board cannot afterward, except for the causes recognized by statute, remove the person appointed before the expiration of the term. *State ex rel v Chatburn,* 63-659; 19 NW 816.

3. Temporary apointment. One who is appointed by the court to discharge the duties of its clerk until a vacancy in the office shall be filled is not entitled to hold until the next general election and until his successor is elected and qualified. *State ex rel v Brown,* 144-739; 123 NW 779.

4. Tenure of hold-over. In case of a failure to elect a county officer at a general election at which such office should be filled, and the incumbent holds over, qualifying anew as required by statute, he fills a vacancy only, and his successor should be elected at the next general election. *Dyer v Bagwell,* 54-487; 6 NW 712; *Boone Co. v Jones,* 58-373; 12 NW 313.

5. Title to office—estoppel and waiver. Where, on the erroneous assumption that a vacancy existed in a public office, two persons are formally nominated, by different political parties, to fill the supposed vacancy and are voted on at the ensuing election, the failure of the candidate who is already serving under a valid appointment to withdraw his nomination and legally to question the nominations made, furnishes no basis for the claim that he thereby waived his right longer to hold the office, and estopped himself from objecting to the result of the election. *State v Claussen,* 216-1079; 250 NW 195.

6. Statute supplementing constitution. The constitutional provision that appointees to fill vacancies in office shall hold until the next general election, is not self-executing, and therefore has been properly supplemented by section 1157, C., '31. *State v Claussen,* 216-1079; 250 NW 195.

7. Election to fill vacancy. The statutory provision (§1155, C., '31) that an officer filling a vacancy in an elective office shall hold until the next regular election at which such vacancy can be filled, means the "next regular election" at which such vacancy can be legally filled. *State v Claussen,* 216-1079; 250 NW 195.

8. Vacancy — when fillable by election. The statutory provision (§1157, C., '31) that if a vacancy occurs in an elective state office thirty days prior to a general election the vacancy shall be filled at said election, in legal effect prohibits the filling of such vacancy at said election when the vacancy occurs less than thirty days prior to said election. *State v Claussen,* 216-1079; 250 NW 195.

ARTICLE XII.

SCHEDULE.

Fines inure to the state. SEC. 4. All fines, penalties, or forfeitures due, or to become due, or accruing to the State, or to any County therein, or to the school fund, shall inure to the State, county, or school fund, in the manner prescribed by law.

Similar constitutional provision, Art IX, (2nd div.) § 4.

Bonds in force. SEC. 5 (Art. XII). All bonds executed to the State, or to any officer in his official capacity, shall remain in force and inure to the use of those concerned.

CHAPTER 4

CONSTRUCTION OF STATUTES

63. Rules. In the construction of the statutes, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the general assembly, or repugnant to the context of the statute:

4. *Joint authority.* Words giving a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of them, unless it be otherwise expressed in the act giving the authority.

12. *Oath—affirmation.* The word "oath" includes affirmation in all cases where an affirmation may be substituted for an oath, and in like cases the word "swear" includes "affirm".

23. *Computing time.* In computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday.

26. *Population.* The word "population", where used in this code or any statute hereafter passed, shall be taken to be that as shown by the last preceding state or national census, unless otherwise specially provided.

XIX PAR. 23. COMPUTING TIME

224. Section applied. *Richardson v B. & M. R. R. Co.*, 8-260; *Teucher v Hiatt*, 23-527; *Manning v Irish*, 47-650; *Bonney v Cocke*, 61-303; 16 NW 139; *Sheldon Bank v Royce*, 84-288; 50 NW 986; *Ritchey v Fisher*, 85-560; 52 NW 505; *Holbrook v Mill Owners' Ins. Co.*, 86-255; 53 NW 229.

225. Scope of paragraph. The method of computing time provided in this section applies as well to criminal as to civil action. *State v Smith*, 162-336; 144 NW 32.

226. Calendar months. Calendar months are to be computed by reckoning from a given day to the day of a corresponding number where there is one. *Parkhill v Brighton*, 61-103; 15 NW 853.

227. Rule of sufficiency. A statute requiring the publication of a notice "five days prior" to the date of election does not require such a publication as will leave five clear days prior to election. *McLeland v Marshall Co.*, 201 NW 401; 203 NW 1.

228. Rule for computation. In computing the number of days that a process has been served before return day, the day of service should be included and the day of return excluded. *Dilts v Zeigler*, 1 Gr 164.

229. Rule for computation. Where sixty days from March 17th were given in which to file bill of exceptions, held, that a bill filed on May 17th could not be considered. *McCoid v Rafferty*, 84-532; 51 NW 24.

230. Rule for computation. But under a provision that notice shall be served in such time as to leave at least ten days between the day of service and the first day of the next term, both the day of service and the first day of the term should

be excluded from the computation. *Robinson v Foster*, 12-186.

231. Rule for computation. Where it was provided that a tenancy should terminate upon ten days' notice, held, that notice being given on the last day of April, an action brought on the 10th day of May was premature, and that the day of service of the notice must be excluded. *Aiken v Appleby*, Mor. 8.

232. Rule for computation. Notices posted on March 18th for a school meeting on March 28th constitute a ten-day notice and comply with § 4195. *Cons. Ind. Sch. Dist. v Martin*, 170-262; 152 NW 623.

233. Sundays. In such case, where the first day of the term falls on Monday, Sunday is not to be excluded from the computation. *Robinson v Foster*, 12-186.

234. Sundays. The provision that the last day, if it falls on Sunday, shall be excluded in any computation, applies only where it is required that some act shall be done on the last day. Under the statutory provision that a petition shall be filed ten days before the first day of the term, held, that Sunday should be included in the computation, although it was the last day before the first day of the term. *Conklin v Marshalltown*, 66-122; 23 NW 294.

235. Sundays. Where proof of loss under policy of insurance was mailed on Saturday, the last day for making the same being Sunday, and it was received by the insurance company on Monday, held, that it was on time. *McKibbon v D. M. Ins. Co.*, 114-41; 86 NW 38.

236. Sundays. In determining whether the defendant has had four days' notice of proposed evidence in a criminal case under section 13851, Sunday is not to be excluded from the computation. *State v Clark*, 145-731; 122 NW 957.

237. Sundays. Where the last day for filing a pleading falls on Sunday the pleading may properly be filed on the following Monday. *Ronayne v Hawkeye Com. Men's Assn.*, 162-615; 144 NW 319.

238. Sundays. A judgment is valid when entered by a justice of the peace on Monday when the third day given by law for entering the judgment falls on Sunday. *Bruce v Pope*, 179-1161; 162 NW 797.

239. Sundays. A contract calling for performance on Sunday may be performed at any time on the following Monday. *Blake v Osmundson*, 178-121; 159 NW 766.

240. Fractions of a day. The law does not recognize parts of a day. Therefore, held, that notes of evidence filed with the clerk on the same day as the entry of a judgment in a contempt proceeding, but two hours later, would be deemed filed in connection with the entering of the judgment. *Small v Wakefield*, 84-533; 51 NW 35.

241. Fractions of a day. Where the compensation of an officer is provided for by the day, he is entitled to compensation for each day on which he is required to render services, and is not to be limited to pro rata compensation for the number of hours actually employed in such service. *White v Dallas Co.*, 87-563; 54 NW 368.

242. Fractions of a day. While for some purposes the law does not recognize fractions of a day in computing time, this principle is not universal. If the exact time is an important element in determining a right of action, the exact time will be considered. *Roelefsen v Pella*, 121-153; 96 NW 738.

243. Fractions of a day. The general principle that the law does not recognize fractions of a day is not of universal application. Exception recognized on the question as to the exact time when an acknowledgment was taken. *Gates Co. v Behrends*, 197-499; 197 NW 640.

247. Construction. The term "population" when employed in a statute conclusively means the same as though the clause "as shown by the last preceding state or national census" were written thereafter. (See § 429.) *State v Seaton*, 191-81; 181 NW 796.

CHAPTER 7-E

BUDGET AND FINANCIAL CONTROL ACT

84-e1. Title. This chapter shall be known and may be cited as the "budget and financial control act".

84-e2. Definitions. When used in this chapter:

1. The terms, "department and establishment" and "department" or "establishment", mean any executive department, commission, board, institution, bureau, office, or other agency of the state government except the courts, by whatever name called, other than the legislature, that uses, expends or receives any state funds.

2. "State funds" means any and all moneys appropriated by the legislature, or money collected by or for the state, or an agency thereof, pursuant to authority granted by any of its laws.

3. "Private trust funds" means any and all endowment funds and any and all moneys received by a department or establishment from private persons to be held in trust and expended as directed by the donor.

4. "Special fund" means any and all government fees and other revenue receipts earmarked to finance a governmental agency to which no general fund appropriation is made by the state.

5. "Repayment receipts" means those moneys collected by a department or establishment that supplement an appropriation made by the legislature.

6. "Budget" means the budget document required by this chapter to be transmitted to the legislature.

7. "Government" means the government of the state of Iowa.

8. "Unencumbered balance" means the unobligated balance of an appropriation after charging thereto all unpaid liabilities for goods and services and all contracts or agreements payable from an appropriation or a special fund.

9. "Code" or "the code" means the code of Iowa, 1931.

84-e3. Governor. The governor of the state shall have:

1. Direct and effective financial supervision over all departments and establishments, and every state agency by whatever name now or hereafter called, including the same power and supervision over such private corporations, persons and organizations that may receive, pursuant to statute, any funds, either appropriated by, or collected for, the state, or any of its departments, boards, commissions, institutions, divisions and agencies.

2. The efficient and economical administration of all departments and establishments of the government.

3. The initiation and preparation of a balanced budget of

any and all revenues and expenditures for each regular session of the legislature.

84-e6. Specific powers and duties. The specific duties of the state comptroller shall be:

1. *Audit of claims.* To audit all demands by the state, and to preaudit all accounts submitted for the issuance of warrants;

2. *Collection and payment of funds.* To control the payment of all moneys into the treasury, and all payments from the treasury by the preparation of appropriate warrants, or warrant checks, directing such collections and payment;

3. *Contracts.* To certify, record and encumber all formal contracts to prevent overcommitment of appropriations and allotments;

4. *Forms.* To prescribe all accounting and business forms and the system of accounts and reports of financial transactions by all departments and agencies of the state government other than those of the legislative branch;

5. *Accounts.* To keep the central budget and proprietary control accounts of the state government. Budget accounts are those accounts maintained to control the receipt and disposition of all funds, appropriations and allotments. Proprietary accounts are those accounts relating to assets, liabilities, income and expense.

6. *Preaudit system.* To establish and fix a reasonable imprest cash fund for each state department and/or institution for disbursement purposes where needed; provided, that these revolving funds shall be reimbursed only upon vouchers approved by the state comptroller. It is the purpose of this subdivision to establish a preaudit system of settling all claims against the state and to centralize all disbursements of the state government other than the disbursements of the state fair board, the institutions under the state board of education and state conservation commission. * * *

9. *Apportionment of interest.* To apportion the interest of the permanent school fund on the first Monday of March and September of each year, among the several counties in proportion to the number of persons between five and twenty-one years of age in each, as shown by the last report filed with him by the superintendent of public instruction.

10. *Report of standing appropriations.* To biennially prepare a separate report containing a complete list of all standing appropriations showing the amount of each appropriation and the purpose for which such appropriation is made and furnish a copy of such report to each member of the general assembly on or before the first day of each regular session.

11. *Budget document.* To prepare the budget document and draft the legislation to make it effective;

12. *Allotments.* To perform the necessary work involved

in reviewing requests for allotments as are submitted to the governor for approval;

13. *Transfer of appropriations.* To determine the need for all transfers of appropriations submitted to the governor for approval under the authority of section 27* hereof;

*Section 27 of original bill rejected by legislature.

14. *Investigations.* To make such investigations of the organization, activities and methods of procedure of the several departments and establishments as he may be called upon to make by the governor and/or the governor and executive council, or the legislature; * * *

84-e7. **Accounting.** The comptroller may at any time require any person receiving money, securities, or property belonging to the state, or having the management, disbursement, or other disposition of the same, an account of which is kept in his office, to render statements thereof and information in reference thereto.

84-e8. **Stating account.** If any officer who is accountable to the treasury for any money or property neglects to render an account to the comptroller within the time prescribed by law, or, if no time is so prescribed, then, within twenty days after being required so to do by the comptroller, the comptroller shall state an account against him from the books of his office, charging ten per cent damages on the whole sum appearing due, and interest at the rate of six per cent per annum on the aggregate from the time when the account should have been rendered; all of which may be recovered by action brought on such account, or on the official bond of such officer.

84-e9. **Compelling payment.** If any such officer fails to pay into the treasury the amount received by him within the time prescribed by law, or, having settled with the comptroller, fails to pay the amount found due, the comptroller shall charge such officer with twenty per cent damages on the amount due, with interest on the aggregate from the time the same became due at the rate of six per cent per annum, and the whole may be recovered by an action brought on such account, or on the official bond of such officer, and he shall forfeit his commission.

84-e10. **Defense to claim.** The penal provisions in the sections 84-e8 and 84-e9 are subject to any legal defense which the officer may have against the account as stated by the comptroller, but judgment for costs shall be rendered against the officer in the action, whatever be its results, unless he rendered an account within the time named in sections 84-e8 and 84-e9.

84-e11. **Requested credits—oath required.** When a county

treasurer or other receiver of public money seeks to obtain credit on the books of the comptroller's office for payment made to the treasurer, before giving such credit, the comptroller shall require him to take and subscribe an oath that he has not used, loaned, nor appropriated any of the public money for his private benefit, nor the benefit of any other person.

84-e12. Requisition for information. In those cases where the comptroller is authorized to call upon persons or officers for information, or statements, or accounts, he may issue his requisition therefor in writing to the person or officer called upon, allowing reasonable time, which, having been served and return made thereon to the comptroller, as a notice in a civil action, shall be evidence of the making of the requisition therein expressed.

See 5249, requests for information by governor.

84-e13. Claims—limitations. The state comptroller shall be limited in authorizing the payment of claims, as follows:

1. *Six months' limit.* No claim shall be allowed by the state comptroller's office when such claim is presented after the lapse of six months from its accrual.

2. *Convention expenses.* No claims for expenses in attending conventions, meetings, conferences or gatherings of members of any association or society organized and existing as quasi-public association or society outside the state of Iowa shall be allowed at public expense, unless authorized by the executive council; and claims for such expenses outside of the state shall not be allowed unless the voucher is accompanied by so much of the minutes of the executive council, certified to by its secretary, showing that such expense was authorized by said council. This section shall not apply to claims in favor of the governor, attorney general, railroad commissioner, or to trips referred to in section 3284, code, 1931.

3. *Payment from fees.* No claims for per diem and expenses payable from fees shall be approved for payment in excess of such fees where the law provides that such expenditures are limited to the special funds collected and deposited in the state treasury.

See 5260, expenses of county superintendent at conventions.

84-e16. Biennial departmental estimates. On, or before, October first, next prior to each biennial legislative session, all departments and establishments of the government shall transmit to the state comptroller, hereinabove provided for, on blanks to be furnished by him, estimates of their expenditure requirements, including every proposed expenditure, for each fiscal year of the ensuing biennium, classified so as to distinguish between expenditures estimated for (a) administration, operation and maintenance, and (b) the cost of each

project involving the purchase of land or the making of a public improvement or capital outlay of a permanent character, together with such supporting data and explanations as may be called for by the state comptroller, hereinabove provided for. In case of the failure of any department or establishment to submit such estimates within the time above specified, the governor shall cause to be prepared such estimates for such department or establishment as in his opinion are reasonable and proper.

84-e22. **Prohibited estimates or requests.** No estimate or request for an appropriation and no request for an increase in an item of any such estimate or request, and no recommendation as to how the revenue needs of the government should be met, shall be submitted to the legislature or any committee thereof by any officer or employee of any department or establishment, unless at the request of either house of the general assembly.

EXECUTION OF THE BUDGET

84-e23. **Availability of appropriations.** The appropriations made shall not be available for expenditure until allotted as provided for in section 84-e24. All appropriations now or hereafter made are hereby declared to be maximum and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named in the event that the estimated budget resources during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full. The governor shall restrict allotments only to prevent an overdraft or deficit in any fiscal year for which appropriations are made.

84-e24. **Quarterly requisitions—exceptions—modifications.** Before an appropriation for administration, operation and maintenance of any department or establishment shall become available, there shall be submitted to the governor, not less than twenty days before the beginning of each quarter of each fiscal year, a requisition for an allotment of the amount estimated to be necessary to carry on its work during the ensuing quarter. Such requisition shall contain such details of proposed expenditures as may be required by the governor.

The governor shall approve such allotments, unless he finds that the estimated budget resources during the fiscal year are insufficient to pay all appropriations in full, in which event he may modify such allotments to the extent he may deem necessary in order that there shall be no overdraft or deficit in the several funds of the state at the end of such fiscal year, and shall submit copies of the allotments thus approved or modified to the head of the department or establishment concerned, and to the state comptroller, hereinabove provided for, who

shall set up such allotments on his books and be governed accordingly in his control of expenditures.

Allotments of appropriations made for equipment, land, permanent improvements, and other capital projects may, however, be allotted in one amount by major classes or projects for which they are expendable without regard to quarterly periods.

Allotments thus made may be subsequently modified by the governor either upon the written request of the head of the department or establishment concerned, or in the event the governor finds that the estimated budget resources during the fiscal year are insufficient to pay all appropriations in full, upon his own initiative to the extent he may deem necessary in order that there shall be no overdraft or deficit in the several funds of the state at the end of such fiscal year; and the head of the department or establishment and the state comptroller, hereinabove provided for, shall be given notice of such modification in the same way as in the case of original allotments.

Provided, however, that the allotment requests of all departments and establishments collecting governmental fees and other revenue which supplement a state appropriation shall attach to the summary of requests a statement showing how much of the proposed allotments are to be financed from (a) state appropriations, (b) stores, and (c) repayment receipts.

The procedure to be employed in controlling the expenditures and receipts of the state fair board and the institutions under the state board of education, whose collections are not deposited in the state treasury, will be that outlined in section 84-e6, subdivision 7.

The finding by the governor that the estimated budget resources during the fiscal year are insufficient to pay all appropriations in full, as provided herein, shall be subject to the concurrence in such finding by the executive council before reductions in allotment shall be made, and in the event any reductions in allotment be made, such reductions shall be uniform and prorated between all departments, agencies and establishments upon the basis of their respective appropriations.

84-e25. **Conditional availability of appropriations.** All appropriations made to any department or establishment of the government as receive or collect moneys available for expenditure by them under present laws, are declared to be in addition to such repayment receipts, and such appropriations are to be available as and to the extent that such receipts are insufficient to meet the costs of administration, operation and maintenance, or public improvements of such departments:

Provided, that such receipts or collections shall be deposited in the state treasury as part of the general fund or special funds in all cases, except those collections made by the state

fair board, the institutions under the state board of education and the state conservation commission.

Provided further, that no repayment receipts shall be available for expenditures until allotted as provided in section 84-e24 and

Provided further, that the collection of repayment receipts by the state fair board and the institutions under the state board of education shall be deposited in a bank or banks duly designated and qualified as state depositories, in the name of the state of Iowa, for the use of such boards and institutions, and such funds shall be available only on the check of such boards or institutions depositing them, which are hereby authorized to withdraw such funds, but only after allotment by the governor as provided in section 84-e24; and

Provided further, that this act shall not apply to endowment and/or private trust funds or to gifts to institutions owned or controlled by the state or to the income from such endowment and/or private trust funds, or to private funds belonging to students or inmates of state institutions.

The provisions of this chapter shall not be construed to prohibit the state fair board from creating an emergency or sinking fund out of the receipts of the state fair and state appropriation for the purpose of taking care of any emergency that might arise beyond the control of the board of not to exceed fifty thousand dollars.

84-e26. **Reversion of unencumbered balances.** All unencumbered balances of annual administration, operation and maintenance appropriations except those of the state conservation commission and except those for the state fair board shall revert to the state treasury at the end of each fiscal year of a given biennium and to the credit of the general fund or special funds from which the appropriation and/or appropriations were made; except that capital expenditures for the purchase of land or the erection of buildings or new construction shall continue in force until the attainment of the object or the completion of the work for which such appropriations are made: provided, that this section shall not be construed to repeal the provisions of section 290 to 293, inclusive, code 1931.

84-a1. **Charging off unexpended appropriations.** Except when otherwise provided by law, the comptroller shall transfer to the general fund of the state any unexpended balance of any annual or biennial appropriation remaining at the expiration of six months after the close of the fiscal period for which the appropriation was made. At the time the transfer is made on the books of his office he shall certify such fact to the treasurer of state, who shall make corresponding entries on the books of the treasurer's office.

84-e27. **General supervisory control.** The governor and

the state comptroller and any officer of the office of state comptroller, hereinabove provided for, when authorized by the governor, are hereby authorized to make such inquiries regarding the receipts, custody and application of state funds, existing organization, activities and methods of business of the departments and establishments, assignments of particular activities to particular services and regrouping of such services, as in the opinion of the governor, will enable him to make recommendations to the legislature, and, within the scope of the powers possessed by him, to order action to be taken, having for their purpose to bring about increased economy and efficiency in the conduct of the affairs of government.

84-e28. **Fiscal year.** The fiscal year of the government shall commence on the first day of July and end on the thirtieth day of June. This fiscal year shall be used for purposes of making appropriations and of financial reporting and shall be uniformly adopted by all departments and establishments of the government.

84-a2. **Biennial fiscal term.** The biennial fiscal term of the state ends on the thirtieth day of June in each even-numbered year, and the succeeding biennial fiscal term begins on the day following.

84-e29. **Misuse of appropriations.** Any board member, commissioner, director, manager, building committee, or other officer, or person connected with any institution, or other state department or establishment as herein defined, to which an appropriation is made, who shall expend any appropriation for any purpose other than that for which the money was appropriated, budgeted and allotted or who shall consent thereto, shall be liable to the state for such sum so spent, and the sum so spent, together with interest and costs, shall be recoverable in an action to be instituted by the attorney general for the use of the state, which action shall be instituted in the district court of Polk county.

84-a3. **Use of appropriations.** No appropriation nor any part thereof shall be used for any other purpose than that for which it was made without specific authority of the general assembly, except as otherwise provided by law.

84-e30. **Misdemeanors—removal—impeachment.** A refusal to perform any of the requirements of this chapter, and the refusal to perform any rule or requirement or request of the governor and/or the state comptroller made pursuant to or under authority of this chapter, by any board member, commissioner, director, manager, building committee or other officer or person connected with any institution, or other state department or establishment as herein defined, shall subject the offender to a penalty of two hundred and fifty dollars, to

be recovered in an action instituted in the district court of Polk county by the attorney general for the use of the state, and shall also constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. If such offender be not an officer elected by vote of the people, such offense shall be sufficient cause for removal from office or dismissal from employment by the governor upon thirty days' notice in writing to such offender; and, if such offender be an officer elected by vote of the people, such offense shall be sufficient cause to subject the offender to impeachment.

CHAPTER 10

AUDITOR OF STATE

113. Examinations. The auditor of state shall cause the financial condition and transactions of all county and school offices to be examined at least once each year by the state examiners of accounts, and shall cause a like examination to be made at least once each year of cities and towns having a population of two thousand or more, including offices of cities acting under special charter.

114. State examiners. The auditor of state shall appoint such number of state examiners of accounts as may be necessary to make such examinations. Said examiners shall be of recognized skill and integrity, familiar with the system of accounting in county, school and city offices, and with the laws relating to the county, school and city affairs. Each examiner shall give bond in the sum of two thousand dollars conditioned as bonds of county officers, which bonds shall be approved and filed as bonds of state officers. Such examiners shall be subject at all times to the direction of said auditor of state.

116. Examinations. Said examiners shall have the right while making said examinations, to examine all papers, books, records, and documents of any of said officers and shall have the right in the presence of the custodian or his deputy, to have access to the cash drawers and cash in the official custody of such officer, and a like right, during business hours, to examine the public accounts of the county, school or city in any depository which has public funds in its custody pursuant to the law.

117. Scope of examinations. All examinations shall be made without notice to the office examined. On every examination inquiry shall be made as to the financial condition and resources of the county, school or city; whether the cost price for improvements and material in said county, school or city is in excess of the cost price for like things in other counties, schools or cities of the state; whether the county, school or

city authorities are complying with the law; and whether the accounts and reports are being accurately kept.

120. Reports. A report of such examination shall be made in triplicate signed and verified by the officers making the examination; one copy to be filed with the auditor of state, one copy with the officer under investigation, and one copy to the county auditor who shall transmit same to the board of supervisors if a county office is under investigation, or with the president of the school board if a school is under investigation, or with the mayor of the city council if a city office is under examination. All reports shall be open to public inspection.

124. Examination of other municipalities. Any township or municipal corporation not embraced within the foregoing provisions of this chapter, may on application to the auditor of state, secure an examination of its financial transactions and the condition of its funds, or a like examination may be had on application of twenty-five or more taxpayers of said township or other corporation, accompanied by such showing of facts as in the opinion of the auditor of state will justify such examination.

126. State reimbursed. Upon payment by the state of the per diem and expense aforesaid, the auditor of state shall at once file with the warrant-issuing officer of the county, school or municipality whose office was examined, a copy of the vouchers so paid by the state, and thereupon said warrant-issuing officer shall at once draw his warrant for said amount on the general funds of his county, school or municipality in favor of the auditor of state, which warrant shall be placed to the credit of the general fund of the state.

130-a3. Duty to install. It shall be the specific duty of each county, school, city, and town officer to install and use in his office a system of uniform blanks and forms as prescribed by law. State examiners of accounts are charged with the specific duty to assist all such officers in installing said system.

CHAPTER 12

ATTORNEY GENERAL

149. Duties. It shall be the duty of the attorney general, except as otherwise provided by law:

4. To give his opinion in writing, when requested, upon all questions of law submitted to him by the general assembly or by either house thereof, or by any state officer, elective or appointive. Questions submitted by state officers must be of a public nature and relate to the duties of such officer.

See section 1245, employment of counsel; 5180, duties of county attorney.

CHAPTER 15

SUPERINTENDENT OF PRINTING

231. County superintendent. The official register shall be distributed, in addition to the foregoing provisions, to the school libraries, through the county superintendent of schools to whom they shall be sent in bulk, and who shall direct their distribution each in his own county.

235. Laws. The superintendent of printing shall make free distribution of the code, and of the acts of each general assembly, as follows:

10. To each state officer ..... 2 copies
11. To the separate departments of principal state officers ..... 1 copy

16. To the clerk of the district court, the county attorney, the county auditor, the county recorder, the county treasurer, the sheriff, and the county superintendent of each county in the state, to the clerk of each superior or municipal court in the state, and also for use in each court room of the district, superior, or municipal court ..... 1 copy

CHAPTER 16

OFFICIAL REPORTS AND DOCUMENTS

244. Official reports—preparation. State officials, boards, commissions, and heads of departments shall prepare and file written official reports, in simple language and in the most concise form consistent with clearness and comprehensiveness of matter, required by law or by the governor.

Before filing any report its author shall carefully edit the same and strike therefrom all minutes of proceedings, and all correspondence, petitions, orders, and other matter which can be briefly stated, or which is not important information concerning public affairs, and consolidate so far as practicable all statistical tables.

Any report failing to comply substantially with this section shall be returned to its author for correction, and until made so to comply shall not be printed.

This section shall not be construed as depriving the superintendent of printing of the right to edit and revise said report.

245. Made to governor. All official reports shall be made to the governor unless otherwise provided.

Reports after being filed with the governor and considered by him shall be delivered to the superintendent of printing.

246. Biennial reports—time covered and date of filing. Reports of the following officials and departments shall cover the

biennial period ending June thirtieth in each even-numbered year, and shall be filed as soon as practicable after the end of the reporting period:

4. Superintendent of public instruction.
6. Board of education.

CHAPTER 18

EXECUTIVE COUNCIL

302. Officers entitled to supplies. The council shall, unless otherwise provided, furnish the following officers and departments with all articles and supplies required for the public use and necessary to enable them to perform the duties imposed upon them by law:

16. Superintendent of public instruction.
18. State board of education and the finance committee thereof.
29. State board of educational examiners. * * *

This section shall not be construed to prevent the furnishing of supplies to other officers who are entitled to receive them under other provisions of law.

CHAPTER 23

PUBLIC CONTRACTS AND BONDS

351. Terms defined. The words "public improvement" as used in this chapter shall mean any building or other construction work to be paid for in whole or in part by the use of funds of any municipality.

The word "municipality" as used in this chapter shall mean county, except in the exercise of its power to make contracts for secondary road improvements, city, including those acting under special charter, town, township, school district, state fair board, state board of education, and state board of control.

See chapter 62, duties relative to public contracts; chapter 63, sale of bonds; chapter 63-B1, maturity of bonds; chapter 452, labor and material in public contracts.

352. Notice of hearing. Before any municipality shall enter into any contract for any public improvement to cost five thousand dollars or more, the governing body proposing to make such contract shall adopt proposed plans and specifications and proposed form of contract therefor, fix a time and place for hearing thereon at such municipality affected thereby or other nearby convenient place, and give notice thereof by publication in at least one newspaper of general circulation in such municipality at least ten days before said hearing.

See 4370, approval by county superintendent also when advertisement for bids is required; 4370-c1, emergency repairs; chapter 452, labor and material, bonds, contracts.

1. School property—assessability. A school district having lots assessable under a city contract for paving and curbing cannot be deemed a "municipality" entering "into a contract" within the meaning of this section. In such circumstances, the district is simply a property owner. *Schumacher v City,* 214-34; 239 NW 71.

2. Inapplicability of budget act. This section has no application to a contract entered into by a city for street grading on a per diem basis and under a contract legally terminable by the council at any time, even though the per diem compensation ultimately exceeds $5,000. *Carlson v City,* 212-373; 236 NW 421.

353. Objections—hearing—decision. At such hearing, any person interested may appear and file objections to the proposed plans, specifications or contract for, or cost of such improvement. The governing body of the municipality proposing to enter into such contract shall hear said objections and any evidence for or against the same, and enter of record its decision thereon.

354. Appeal—limitation. As hereinafter provided, interested objectors may appeal from such decision to the state comptroller by serving notice thereof on the clerk or secretary of such municipality within ten days after such decision is entered of record, provided that—

1. For all school districts, except independent school districts in cities and towns and consolidated school districts, and for townships, the amount involved for the whole improvement is five thousand dollars or more.

2. For counties, cities of the second class, towns, and for consolidated school districts and for independent school districts in whole or in part in cities of the second class or towns, ten thousand dollars or more.

3. For cities of the first class, including cities under special charter, and for school districts in whole or in part in cities of the first class and in cities under special charter, for state institutions and state fair board, twenty-five thousand dollars or more.

4. The number of objectors required to perfect an appeal shall be as follows:

Under subsection 1—ten.
Under subsection 2—twenty-five.
Under subsection 3—fifty.

1. Fatally defective service. Appeal to the director of the budget from the action of the city council in overruling objections to a proposal for paving, is not effected by simply delivering to the city clerk a notice which purports to be a copy of an unproduced original, but which was not such copy in that only twenty-four of the twenty-seven signatures affixed to the original were affixed to the notice served; and this is true even though the city appears and moves to dismiss the appeal. *Incorporated Town v Hogue,* 204-3; 214 NW 729.

355. Information certified to comptroller. In case an appeal is taken, such body shall forthwith certify and submit to the state comptroller for examination and review the following:

1. A copy of the plans and specifications for such improvement.
2. A copy of the proposed contract.
3. An estimate of the cost of such improvement.
4. A report of the kind and amount of security proposed to be given for the faithful performance of the contract and the cost of such security.
5. A copy of the objections, if any, which have been urged by any taxpayer against the proposed plans, specifications or contract, or the cost of such improvement.
6. A separate estimate of the architect's or engineer's fees and cost of supervision.
7. A statement of the taxable value of the property within the municipality proposing to make such improvement.
8. A statement of the several rates of levy of taxes in such municipality for each fund.
9. A detailed statement of the bonded and other indebtedness of such municipality.
10. In case of state institutions and state fair board, the last three requirements may be omitted.

356. Notice of hearing on appeal. The comptroller shall forthwith fix a time and place in the municipality or nearby convenient place for hearing said appeal, and notice of such hearing shall be given by registered mail to the executive officer of the municipality, and to the first five persons whose names appear upon the notice of appeal, at least ten days before the date fixed for such hearing.

The hearing on contracts for the state institutions and state fair board shall be at the seat of government.

357. Hearing and decision. At such hearing the appellants and any other interested person may appear and be heard. The comptroller shall examine, with the aid of competent assistants, the entire record, and if he shall find that the form of contract is suitable for the improvement proposed and that such improvements can be made within the estimates therefor, he shall approve the same. Otherwise he shall recommend such modifications of the plans, specifications, or contract, as in his judgment shall be for the public benefit, and if such modifications are so made, he shall approve the same. The comptroller shall certify his decision to the body proposing to enter into such contract, whereupon the municipality shall advertise for bids and let the contract subject to the approval of the comptroller who shall at once render his final decision thereon and transmit the same to the municipality.

1. Advertisement for bids—irregular compliance with mandatory duty. The irregularity of municipal authorities in advertising for, receiving, and opening, bids for the construction of a municipal light and power plant before instead of after the director of the budget had, on appeal, overruled objections to the plans, specifications,

and proposed form of contract, does not invalidate the contract entered into after said ruling and specifically approved by said director. But the duty to "advertise for bids" is mandatory in case an appeal is taken to the budget director. *Johnson v Town*, 215-1033; 247 NW 552.

2. **Public improvements—rejection of bids—subsequent contract with rejected bidder.** After advertising for bids for the construction of a municipal electric light and power plant, and after the rejection of all bids because excessive, the council may, subsequently, in the absence of fraud or bad faith, and without re-advertisement, validly enter into a contract with one of the rejected bidders at a figure substantially less than any of the former bids. *Johnson v Inc. Town of Remsen*, 215 Iowa 1034.

358. Enforcement of performance. After any contract for any public improvement has been completed and any five persons interested request it, the comptroller shall examine into the matter as to whether or not the contract has been performed in accordance with its terms, and if on such investigation he finds that said contract has not been so performed, and so reports to the body letting such contract, it shall at once institute proceedings on the contractor's bond for the purpose of compelling compliance with the contract in all of its provisions.

359. Nonapproved contracts void. If an appeal is taken, no contract for public improvements shall be valid unless the same is finally approved by the comptroller. In no case shall any municipality expend for any public improvement any sum in excess of five per cent more than the contract price without the approval of the comptroller.

360. Appeal board. If the appeal is from the action of the state board of education, state board of control, or state fair board, the additional members of the appeal board shall sit with the comptroller and they shall hear the appeal as an appeal board, and in such case the word "state comptroller" as used in this chapter shall, so far as applicable, be construed to mean such appeal board.

361. Witness fees—costs. Witness fees and mileage for witnesses on hearing appeals shall be the same as in the district court; but objectors or appellants shall not be allowed witness fees or mileage. Costs of hearings and appeals shall be paid by the municipality.

362. Report on completion. Upon the completion of the improvement the executive officer or governing board of the municipality shall file with the comptroller a verified report showing:

1. The location and character of the improvement.
2. The total contract price for the completed improvement.
3. The total actual cost of the completed improvement.
4. By whom, if anyone, the construction was supervised.
5. By whom final inspection was made.

6. Whether or not the improvement complies with its contract, plans and specifications.

7. Any failure of the contractor to comply with the plans and specifications.

363. Issuance of bonds—notice. Before any municipality shall institute proceedings for the issuance of any bonds or other evidence of indebtedness, excepting such bonds or other evidence of indebtedness as have been authorized by a vote of the people of such municipality, and except such bonds or obligations as it may be by law compelled to issue, a notice of such action, including a statement of the amount and purpose of said bonds or other evidence of indebtedness shall be published at least once in a newspaper of general circulation within such municipality at least ten days before the meeting at which it is proposed to issue such bonds.

364. Objections. At any time before the date fixed for the issuance of such bonds or other evidence of indebtedness, five or more taxpayers may file a petition in the office of the clerk or secretary of the municipality setting forth their objections thereto.

365. Notice of hearing. Upon the filing of any such petition, the clerk or secretary of such municipality shall immediately certify a copy thereof, together with such other data as may be necessary in order to present the questions involved, to the comptroller, and upon receipt of such certificate, petition and information, he shall fix a time and place for the hearing of such matter, which shall be not less than ten nor more than thirty days thereafter. Said hearing shall be held in the municipality in which it is proposed to issue such bonds or other evidence of indebtedness, or in some other nearby convenient place fixed by the comptroller. Notice of such hearing shall be given by registered mail to the executive officer of the municipality and to the five persons whose names first appear on the petition at least ten days before the date of such hearing.

366. Decision. The comptroller shall examine the entire record and if he finds that the bonds are to be issued and arrangements for payment have been made in accordance with law he shall approve the same, otherwise he shall recommend such modifications as in his judgment are necessary to comply with the provisions of the state law and if such modifications are so made he shall approve the same, and his decision shall be final. The same shall be certified to the executive officer of the municipality affected.

In case there is no appeal, the board of the municipality affected may issue such bonds or other evidence of indebtedness, if legally authorized so to do, in accordance with the proposition published, but in no greater amount.

In case of an appeal, the municipality may issue such bonds

or other evidence of indebtedness in accordance with the decision of the comptroller.

367. Bonds and taxes void. Any bonds or other evidence of indebtedness issued contrary to the provisions of this chapter, and any tax levied or attempted to be levied for the payment of any such bonds or interest thereon, shall be null and void.

CHAPTER 24

LOCAL BUDGET LAW

368. Short title. This chapter shall be known as the "local budget law".

369. Definition of terms. As used in this chapter and unless otherwise required by the context:

1. The word "municipality" shall mean the county, city, town, school district, and all other public bodies or corporations that have power to levy or certify a tax or sum of money to be collected by taxation, but shall not include any drainage district, township or road district.

2. The words "levying board" shall mean board of supervisors of the county and any other public body or corporation that has the power to levy a tax.

3. The words "certifying board" shall mean any public body which has the power or duty to certify any tax to be levied or sum of money to be collected by taxation.

4. The words "fiscal year" shall mean the year ending on the thirtieth day of June, and any other period of twelve months constituting a fiscal period, and ending at any other time.

5. The word "tax" shall mean any general or special tax levied against persons, property, or business, for public purposes as provided by law, but shall not include any special assessment nor any tax certified or levied by township trustees.

370. Requirements of local budget. No municipality shall certify or levy in any year any tax on property subject to taxation unless and until the following estimates have been made, filed, and considered, as hereinafter provided:

1. The amount of income thereof for the several funds from sources other than taxation.

2. The amount proposed to be raised by taxation.

3. The amount proposed to be expended in each and every fund and for each and every general purpose during the fiscal year next ensuing.

4. A comparison of such amounts so proposed to be expended with the amounts expended for like purposes for the two preceding years.

See 4386-4391, limitations in general fund; 4448, limitation for books and supplies; 4403, 1179-b2, limitation on amount to apply on principal and interest of bonds; 4363, levy in city districts to purchase sites.

PREPARATION, FILING, AND CERTIFICATION OF ANNUAL BUDGET

1. Secure necessary budget blanks from the county auditor if they have not already been provided by that officer
2. When budget is to be made up, sections 371, 383, 4386
3. Determine amounts to estimate and certify in each of the two funds in accordance with the following:
   (a) General fund, sections 373, 373-a1, 374, 4386, 4387, 4388, and 4448
   (b) Emergency estimate, section 373
   (c) Schoolhouse fund
      (1) By board but only when authorized by voters, section 4217 (7)
      (2) By board but only when bonded indebtedness is outstanding, section 4403
      (3) By board only in city independent districts to buy sites, section 4363
   (d) Limitations, section 380, 381
4. Itemize according to section 372
5. Set up comparisons required by section 370
6. File with secretary at least twenty days before August 15, sections 375 and 383
7. Set date for hearing before the board on the budget estimates, section 375. (Date set for hearing must allow for ten days' publication notice)
8. Arrange for publication of budget estimates with date for hearing thereon, section 375, 381. (In rural independent districts and school townships such estimates and the notice of hearing thereon shall be posted in three places in the district in lieu of publication), section 375, 381
9. Conduct hearing on budget, section 377
10. Make final decision on budget estimates, section 378
11. Budget certified to county auditor by president of board, section 383 with proof of publication or posting, as the case may be, section 376
12. How certified
   (a) When in dollars, section 7163
   (b) When in mills, section 4389
13. Secretary certify to county auditor the amount of tax free land in the district that belongs to the state or federal government, a county, or to a municipal corporation that is wholly outside the district, a description of such lands, and the branch of government by which owned, section 4283-e5. Blanks for this purpose may be secured from the county auditor or from the state board of assessment and review, section 4283-e7

NOTE 1. A board has no power to estimate a tax for the schoolhouse fund unless there is outstanding bonded indebtedness, section 4403, or unless the voters have authorized a schoolhouse fund tax as provided in section 4217 (7), except that the board in a city independent district has authority under section 4363 to levy not to exceed a 1-mill schoolhouse fund tax for the purchase of sites.

371. Time of filing estimates. All such estimates and any other estimates required by law shall be made and filed a sufficient length of time in advance of any regular or special meeting of the certifying board or levying board, as the case may be, at which tax levies are authorized to be made to permit publication, discussion, and consideration thereof and action thereon as hereinafter provided.

372. Estimates itemized. The estimates herein required shall be fully itemized and classified so as to show each particular class of proposed expenditure, showing under separate heads the amount required in such manner and form as shall be prescribed by the state comptroller.

373. Emergency fund—levy. Each municipality as defined herein, may include in the estimate herein required, an estimate for an emergency fund. Each such muncipality shall have power to assess and levy a tax for such emergency fund at a rate not to exceed one mill upon the taxable property of the municipality, provided that no such emergency tax levy shall be made until such municipality shall have first petitioned the comptroller to make such levy and received his approval thereof. Transfers of monies may be made from the emergency fund to any other fund of the municipality for the purpose of meeting deficiencies in any such fund arising from any cause, provided, however, that no such transfer shall be made except upon the written approval of the comptroller, and then only when such approval is unanimously requested by the governing body of said municipality.

1. Constitutionality. Former provisions for registry were held not in conflict with Constitution, Art. II, § 1, prescribing the qualifications of electors. *Edmonds v Banbury*, 28-267; See *Lane v Mitchell*, 153-139; 133 NW 381.

2. Election without registry. An election without registration of voters is void. *Nefzger v D. & St. P. R. Co.*, 36-642; see *Younker v Susong*, 173-663; 156 NW 24.

3. Legalization of invalid tax. The legislature may validly legalize a levy of taxes made under a supposedly legal statute but which was invalid because its title was constitutionally insufficient. (See Book of Anno., Vol. I, Const., Art. 1, §21, Anno. 18 et seq.; also Art. III, §30, Anno. 44 et seq.) *Chi., R. I. Ry. v Rosenbaum*, 212-227; 231 NW 646.

373-a1. Supplemental estimates. Supplemental estimates for particular funds may be made for levies of taxes for future years when the same are authorized by law. Such estimates may be considered, and levies made therefor at any time by filing the same, and upon giving notice in the manner required in section 375. Such estimates and levies shall not be considered as within the provisions of section 374.

374. Estimated tax collections. The amount of the difference between the receipts estimated from all sources other than taxation and the estimated expenditures for all purposes, including the estimates for emergency expenditures, shall be the estimated amount to be raised by taxation upon the assessable property within the municipality for the next ensuing fiscal year. The estimate shall show the number of dollars of taxation for each thousand dollars of the assessed value of all property that is assessed.

375. Filing estimates—notice of hearing. Each municipality shall file with the secretary or clerk thereof the

estimates required to be made in sections 370 to 374, inclusive, at least twenty days before the date fixed by law for certifying the same to the levying board and shall forthwith fix a date for hearing thereon, and shall publish such estimates and any annual levies previously authorized as provided in section 1179-b2 with a notice of the time when and the place where such hearing shall be held at least ten days before the hearing. Provided that in rural independent districts and school townships such estimates and the notice of hearing thereon shall be posted in three public places in the district in lieu of publication.

For a county, such publication shall be in the official newspapers thereof.

For any other municipality such publication shall be in a newspaper published therein, if any, if not, then in a newspaper of general circulation therein.

376. Levies void. The verified proof of the publication of such notice shall be filed in the office of the county auditor and preserved by him. No levy shall be valid unless and until such notice is published and filed.

377. Meeting for review. The certifying board or the levying board, as the case may be, shall meet at the time and place designated in said notice, at which meeting any person who would be subject to such tax levy, shall be heard in favor of or against the same or any part thereof.

378. Record by certifying board. After the hearing has been concluded, the certifying board shall enter of record its decision in the manner and form prescribed by the comptroller and shall certify the same to the levying board, which board shall enter upon the current assessment and tax roll the amount of taxes which it finds shall be levied for the ensuing fiscal year in each municipality for which it makes the tax levy.

379. Procedure by levying board. Any board which has the power to levy a tax without the same first being certified to it, shall follow the same procedure for hearings as is hereinbefore required of certifying boards.

380. Tax limited. No greater tax than that so entered upon the record shall be levied or collected for the municipality proposing such tax for the purpose or purposes indicated; and thereafter no greater expenditure of public money shall be made for any specific purpose than the amount estimated and appropriated therefor, except as provided in sections 373, 381, and paragraph 4 of section 5259.

381. Further tax limitation. No tax shall be levied by any municipality in excess of the estimates published, except such taxes as are approved by a vote of the people, but in no case shall any tax levy be in excess of any limitation imposed thereon now or hereafter by the constitution and laws of the state.

382. **Expenses—how paid.** The cost of publishing the notices and estimates required by this chapter, and the actual and necessary expenses of preparing the budget shall be paid out of the general funds of each municipality respectively.

383. **Budgets certified.** The local budgets of the various municipalities shall be certified by the chairman of the certifying board or the levying board, as the case may be, in duplicate to the county auditor not later than the fifteenth day of August each year on blanks prescribed by the comptroller, and according to rules and instructions which shall be furnished all certifying and levying boards in printed form by said comptroller.

One copy of said budget shall be retained on file in his office by the county auditor, and the other shall be certified by him to the comptroller.

See 4389, when taxes may be certified in mills; 7163, certified in dollars.

384. **Summary of budget.** Before forwarding copies of local budgets to the comptroller, the county auditor shall prepare a summary of each budget, showing the condition of the various funds for the fiscal year, including the budgets adopted as herein provided. Said summary shall be printed as a part of the annual financial report of the county auditor, and one copy shall be certified by him to the comptroller.

385. **Levying board to spread tax.** At the time required by law the levying board shall spread the tax rates necessary to produce the amount required for the various funds of the municipality as certified by the certifying board, for the next succeeding year, as shown in the approved budget in the manner provided by law. One copy of said rates shall be certified to the comptroller.

386. **Tax rates final.** The several tax rates and levies of the municipalities thus determined and certified in the manner provided in the preceding sections, except such as are authorized by a vote of the people, shall stand as the tax rates and levies of said municipality for the ensuing year for the purposes set out in the budget.

387. **Transfer of inactive funds.** Subject to the provisions of any law relating to municipalities, when the necessity for maintaining any fund of the municipality has ceased to exist, and a balance remains in said fund, the certifying board or levying board, as the case may be, shall so declare by resolution, and upon such declaration, such balance shall forthwith be transferred to the general or contingent fund of the municipality, unless other provisions have been made in creating such fund in which such balance remains.

388. **Transfer of active fund—poor fund.** Upon the approval of the comptroller, it shall be lawful to make temporary

or permanent transfers of money from one fund of the municipality to another fund thereof; but in no event shall there be transferred for any purpose any of the funds collected and received for the construction and maintenance of secondary roads. The certifying board or levying board, as the case may be, shall provide that money temporarily transferred shall be returned to the fund from which it was transferred within such time and upon such conditions as the comptroller shall determine, provided that it shall not be necessary to return to the emergency fund, or to any other fund no longer required, any money transferred therefrom to any other fund. No transfer shall be made to a poor fund unless there is a shortage in said fund after the maximum permissible levy has been made for said fund.

See 4217(5), transfer of schoolhouse fund to general fund by vote of electors; 4241, transfer of general fund to schoolhouse fund by board.

389. Supervisory power of comptroller. The comptroller shall exercise general supervision over the certifying boards and levying boards of all municipalities with respect to budgets and shall prescribe for them all necessary rules, instructions, forms, and schedules. The best methods of accountancy and statistical statements shall be used in compiling and tabulating all data required by this chapter.

390. Violations. Failure on the part of any public official to perform any of the duties prescribed in chapters 22, 23, and 24, and section 84-a3 and 101-a1 to 101-a5, inclusive, shall constitute a misdemeanor, and shall be sufficient ground for removal from office.

CHAPTER 29

STATE BANNER—DISPLAY OF FLAG

470. Flags on public buildings. It shall be the duty of the custodians of all public buildings of the state to raise over such building the flag of the United States of America, upon each secular day when weather conditions are favorable, and it shall be the duty of any board of public officers charged with the duty of providing for the supplies of any such public building to provide, in connection with other supplies for any such building of the state, a suitable flag for the purposes herein provided.

471. Mothers' day. The governor of this state is hereby authorized and requested to issue annually a proclamation calling upon our state officials to display the American flag on all state and school buildings, and the people of the state to display the flag at their homes, lodges, churches, and places of business, on the second Sunday in May, known as mothers'

day, as a public expression of reverence for the homes of our state, and to urge the celebration of mothers' day in said proclamation in such a way as will deepen home ties, and inspire better homes and closer union between the commonwealth, its homes, and their sons and daughters.

471-g1. Columbus day. The governor of this state is hereby authorized and requested to issue annually a proclamation, calling upon our state officials to display the American flag on all state and school buildings and the people of the state to display the flag at their homes, lodges, churches, and places of business on the twelfth day of October, known as Columbus day; to commemorate the life and history of Christopher Columbus and to urge that services and exercises be had in churches, halls and other suitable places expressive of the public sentiment befitting the anniversary of the discovery of America.

CHAPTER 35

TIME OF ELECTION AND TERM OF OFFICE

515. Superintendent of public instruction. The superintendent of public instruction shall be elected at the general election in 1926 and each fourth year thereafter.

See 3829 to 3832, qualifications, office, powers, and duties; 1063, amount of bond required.

CHAPTER 39

REGISTRATION OF VOTERS

676. Registration required. Registration of voters shall be made for all elections, in all cities, including cities acting under special charter, having a population of ten thousand or more, not counting inmates of any state institution. Provided, however, that by city ordinance, registration of voters may be required in any city having a population of not less than six thousand and not more than ten thousand.

Registration of voters shall not be made for school elections except as otherwise provided.

See 4216-c17, where registration of voters is required; chapter 40, general election laws that are also applicable to regular or special school elections; chapter 41, how to canvass votes; 927 and 4216-c34, absent voters laws applicable to what school elections; 4216-c12, right to vote; chapter 211-C1, school election laws. Art. II, sec. 1, Constitution of Iowa, constitutional right to vote.

CHAPTER 40

METHOD OF CONDUCTING ELECTIONS

742. Schoolhouses as polling places. In precincts outside of cities and towns the election shall, if practicable, be held in

the public school building. All damage to the building or furniture shall be paid by the county.

See sections 4371 to 4373, use of school buildings for other purposes than school.

761. Constitutional amendment or other public measure. When a constitutional amendment or other public measure is to be voted upon by the electors, it shall be printed in full upon a separate ballot, preceded by the words, "Shall the following amendment to the constitution (or public measure) be adopted?"

1. Ballot requirement. The ballot used at an election to vote on the approval of a proposed ordinance granting a public utility franchise, must have printed thereon the ordinance in full. *McLaughlin v City*, 189-556; 178 NW 540; see *Lehigh Sewer P. & T. Co. v Town*, 156-386; 136 NW 934.

762. Form of ballot. Upon the right-hand margin, opposite said words, two spaces shall be left, one for votes favoring such amendment or public measure, and the other for votes opposing the same. In one of these spaces the word "yes" or other word required by law shall be printed; in the other, the word "no" or other word required, and to the right of each space a square shall be printed to receive the voting cross.

763. General form of ballot. Ballots referred to in the two preceding sections shall be substantially in the following form:

"Shall the following amendment to the constitution (or public measure) be adopted?" YES ☐ NO ☐

(Here insert in full the proposed constitutional amendment or public measure.)

1. Form of petition. A petition for the submission of a proposition to the electors must substantially contain every matter required by the statute in order that from the petition the ballot may be so framed that the entire proposition will be submitted to the electors. *O'Keefe v Hopp*, 210-398; 230 NW 876.

764. Marking ballots on public measures. The elector shall designate his vote by a cross mark, thus, "X," placed in the proper square.

765. Notice on ballots. At the top of ballots on such public measures shall be printed the following:

"[Notice to voters. For an affirmative vote upon any question submitted upon this ballot make a cross (X) mark in the square after the word 'Yes.' For a negative vote make a similar mark in the square following the word 'No'.]"

766. Different measures on same ballot. If more than one constitutional amendment or public measure is to be voted upon, they shall be printed upon the same ballot, one below the other, with one inch space between the several constitutional amendments or public measures to be submitted.

1. **Related propositions on different ballots.** The requirement that different propositions relating to public measures submitted to the people for approval or disapproval at the same election, be printed on the same ballot, even when the propositions are separate but directly related, is held not mandatory. *McLaughlin v City*, 189-556; 178 NW 540.

767. Printing of ballots on public measures. All of such ballots for the same polling place shall be of the same size, similarly printed, upon yellow colored paper. On the back of each such ballot shall be printed appropriate words, showing that such ballot relates to a constitutional or other question to be submitted to the electors, so as to distinguish the said ballots from the official ballot for candidates for office, and a facsimile of the signature of the auditor or other officer who has caused the ballot to be printed.

1. **Color of ballot.** The ballot used at a special election to vote on the approval of a proposed ordinance granting a public utility franchise need not be printed on yellow paper as required by the statute. *McLaughlin v City*, 189-556; 178 NW 540.

791-a1. Voters entitled to vote. All persons entitled to vote at said election who are within said polling places at the time said polling places are closed shall be permitted to vote.

792. Oath. Before opening the polls, each of the judges and clerks shall take the following oath: "I, A. B., do solemnly swear that I will impartially, and to the best of my knowledge and ability, perform the duties of judge (or clerk) of this election, and will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same."

1. **Failure to take oath.** These provisions are directory. A failure of the officers mentioned to be sworn will not vitiate the election, and in a case in court involving the validity of an election, the fact that the officers were sworn may be proved aliunde. The return is not conclusive. *Dishon v Smith*, 10-212.

793. How administered. Any one of the judges or clerks present may administer the oath to the others, and it shall be entered in the poll books, subscribed by the person taking it, and certified by the officer administering it.

794. Ballot furnished to voter. The judges of election of their respective precincts shall have charge of the ballots and furnish them to the voters. Any person desiring to vote shall give his name, and, if required, his residence, to such judges, one of whom shall thereupon announce the same in a loud and distinct tone of voice.

795. Voting under registration. In precincts where registration is required, if such name is found on the register of voters by the officer having charge thereof, he shall likewise repeat such name in the same manner; if the name of the person desiring to vote is not found on the register of voters, his

ballot shall not be received until he shall have complied with the law prescribing the manner and conditions of voting by unregistered voters.

796. Challenges. Any person offering to vote may be challenged as unqualified by any judge or elector; and it is the duty of each of the judges to challenge any person offering to vote whom he knows or suspects not to be duly qualified. No judge shall receive a ballot from a voter who is challenged, until such voter shall have established his right to vote.

797. Examination on challenge. When any person is so challenged, the judges shall explain to him the qualifications of an elector, and may examine him under oath touching his qualifications as a voter.

798. Oath in case of challenge. If the person challenged be duly registered, or if such person is offering to vote in a precinct where registration is not required, and insists that he is qualified, and the challenge be not withdrawn, one of the judges shall tender to him the following oath:

"You do solemnly swear that you are a citizen of the United States, that you are a resident in good faith of this precinct, that you are twenty-one years of age as you verily believe, that you have been a resident of this county sixty days, and of this state six months next preceding this election, and that you have not voted at this election."

If said person takes such oath, his vote shall be received.

1. Failure of duty. The duties and powers conferred by this section on judges of election are ministerial and such judges cannot refuse to administer the oath provided for or to receive the ballot after the oath has been taken. *Lane v Mitchell*, 153-139; 133 NW 381.

2. Personal liability. A wilful and malicious refusal to receive a ballot which the voter is entitled to cast may subject an election judge to liability beyond merely nominal damages. *Lane v Mitchell*, 153-139; 133 NW 381.

3. Improper oath—effect. If the ballot of a voter is received it is no ground of complaint that an improper oath has been administered to him touching his qualifications. *State v O'Day*, 69-368; 28 NW 642.

799. Voter to receive one ballot—indorsement by judge. One of the judges of election shall give the voter one ballot and only one, on the back of which a judge shall indorse his initials, in such manner that they may be seen when the ballot is properly folded. No ballot without said official indorsement shall be deposited in the ballot box. The voter's name shall immediately be checked on the registry list.

1. Failure to indorse. A ballot not bearing the indorsement of the judge should not be counted. *Kelso v Wright*, 110-560; 81 NW 805.

2. Ballots—failure to initial—effect. *Donlan v Cooke*, 212-771; 237 NW 496.

800. Names to be entered on poll book. The name of each person, when a ballot is delivered to him, shall be entered by each of the clerks of election in the poll book kept by him, in the place provided therefor.

1. Municipal court election—percentage of voters required. The phrase "fifteen per cent of the qualified electors, as shown by the poll list" as employed in section 10643, C., '31, must be deemed to refer to the "poll books" in cities having no statutory system of permanent registration of voters, while in cities having such system of registration (where poll books are not employed) the phrase must be deemed to refer to the "certificates of registration" duly signed by voters just preceding their actual voting. *Gilman v City*, 215-442; 245 NW 868.

801. Marking and return of ballot. On receipt of the ballot, the voter shall, without leaving the inclosed space, retire alone to one of the voting booths, and without delay mark his ballot, and, before leaving the voting booth, shall fold the same in such manner as to conceal the marks thereon, and deliver the same to one of the judges of election. The number of the voter on the poll books or register lists shall not be indorsed on the back of his ballot.

1. Right of secrecy. An illegal voter possesses no right of secrecy as to how he voted. *Powers v Harten*, 183-764; 167 NW 693; see *State v Lockwood*, 181-1233; 165 NW 330.

2. Marking with pencil or ink. A voter may very properly mark his ballot with a pencil of any color or with pen and ink. *Donlan v Cooke*, 212-771; 237 NW 496.

802. Depositing ballots. One of the judges of election shall at once, after receiving the ballot, in the presence of the voter, deposit such ballot in the ballot box and the voter shall quit said inclosed space as soon as he has voted.

803. Failure to vote—return of ballot. Any voter who, after receiving an official ballot, decides not to vote, shall, before retiring from within the guard rail, surrender to the election officers the official ballot which has been given him, and such fact shall be noted on each of the poll lists. A refusal to surrender such ballot shall subject the person so offending to immediate arrest and the penalties provided in this chapter.

804. Prohibited ballot—taking ballot from polling place. No voter shall vote or offer to vote any ballot except such as he has received from the judges of election, nor take or remove any ballot from the polling place before the close of the poll.

805. Limitation on time for voting. No voter shall be allowed to occupy a voting booth already occupied by another, nor remain within said inclosed space more than ten minutes, nor to occupy a voting booth more than five minutes, in case all of said voting booths are in use and other voters waiting to occupy the same, nor to again enter the inclosed space after hav-

ing voted; nor shall more than two voters in excess of the whole number of voting booths provided be allowed at any one time in such inclosed space, except by the authority of the election officers to keep order and enforce the law.

1. **Irregularities.** In a school election, held, the following irregularities were not of sufficient importance to render the election invalid, to wit: (a) that at times more than one elector, while preparing their ballots, occupied the same voting booth at the same time; (b) that electors handed unfolded ballots to the judges; (c) that a director and an elector acted as judges, instead of the president of the board and a director, as provided in § 4195 [Now 4216-c10]; (d) that the polls were kept open longer than directed by statute. *Chambers v Board*, 172-340; 154 NW 581; *Younker v Susong*, 173-663; 156 NW 24.

806. Selection of officials to assist voters. At, or before, the opening of the polls, the judges of each precinct shall select two members of the election board, of different political parties, to assist voters who may be unable to mark their ballots.

807. Assisting voter. Any voter who may declare upon oath that he can not read the English language, or that, by reason of any physical disability other than intoxication, he is unable to mark his ballot, shall, upon request, be assisted by said two officers, in marking said ballot. Said officers shall mark said ballot as directed by the voter, and shall thereafter give no information regarding the same.

808. Assistance indicated on poll book. The clerks of election shall enter upon the poll lists, after the name of any elector who received such assistance in marking his ballot, a memorandum of the fact.

817. Spoiled ballots. Any voter who shall spoil his ballot may, on returning the same to the judges receive another in place thereof, but no voter shall receive more than three ballots, including the one first delivered to him. None but ballots provided in accordance with the provisions of this chapter shall be counted.

825. Penalty. Any violation of the provisions of the preceding section shall be punished by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment for not less than ten days nor more than thirty days in the county jail, or by both fine and imprisonment.

CHAPTER 41

CANVASS OF VOTES

840. Canvass by judges. When the poll is closed, the judges shall forthwith, and without adjournment:

1. Publicly canvass the vote, and credit each candidate with the number of votes counted for him.

2. Ascertain the result of the vote.
3. Compare the poll lists and correct errors therein.
4. Cause each clerk to keep a tally list of the count.

See 4216-c19, canvassing votes in school elections; 4216-c20, canvassing returns of school elections.

1. **Illegal handling of ballots.** An election will not be invalidated on the mere showing that unauthorized parties handled and counted the ballots in the immediate presence of the election officials. *State v Creston M. Tel. Co.*, 195-1368; 191 NW 988.

841. **Judges declare election.** The candidate receiving the highest number of votes, if for an office in that precinct alone, shall be declared elected, and the judges shall issue certificates accordingly.

842. **Double or defective ballots.** If two or more marked ballots are so folded together as to appear to be cast as one, the judges shall indorse thereon "Rejected as double". Such ballots shall not be counted, but shall be folded together and kept as hereinafter directed. Every ballot not counted shall be indorsed "Defective" on the back thereof.

883. **Tie vote.** If more than the requisite number of persons, including presidential electors, are found to have an equal and the highest number of votes, the election of one of them shall be determined by lot. The name of each of such candidates shall be written on separate pieces of paper, as nearly uniform in size and material as possible, and placed in a receptacle so that the names cannot be seen. In the presence of the board of canvassers, one of them shall publicly draw one of such names, and such person shall be declared elected. The result of such drawing shall be entered upon the abstract of votes and duly recorded, and a certificate of election issued to such person, as provided in this chapter.

CHAPTER 44

ABSENT VOTERS' LAW

927. **Right to vote—conditions.** Any qualified voter of this state may, as provided in this chapter, vote at any general, municipal, special, or primary election, or at any election held in any independent town, city, or consolidated school district:

"1. When, in the conduct of his business or due to other necessary travel, he expects to be absent on election day from the county in which he is a qualified voter.

"2. When, through illness or physical disability, he expects to be prevented from personally going to the polls and voting on election day."

See 4216-c34, absent voters laws applicable to what school elections; 4216-c12, right to vote; chapter 211-C1, school election laws; Art. II,

sec. 1, Constitution of Iowa, constitutional right to vote; 676 and 4216-c17, where registration of voters is required; chapter 40, general election laws that are also applicable to regular or special school elections; chapter 41, how to canvass votes.

928. Application for ballot. Any voter, under the circumstances specified in section 927, may, on any day not Sunday, election day or a holiday and not more than twenty days prior to the date of election, make application to the county auditor, or to the city or town clerk, as the case may be, for an official ballot to be voted at such election.

929. School secretary. In the application of this chapter to elections held in independent city, town, and consolidated school districts, the secretary of the school board shall perform the duty herein imposed on the county auditor or clerk of the city or town.

1. Implied power. The county superintendent, under her statutory powers and duty to call elections in consolidated districts to vote on the question of dissolution of the district, has implied power to receive applications for ballots by, and to deliver ballots to, electors who wish to cast their ballots. *Willis v Sch. Dist.*, 210-391; 227 NW 532.

930. Blank applications. Said officers shall furnish to any qualified voter of the county, city, or town of which they are such officers, blanks on which to make application for such ballot.

931. Form of blank application. Applications for ballots shall be made on blanks substantially in the following form:

"APPLICATION FOR BALLOT TO BE VOTED AT THE .....ELECTION ON .....

State of.....
County of.....} ss.

I, ..., do solemnly swear that I have been a resident of the state of Iowa for six months, of the county of..... for sixty days, and of the..... precinct of ..... township of ..... ward of the city, town, or election, and that I am a duly qualified voter entitled to vote at said election; that my occupation is....., and that on account of.....
(Business, illness, or physical disability)
I cannot be at the polls on election day, and I hereby make application for an official ballot or ballots to be voted by me at such election, and that I will return said ballot or ballots to the officer issuing same, before the day of said election. I am affiliated with the.....party.
(Fill out only in case of primary election)

Date..... Signed.....
Residence (street and number, if any).....

City or town.....
P. O. address.....
Subscribed and sworn to before me this.....
day of....., A. D. 19.....
....."

935. Ballot mailed. Upon receipt of such application, and immediately after the ballots are printed, it shall be the duty of such auditor or clerk to mail to said applicant, postage prepaid, such official ballot or ballots as such applicant would have the right to cast at such election.

936. Application mailed. If the voter is absent from the county and requests said application by letter, the auditor may send him both the application and ballot at the same time.

937. Personal delivery of ballot. Such officer shall deliver said ballot or ballots to any qualified elector applying in person at the office of such auditor or clerk, as the case may be, and subscribing to the foregoing application, not more than fifteen days before the date of said election, but said ballot shall be immediately marked, inclosed in the ballot envelope with proper affidavit thereon, and returned to said officer.

938. Duty of auditor. It shall be the duty of said auditor or clerk to fold said ballot or ballots in the manner in which they are required to be folded when voted, and to inclose the same in an unsealed envelope, to be furnished by him, which envelope shall bear upon the face thereof the name, official title, and postoffice address of such auditor or clerk.

939. Voter's affidavit on envelope. On the reverse side of said unsealed envelope shall be printed a blank form of affidavit in substantially the following form:

"State of.....}
County of.....} ss.

I, ..., do solemnly swear that the following matters relating to my qualifications for registration and voting are true; residence, city, town, or township of....., street, No....., ...county, Iowa. Age.....years. Nativity..... Color..... Sex..... Term of residence in precinct..... Term of residence in county..... Term of residence in state..... Naturalized..... Date of naturalization papers..... Court in which naturalized.....Date of application.....Whether by act of congress..... Whether qualified voter ..... Last preceding place of residence, city, town, or township of.....

..... street, No. .....
I am affiliated with the.....party.
(Fill out only in case of primary election)
I am engaged in the business or work of.....; that I shall be prevented from attending the polls on the day of election on account of (here affiant will state whether absence from the county of his residence or physical disability), and that I have marked the inclosed ballot in secret.

Signed.....

Subscribed and sworn to before me this.....day of....., A. D....., and I hereby certify that the affiant exhibited the inclosed ballot to me unmarked; that he then in my presence and in the presence of no other person, and in such manner that I could not see his vote, marked such ballot and inclosed and sealed the same in this envelope; that the affiant was not solicited or advised by me for or against any candidate or measure.

.....

.....

(Official title.)"

1. **Inadvertent identification.** The impression of a notarial seal on an official ballot, caused by placing the ballot in the return envelope before the notary affixed his seal to the affidavit on the envelope, does not constitute an illegally identified ballot. *Willis v Sch. Dist.*, 210-391; 227 NW 532.

941. Marking ballot. The voter, on receipt of said ballot or ballots, shall, in the presence of the officer administering the oath and of no other person, mark such ballot or ballots, but in such manner that such officer will not know how such ballot is marked.

942. Taking and subscribing oath. After marking such ballot, the voter shall, before said officer, make and subscribe to the affidavit on the reverse side of the envelope, and, in the presence of such officer, fold such ballot, or ballots, separately, so as to conceal the markings thereon, and deposit the same in said envelope, which shall then be securely sealed.

943. Mailing or delivering ballot. The sealed envelope containing the said ballot or ballots may be personally delivered by the voter to the auditor, deputy, or clerk at the office of said auditor or clerk, prior to election day. If not so delivered, said envelope shall be inclosed in a carrier envelope, which shall also be securely sealed, and mailed by the voter, postage paid, to reach said auditor or clerk prior to election day.

944. Manner of preserving ballot and application. Upon receipt of such ballot, the auditor or clerk shall at once inclose the same, unopened, together with the application made by the voter, in a large carrier envelope, securely seal the same, and indorse thereon, over his official signature, the following:

1. Names of the judges of election of the precinct (naming it) of which the voter is a resident.

2. The name of the city or town in which or near which such judges will hold the election in said precinct.

3. The street number, or other clear designation of the polling place in said precinct, and a statement that "This envelope contains an absent voter's ballot and must be opened only at the polls on election day while said polls are open."

945. Delivery of ballot. In case said voter's ballot is received by the auditor or clerk prior to the delivery of the official ballots to the judges of election of the precinct in which said elector resides, such ballot, envelope, and application, sealed in the carrier envelope, shall be inclosed in such package and therewith delivered to the judges of such precinct.

Referred to in §946.

946. Auditor may mail or personally deliver. If said voter's ballot be received after the time specified in the preceding section, said receiving officer shall at once mail said carrier envelope, postage prepaid, to said judges. Said officer may, in person or by deputized agent, personally deliver said envelope to said judges, if he can so do without expense to the county, city, or town.

947. Receipt for ballot. In case ballots and applications are personally delivered, the delivering officer shall take the receipt of the judges therefor.

948. Ballots rejected. All ballots forwarded to absent voters and not received by the auditor or city or town clerk in time for delivery to the judges of election before the closing of the polls, shall be rejected.

949. Casting ballots. At any time between the opening and closing of the polls on such election day the judges of election of said precinct shall open the outer or carrier envelope only, announce the absent or disabled voter's name, and compare the signature upon the application with the signature upon the affidavit on the ballot envelope. In case the judges find the affidavits executed, that the signatures correspond, the applicant a duly qualified elector of the precinct, and that the applicant has not voted in person at said election, they shall open the envelope containing the voter's ballot in such manner as not to deface or destroy the affidavit thereon, and take out the ballot or ballots therein contained without unfolding or permitting the same to be unfolded or examined, and, having indorsed the ballot in like manner as other ballots are required to be indorsed, deposit the same in the proper ballot box and enter the voter's name in the poll book, the same as if he had been present and voted in person.

950. Precincts using voting machines. In precincts using voting machines, none of said ballot envelopes shall be opened until immediately after the closing of the polls to voters who vote in person. If there be more than one absent voter's ballot entitled to be cast, they shall, without being unfolded, be thoroughly intermingled in some proper manner, after which they shall be unfolded and, under the personal supervision of all the judges, be registered on the voting machine the same as if the absent voter had been present and voted in person.

951. Rejecting ballot. In case such affidavit is found to be insufficient, or that the signatures do not correspond, or that the applicant is not a duly qualified elector in such precinct, or that the ballot envelope is open, or has been opened and resealed, or that the ballot envelope contains more than one ballot of any one kind, or that said voter has voted in person, such vote shall not be accepted or counted.

952. Rejected ballots—how handled. Every ballot not counted shall be indorsed on the back thereof "Rejected because (giving reason therefor)." All rejected ballots shall be inclosed and securely sealed in an envelope on which the judges shall indorse "Defective ballots," with a statement of the precinct in which and the date of the election at which they were cast, signed by the judges and returned to the same officer and in the same manner as by law provided for the return and preservation of official ballots voted at such election.

953. Rejection of ballot—return of envelope. If the ballot is rejected, said ballot envelope, with the affidavit of the voter indorsed thereon, shall be returned with said rejected ballot in the envelope indorsed "Defective ballots."

954. Affidavit envelope constitutes registration. The affidavit upon the ballot envelope shall constitute a sufficient registration of the voter in precincts where registration is required.

955. Alphabetical list completed. The judges of election shall, in case the ballot is deposited in the box, enter the voter's name on the alphabetical lists if not already there, with the same data as is entered when a certificate of registration is filed.

956. Ballot envelope preserved. The ballot envelope having the voter's affidavit thereon shall, in case the ballot is deposited in the box, be preserved and returned with the certificates of registration, poll book, and alphabetical lists to the city clerk, who shall preserve the same, and it shall be used by the registers of election, in precincts where registration is required, in making up the new registry lists from the poll books, and such affidavit shall serve as the registration record of the voter for the new registry books and lists.

957. Challenges. The vote of any absent voter may be challenged for cause and the judges of election shall determine the legality of such ballot as in other cases.

Challenges, §§ 796-798.

958. Ballot of deceased voter. When it shall be made to appear by due proof to the judges of election that any elector, who has so marked and forwarded his ballot, has died before the ballot is deposited in the ballot box, then the ballot of such deceased voter shall be indorsed, "Rejected because voter is dead," and be returned by the judges of election with the unused ballots to the official issuing it; but the casting of the ballot of a deceased voter shall not invalidate the election.

959. Laws made applicable. This chapter and all other election laws now in force, and not inconsistent with this chapter, shall apply to all counties, cities, and towns in which voting machines are used, and the proper election officials in such counties shall take such action as is necessary to carry out the provisions of this chapter.

960. False affidavit. Any person who shall wilfully swear falsely to any of such affidavits shall be guilty of perjury, and punished accordingly.

961. Refusal to return ballot. Any person who, having procured an official ballot or ballots, shall wilfully neglect or refuse to cast or return the same in the manner provided, or who shall wilfully violate any provision of this chapter, shall, unless otherwise provided, be fined not to exceed one hundred dollars, or imprisoned in the county jail not to exceed thirty days. Any person who applies for a ballot and wilfully neglects or refuses to return the same shall be deemed to have committed an offense in the county to which such ballot was returnable.

962. Offenses by officers. If any county auditor, city or town clerk, or any election officer shall refuse or neglect to perform any of the duties prescribed by this chapter, or shall violate any of the provisions thereof, he shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not to exceed ninety days.

CHAPTER 47

CONTESTING ELECTIONS—GENERAL PROVISIONS

981. Grounds of contest. The election of any person to any county office, or to a seat in either branch of the general assembly, may be contested by any person eligible to such office; and the election of any person to a state office, or to the office of presidential elector, by any eligible person who

received votes for the same office; and the grounds therefor shall be as follows:

1. Misconduct, fraud, or corruption on the part of judges of election in any precinct, or of any board of canvassers, or any member of either board, sufficient to change the result.

2. That the incumbent was not eligible to the office at the time of election.

3. That the incumbent has been duly convicted of an infamous crime before the election, and the judgment has not been reversed, annulled, or set aside, nor the incumbent pardoned, at the time of election.

4. That the incumbent has given or offered to any elector, or any judge, clerk, or canvasser of the election, any bribe or reward in money, property, or thing of value, for the purpose of procuring his election.

5. That illegal votes have been received or legal votes rejected at the polls, sufficient to change the result.

6. Any error in any board of canvassers in counting the votes, or in declaring the result of the election, if the error would affect the result.

7. Any other cause which shows that another person was the person duly elected.

1. Electioneering by judges—effect. A judge of election who, while conducting an election, electioneers for a particular candidate is guilty of such misconduct as to furnish basis for a contest as to the office involved. *Brooks v Fay*, 206-845; 220 NW 30.

982. Certificate withheld. If notice of contesting the election of an officer is filed before the certificate of election is delivered to him, it shall be withheld until the determination of the contest.

983. Incumbent. The term "incumbent" in this chapter means the person whom the canvassers declare elected.

984. Change the result. When the misconduct, fraud, or corruption complained of is on the part of the judges of election in a precinct, it shall not be held sufficient to set aside the election, unless the rejection of the vote of that precinct would change the result as to that office.

1. Misconduct—effect of. In an election contest over a county office, the entire vote of a precinct will not be thrown out because of the misconduct of the judges of election unless the contestant shows that the number of votes affected by such misconduct was such as to change the result in the county as to that office. *Brooks v Fay*, 206-845; 220 NW 30.

985. Recanvass in case of contest. The parties to any contested election shall have the right, in open session of the court or tribunal trying the contest, and in the presence of the officer having them in custody, to have the ballots opened, and all errors of the judges in counting or refusing to count ballots corrected by such court or tribunal.

986. Other contests. All the provisions of the chapter in relation to contested elections of county officers shall be applicable, as near as may be, to contested elections for other offices, except as herein otherwise provided, and in all cases process and papers may be issued to and served by the sheriff of any county.

CHAPTER 52

CONTESTING OF ELECTIONS OF COUNTY OFFICERS

1020. Contest court. The court for the trial of contested county elections shall be thus constituted: The chairman of the board of supervisors shall be the presiding officer, and the contestant and incumbent may each name a person who shall be associated with him.

1021. Judges. The contestant and incumbent shall each file in the auditor's office, on or before the day of trial, a written nomination of one associate judge of the contested election, who shall be sworn in manner and form as trial jurors are in trials of civil actions; if either the contestant or the incumbent fails to nominate, the presiding judge shall appoint for him. When either of the nominated judges fails to appear on the day of trial, his place may be filled by another appointment under the same rule.

1022. Clerk. The county auditor shall be clerk of this court, and keep all papers, and record the proceedings in the election book, in manner similar to the record of the proceedings of the district court, but when the county auditor is a party, the court shall appoint a suitable person as clerk, whose appointment shall be recorded.

1023. Sheriff to attend. The court or presiding judge may direct the attendance of the sheriff or a constable when necessary.

1024. Statement. The contestant shall file in the office of the county auditor, within twenty days after the day when the incumbent was declared elected, a written statement of his intention to contest the election, setting forth the name of the contestant, and that he or she is qualified to hold such office, the name of the incumbent, the office contested, the time of the election, and the particular causes of contest, which statement shall be verified by the affidavit of the contestant, or some elector of the county, that the causes set forth are true as he verily believes.

1. Jurisdiction. The act of a contestant in properly filing his statement of contest and bond and the approval of the latter, confers on the contest court, jurisdiction over the contest. *Marsh v Huffman,* 199-788; 202 NW 581.

2. Computation of time. It is the intention that the statement of contest must be filed within twenty

days after the day when the canvass of the votes was made that determined the result as to the particular office in question. *Clark v Tracy*, 95-410; 64 NW 290. *Furguson v Henry*, 95-439; 64 NW 292.

3. Scope of section. The provisions of this section as to what the statement of contest must show have reference to the paper filed by the contestant as the basis for his proceedings, and it is doubtful whether they apply to the answer filed by the incumbent. *Kelso v Wright*, 110-560; 81 NW 805.

4. City office—place of filing contest and bond. In an election contest over a city office, the written statement of intention to contest and bond are properly filed with the county auditor. *Jenkins v Furgeson*, 212-640; 233 NW 741.

1025. Bond. The contestant must also file with the county auditor a bond, with security to be approved by said auditor, conditioned to pay all costs in case the election be confirmed, or the statement be dismissed, or the prosecution fail.

1027. Names of voters specified. When the reception of illegal or the rejection of legal votes is alleged as a cause of contest, the names of the persons who so voted, or whose votes were rejected, with the precinct where they voted or offered to vote, shall be set forth in the statement.

1028. Trial—notice. The chairman of the board of supervisors shall thereupon fix a day for the trial, not more than thirty nor less than twenty days thereafter, and shall cause a notice of such trial to be served on the incumbent, with a copy of the contestant's statement, at least ten days before the day set for trial.

1029. Place of trial. The trial of contested county elections shall take place at the county seat, unless some other place within the county is substituted by the consent of the court and parties.

1030. Subpoenas. Subpoenas for witnesses may be issued at any time after the notice of trial is served, either by the clerk of the district court or by the county auditor, and shall command the witnesses to appear as ....., on ....., to testify in relation to a contested election, wherein A..... B..... is contestant and C..... D..... is incumbent.

1031. Postponement. The trial shall proceed at the time appointed, unless postponed for good cause shown by affidavit, the terms of which postponement shall be in the discretion of the court.

1032. Procedure—powers of court. The proceedings shall be assimilated to those in an action, so far as practicable, but shall be under the control and direction of the court, which shall have all the powers of the district court necessary to the right hearing and determination of the matter, to compel the attendance of witnesses, swear them and direct their examination, to punish for contempt in its presence or by disobedience to its lawful mandate, to adjourn from day to day, to

make any order concerning intermediate costs, and to enforce its orders by attachment. It shall be governed by the rules of law and evidence applicable to the case.

1. General appearance by incumbent. The act of an incumbent in appearing in an election contest and questioning the jurisdiction of the contest court, but without any announcement that his appearance was solely for said special purpose, constitutes a general appearance. *Marsh v Huffman*, 199-788; 202 NW 581.

2. Bond. The incumbent in such a contest is not required, as a general rule, to give bond. *Kelso v Wright*, 110-560; 81 NW 805.

3. Scope of defense. The incumbent may meet the case made by the contestant by showing that the illegal votes counted for him were without prejudice because of the illegal votes cast for the contestant. *Kelso v Wright*, 110-560; 81 NW 805.

4. Authorized continuance. A contest court having acquired jurisdiction of the contest may, on discovering that no proper service has been made on the incumbent, validly continue the proceedings, even beyond the thirty days provided by statute, in order to effect such service. *Marsh v Huffman*, 199-788; 202 NW 581.

1033. Sufficiency of statement. The statement shall not be dismissed for want of form, if the particular causes of contest are alleged with such certainty as will sufficiently advise the incumbent of the real grounds of contest.

1034. Amendment — continuance. If any part of the causes are held insufficient, they may be amended, but the incumbent will be entitled to an adjournment, if he states on oath that he has matter of answer to the amended causes, for the preparation of which he needs further time. Such adjournment shall be upon such terms as the court thinks reasonable; but if all the causes are held insufficient and an amendment is asked, the adjournment shall be at the cost of contestant. If no amendment is asked for or made, or in case of entire failure to prosecute, the proceedings may be dismissed.

1. Amendments. The contestant may, after the expiration of the twenty days allowed for filing written statement of contest, amend the grounds of contest stated. *Brown v McCollum*, 76-479; 41 NW 581. *State ex rel v Van Beek*, 87-569; 54 NW 525.

1035. Testimony. The testimony may be oral or by deposition, taken as in an action at law in the district court.

1036. Voters required to testify. The court may require any person called as a witness, who voted at such election, to answer touching his qualifications as a voter, and, if he was not a qualified voter in the county where he voted, then to answer for whom he voted.

1. Privilege of secrecy. An illegal voter, who admits that he did vote on the occasion in question, possesses no right of secrecy as to how he voted. *Powers v Harten*, 183-764; 167 NW 693.

2. Oral testimony as to how elector voted. Under some circumstances, an elector may voluntarily testify how he voted. *State v Lockwood*, 181-1233; 165 NW 330.

3. How one voted. Circumstances, in and of themselves, may be sufficient to show how a person voted. *Powers v Harten*, 183-764; 167 NW 693.

1037. Judgment. The court shall pronounce judgment whether the incumbent or any other person was duly elected, and adjudge that the person so declared elected will be entitled to his certificate. If the judgment be against the incumbent, and he has already received the certificate, the judgment shall annul it. If the court find that no person was elected, the judgment shall be that the election be set aside.

1. Disqualification removed after election. Ineligibility at the time of election which may be and is removed before the person elected is required to enter upon the discharge of the office will not be a ground for contest. *State ex rel v Van Beek*, 87-569; 54 NW 525.

2. Judgment—effect. The judgment of a contest court holding the election in question illegal is valid and conclusive upon both parties to the contest, unless appealed from and reversed. (See Book of Anno., Vol. I, §11567, Anno. 45 et seq.) *Leslie v Barnes*, 201-1159; 208 NW 725.

1038. How enforced. When either the contestant or incumbent shall be in possession of the office, by holding over or otherwise, the presiding judge shall, if the judgment be against the party so in possession of the office and in favor of his antagonist, issue an order to carry into effect the judgment of the court, which order shall be under the seal of the county, and shall command the sheriff of the county to put the successful party into possession of the office without delay, and to deliver to him all books and papers belonging to the same; and the sheriff shall execute such order as other writs.

Referred to in § 1039.

1039. Appeal. The party against whom judgment is rendered may appeal within twenty days to the district court, but, if he be in possession of the office, such appeal will not supersede the execution of the judgment of the court as provided in the preceding section, unless he gives a bond, with security to be approved by the district judge in a sum to be fixed by him, and which shall be at least double the probable compensation of such officer for six months, which bond shall be conditioned that he will prosecute his appeal without delay, and that, if the judgment appealed from be affirmed, he will pay over to the successful party all compensation received by him while in possession of said office after the judgment appealed from was rendered. The court shall hear the appeal in equity and determine anew all questions arising in the case.

1. Form and manner of taking. Whether notice of appeal in such case should be in writing, quaere; but where verbal notice was given at the time the judgment of the court of contest was rendered, and the parties then agreed as to disposition to be made of the ballot box, held, that the notice was sufficient under the circumstances. *McIntosh v Livingston*, 41-219.

2. When appeal taken. After the judges of contest have in fact announced their decision, the notice of appeal may be served although the decision has not yet been formally reduced to writing and filed with the proper authorities. *Mentzer v Davis*, 109-528; 80 NW 557.

3. Trial on appeal. The appeal in an election contest is triable in

the court in equity, and is therefore triable de novo; and an appeal to the supreme court from the decision of the district court is also to be heard de novo. *Murphy v Lentz*, 131-328; 108 NW 530. See *Spurrier v McLennan*, 115-461; 88 NW 1062.

4. Liability of county. The officer obtaining possession of an office by judgment of a court in a contest cannot recover from the county the salary or compensation of which he has been deprived by the incumbency of the de facto officer who is ousted by the contest. *Brown v Tama Co.*, 122-745; 98 NW 562.

5. Genuineness of ballots. The question of the genuineness of the ballots should be submitted to the jury on the trial in the district court in an appeal from the decision of the board of contest, but the jury are not to determine the validity of the ballots so far as such validity depends upon the marking thereof or the condition thereof when cast. *Furguson v Henry*, 95-439; 64 NW 292.

6. Good faith—effect. The fact of good faith and claim of right on the part of the officer de facto will not affect the right of the officer de jure to the emoluments of the office. *McCue v Wapello Co.*, 56-698; 10 NW 248.

7. Ballots as evidence. Ballots should not be received in evidence unless they have been so kept as not to be exposed to the reach of unauthorized persons in such a way as to afford a reasonable possibility of their having been changed or tampered with. *Mentzer v Davis*, 109-528; 80 NW 557.

8. Discarding precinct vote—effect. The fact that contestant claims that the returns for a certain township or precinct were not such as to entitle the votes from that precinct to be counted will not prevent a determination of the contest by a recounting of votes of which proper returns were made. *Brown v Crosson*, 115-256; 88 NW 366.

9. Consent judgment — appeal. An election contestant may not appeal from the judgment of the contest board holding the election in question illegal and providing for the calling of a new election by said board, when he consented to the entry of such judgment. *Leslie v Barnes*, 201-1159; 208 NW 725.

10. Appeal by nonincumbent—bond not required. No appeal bond is required in an appeal to the district court from the judgment of an election contest court by a party who is not an incumbent of the office in question, section 11440, C., '31 having no application to such a case. *Donlan v Cooke*, 212-771; 237 NW 496.

1040. Judgment. If, upon appeal, the judgment is affirmed, the district court may render judgment upon the bond for the amount of damages, against the appellant and the sureties thereon.

1041. Process—fees. The style, form, and manner of service of process and papers, and the fees of officers and witnesses, shall be the same as in the district court, so far as the nature of the case admits.

1042. Compensation. The judges shall be entitled to receive four dollars a day for the time occupied by the trial.

1043. Costs. The contestant and the incumbent are liable to the officers and witnesses for the costs made by them, respectively; but if the election be confirmed, or the statement be dismissed, or the prosecution fail, judgment shall be rendered against the contestant for costs; and if the judgment be against the incumbent, or the election be set aside, it shall be against him for costs.

1. **Taxation.** The payment of costs in an election contest in which the contestant is unsuccessful is to be determined by the rules applicable in criminal cases where the prosecution has failed. (See section 12422.) *Hull v Eby,* 123-257; 98 NW 774.

1044. How collected. A transcript of the judgment, filed and recorded in the office of the clerk of the district court as provided in relation to transcripts from justices' courts, shall have the same effect as there provided, and execution may issue thereon.

CHAPTER 53

TIME AND MANNER OF QUALIFYING

1047. Unavoidable casualty. When on account of sickness, the inclement state of the weather, unavoidable absence, or casualty, an officer has been prevented from qualifying within the prescribed time, he may do so within ten days after the time herein fixed.

See Art. XI, sec. 5, Constitution of Iowa, oath required by constitution; 1215, 1216, 4216-c28, who may administer oath.

1. **Delay by injunction.** Where an officer elected is prevented from qualifying by an injunction and is competent to qualify within the time when he may be reasonably required to do so in view of such injunction, he is entitled to the office although he may have been subject to a disqualification at the time of his election and at the time when but for such injunction he would have been required to qualify. *State v Van Beek,* 87-569; 54 NW 525.

1051. Officer holding over. When it is ascertained that the incumbent is entitled to hold over by reason of the nonelection of a successor, or for the neglect or refusal of the successor to qualify, he shall qualify anew, within the time provided by the next section.

1. **Term for qualifying.** The term for which an incumbent holding over is to occupy the office and qualify is not a full term, but only until the vacancy can be legally filled by election. *Dyer v Bagwell,* 54-487; 6 NW 712; *Boone Co. v Jones,* 58-373; 12 NW 313.

2. **Nonright to requalify.** When an officer was elected at a regular meeting of the directors of a school district, and the meeting adjourned to a certain day for the purpose of learning whether he would accept or not, and at the adjourned meeting he refused to accept, held, that his refusal was the same as if made at the regular meeting, and the board had the same power to elect another person as if no ballot had been cast; and the fact that such election was at an adjourned meeting would not give the incumbent a right to qualify and retain the office for another term. *Carter v McFarland,* 75-196; 39 NW 268; see *State v Alexander,* 107-177; 77 NW 841.

3. **Separate bonds.** Where a holding-over officer executed a bond with sureties for the entire period of the term of the person in whose place he held over, under a mistaken belief that he was entitled to hold for the entire term of such officer, and at the next election was duly elected to fill the vacancy in such office, and executed a new bond, held that the sureties on the first named bond were not cosureties with those on the second bond for the period subsequent to the last election, and could not be compelled to contribute for a defalcation occurring during that time. *Boone Co. v Jones,* 58-373; 12 NW 313.

1052. Appointee to fill vacancy. Persons elected or appointed to fill vacancies, and officers entitled to hold over to fill vacancies occurring through a failure to elect, appoint, or qualify, as provided in chapter 59, shall qualify within ten days from such election, appointment, or failure to elect, appoint, or qualify, in the same manner as those originally elected or appointed to such offices.

1. Disqualified party. Where there is an election of a person disqualified to hold the office, who therefore is unable to qualify, the vacancy is for failure to qualify and not for failure to elect, and the preceding officer is entitled to qualify within ten days after the failure of the newly elected officer to qualify. *State v Cahill,* 131-155; 105 NW 691.

1053. Temporary officer. Any person temporarily appointed to fill an office during the incapacity or suspension of the regular incumbent shall qualify, in the manner required by this chapter, for the office so to be filled.

1054. Other officers. All other civil officers, elected by the people or appointed to any civil office, unless otherwise provided, shall take and subscribe an oath substantially as follows:

"I, ..., do solemnly swear that I will support the constitution of the United States and the constitution of the state of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all the duties of the office of .....(naming it) in (naming the township, town, city, county, district, or state, as the case may be), as now or hereafter required by law."

1055. Oath on bond. Every civil officer who is required to give bond shall take and subscribe the oath provided for in section 1054, on the back of his bond, or on a paper attached thereto, to be certified by the officer administering it.

1056. Re-elected incumbent. When the incumbent of an office is re-elected, he shall qualify as above directed.

1. Failure to requalify. An officer holding over after re-election and failing to file a new bond is still an officer de facto, and not a person falsely assuming to be an officer, at least until his office is declared vacant. *State v Bates,* 23-96.

1057. Approval conditioned. When the re-elected officer has had public funds or property in his control, under color of his office, his bond shall not be approved until he has produced and fully accounted for such funds and property to the proper person to whom he should account therefor; and the officer or board approving the bond shall indorse upon the bond, before its approval, the fact that the said officer has fully accounted for and produced all funds and property before that time under his control as such officer.

See 4222 and 4305, secretary and treasurer qualify.

1. Burden of proof. This section is directory; and where it appeared that there was no defalcation at the previous semi-annual settlement, held that the sureties insisting that such defalcation had taken place before the acceptance of the bond signed by them, had the burden of proving that fact. *Carroll Co. v Ruggles*, 69-269; 28 NW 590.

2. Failure to perform duty. The duty of an officer not to approve the bond until the person qualifying has accounted as required in this section is a duty to the public only, and neglect thereof will not render such officer liable to the sureties on the new bond. *Dist. Tp. v McCord*, 54-346; 6 NW 536; *Held v Bagwell*, 58-139; 12 NW 226.

3. Failure to perform duty. While it is the duty of the board of supervisors to require an officer to account for all public funds which have come into his hands under color of his office, before approving his bond for the second term, neither the failure to perform that duty nor a false representation that it has been performed, will release the sureties on the bond from liability for a defalcation occurring subsequent to the approval of the board. *Palmer v Woods*, 75-402; 39 NW 668.

4. Presumption. An officer when he enters upon a subsequent term must be presumed, in the absence of evidence to the contrary, to have on hand all the funds with which he is chargeable, and proof of the amount which should have been on hand at that time will be prima facie proof that it was on hand. The fact that his bond is approved without his having produced and accounted for all funds and property, as here required, will not exempt his sureties from liability. *Dist. Tp. v McCord*, 54-346; 6 NW 536.

5. Requalification as own successor—presumption. The fact that a county treasurer who succeeds himself, requalifies, and gives a new bond for his second term, creates no conclusive presumption that the liability which attached to him during the first term has been carried over to his new bond. *Dallas Co. v Bank*, 205-672; 216 NW 119.

CHAPTER 54

OFFICIAL AND PRIVATE BONDS

1059. Conditions of bond of public officers. All other public officers, except as otherwise specially provided, shall give bond with the conditions, in substance, as follows:

That as..... (naming the office), in ..... (city, town, township, county, or state of Iowa), he will render a true account of his office and of his doings therein to the proper authority, when required thereby or by law; that he will promptly pay over to the officer or person entitled thereto all moneys which may come into his hands by virtue of his office; that he will promptly account for all balances of money remaining in his hands at the termination of his office; that he will exercise all reasonable diligence and care in the preservation and lawful disposal of all money, books, papers, securities, or other property appertaining to his said office, and deliver them to his successor, or to any other person authorized to receive the same; and that he will faithfully and impartially, without fear, favor, fraud, or oppression, discharge all duties now or hereafter required of his office by law.

Referred to in § 114.

See 4305, secretary and treasurer give bonds.

1. **Applicability.** The provision as to bonds has no application to a special constable appointed to serve a search warrant. *Hoeg v Pine,* 143-243; 121 NW 1019.

2. **Common-law bond.** A bond executed in such case without authority is not valid as a common-law bond. *Hoeg v Pine,* 143-243; 121 NW 1019.

3. **Failure to require bond—effect.** The failure of the superintendent of a city police department to exact a bond of a policeman does not render the city liable for an unlawful act of such policeman. *Looney v Sioux City,* 163-604; 145 NW 287.

4. **Unauthorized bond.** A bond given by an officer when not required by statute, where no benefit or advantage accrues to him by reason of its execution, cannot be enforced. *State v Heisey,* 56-404; 9 NW 327.

5. **Not insurer of official funds.** The clerk of the district court is not liable for loss of official funds coming into his hands and lost because of the failure of the bank in which they were deposited, when, at the time of deposit, he in good faith justifiably believed the bank to be solvent. *Prudential v Hart,* 205-801; 218 NW 529; *Town v Riedmiller,* 208-879; 226 NW 159; *Andrew v Bank,* 214-105; 241 NW 412.

6. **Excessive bank deposits.** A resolution of a city council to the effect that all city funds shall be deposited in a named bank is no authority to the city treasurer to make deposits in excess of the amount of the bond given by the bank to secure said deposits, and the treasurer and the surety on his official bond are liable for such excess, even though the treasurer was not guilty of any negligence in depositing such excess. *State v Carney,* 208-133; 217 NW 472.

7. **Deposits—liability of county treasurer.** Even though the county treasurer deposits public funds in a depositary bank in an amount authorized by a resolution of the board of supervisors, yet if the board later, by resolution, reduces the amount authorized to be deposited, the treasurer and his surety are liable for a loss resulting from the failure of the treasurer to exercise reasonable diligence to reduce his deposit to the amount authorized in the latter resolution. *State v Surety Co.,* 210-215; 230 NW 308.

8. **Time deposit works conversion.** A sheriff is guilty of instant conversion and a breach of his bond when he deposits in a bank funds properly coming into his hands in unadjudicated condemnation proceedings and takes from the bank a certificate of deposit which is payable at a definite time in the future, and in such case the question of due care or negligence in making the deposit is quite immaterial. *Northwestern Mfg. Co. v Bassett,* 205-999; 218 NW 932.

9. **Unallowable deposits.** *Bookhart v Younglove,* 207-800; 218 NW 533.

10. **Delivery of funds to successor—effect.** An outgoing sheriff and his bondsmen are absolved from all liability as to funds held by the sheriff in unadjudicated condemnation proceedings by delivering said funds to his successor in office. *Northwestern Mfg. Co. v Bassett,* 205-999; 218 NW 932.

11. **Demand on surety.** In an action on the bond of a public officer to recover funds unaccounted for, no demand on the surety is necessary before commencing the action, when proper demand has been made on the principal. *State v Carney,* 208-133; 217 NW 472.

1063. State officers — amount of bonds. State officers shall give bonds in an amount as follows:

4. Each member of the finance committee of the state board of education, twenty-five thousand dollars.

5. Each treasurer of a state institution under the control of the state board of education, shall furnish a surety bond, the amount thereof to be determined by the said board.

7. Superintendent of public instruction, not less than two thousand dollars.

See 515, time of election and length of term; 3829, qualifications of superintendent of public instruction.

1065. County, city, town, and township officers. The bonds of the following county officers, viz.: clerks of the district courts, county attorneys, recorders, coroners, auditors, superintendents of schools, sheriffs, justices of the peace, and constables, and city, town, and township assessors shall each be in a penal sum to be fixed by the board of supervisors.

1077. Custody of bond. The bonds and official oaths of public officers shall, after approval and proper record, be filed:

1. For all state officers, elective or appointive, except those of the secretary of state, with the secretary of state.

3. For county and township officers, except those of the county auditor, with the county auditor.

4. For county auditor, with the county treasurer.

6. For officers of cities and towns, and officers not otherwise provided for, when both bond and oath are required, in the office of the officer or clerk of the body approving the bond.

1079. Failure to give bond. Any officer who acts in an official capacity without giving bond when such bond is required shall be fined in an amount not exceeding the amount of the bond required of him.

CHAPTER 56

REMOVAL FROM OFFICE

1091. Removal by court. Any appointive or elective officer, except such as may be removed only by impeachment, holding any public office in the state or in any division or municipality thereof, may be removed from office by the district court for any of the following reasons:

1. For wilful or habitual neglect or refusal to perform the duties of his office.
2. For wilful misconduct or maladministration in office.
3. For corruption.
4. For extortion.
5. Upon conviction of a felony.
6. For intoxication, or upon conviction of being intoxicated.

1. Constitutionality. See: *State ex rel v Henderson*, 145-657; 124 NW 767.

2. "Intoxication" defined. *State ex rel v Baughn*, 162-308; 143 NW 1100.

3. Intoxication. An officer such as described in this section is subject to removal for voluntary intoxication disabling him from performing the duties of his office. *State ex rel v Henderson*, 145-657; 124 NW 767.

4. "Wilful neglect." Where there is doubt whether a given act is unlawful and the question has

not been determined by the supreme court of this state, the mayor and chief of police of a city, in refusing to prosecute persons for doing the act, after having been advised by the legal department of the city that such act is not unlawful, cannot be said to wilfully neglect or refuse to perform the duties of their office. *State v Roth*, 162-638; 144 NW 339. See *State v Welsh*, 109-19; 79 NW 369.

5. Wilful misconduct. To constitute wilful misconduct or maladministration something more is necessary than the mere breach of an official duty without intent to derive an advantage from such breach. *State ex rel v Meek*, 148-671; 127 NW 1028.

6. Technical but noncorrupt violation of statute. A technical violation by a public officer of a statute or of an official dutv will not necessarily constitute such "wilful misconduct or maladministration in office" as will justify his summary dismissal from office. He must be actuated by an evil purpose—a purpose to do wrong. *State v Zeigler*, 199-392; 202 NW 94.

7. Misconduct in preceding term. Misconduct during a preceding term of office may be ground for the removal of a sheriff. *State v Welsh*, 109-19; 79 NW 369.

8. Jury trial. In a proceeding under this statute the defendant is not entitled to a jury trial. *State ex rel v Henderson*, 145-657; 124 NW 767.

9. Evidence—sufficiency. In a particular case held that the showing of negligence or incompetency in the prosecution of certain criminal cases was not such as to require a removal of the county attorney from office. *State ex rel v Hospers*, 147-712; 126 NW 818.

10. Removal by apointive board. Where an elective officer is appointed by the board of supervisors to fill a vacancy he is not subject to removal by such board at pleasure, but is entitled to hold for the residue of the unexpired term unless removed for cause. *State v Chatburn*, 63-659; 19 NW 816.

11. Pleadings. Allegations that a public officer drew statutory mileage on account of official journeys when the travel (1) was without cost to himself, or (2) was by means of a conveyance owned and supplied by the public, does not state facts constituting grounds for removal from office. (See §1225-d3, C., '31.) *State v Naumann*, 213-418; 239 NW 93.

12. Fundamentally required proof. In the absence of wilful misconduct and corrupt motives on the part of a public officer, mere error of judgment either as to law or fact will not justify his removal from office. *State v Missildine*, 215-663; 245 NW 303; *State v Canning*, 206-1349; 221 NW 923; *State v Naumann*, 213-418; 239 NW 93.

13. Systematic disregard of law. The conduct of a member of the board of supervisors in systematically disregarding, or by subterfuges avoiding, the law which requires estimates by the county engineer and advertisement of public contracts for work and supplies evinces such "wilfulness" as to render such acts ample ground for removal from office. *State v Garretson*, 207-627; 223 NW 390.

14. Constitutional power to remove officer. *Myers v United States*, 272 US 52.

1092. Jurisdiction. The jurisdiction of the proceeding provided for in this chapter shall be as follows:

1. As to state officers whose offices are located at the seat of government, the district court of Polk county.

2. As to state officers whose duties are confined to a district within the state, the district court of any county within such district.

3. As to county, municipal, or other officers, the district court of the county in which such officers' duties are to be performed.

1093. Who may file petition. The petition for removal may be filed:

1. By the attorney general in all cases.
2. As to state officers, by not fewer than twenty-five electors of the state.
3. As to any other officer, by five qualified electors of the district, county, or municipality where the duties of the office are to be performed.
4. As to district officers, by the county attorney of any county in the district.
5. As to all county and municipal officers, by the county attorney of the county where the duties of the office are to be performed.

1093-e1. Bond for cost. If the petition for removal is filed by any one other than the attorney general or the county attorney, the court shall require the petitioners to file a bond in such amount and with such surety or sureties as the court may require, said bond to be approved by the clerk, to cover the costs of such removal suit, including attorney fees if final judgment is not entered removing the officer charged.

1094. Petition—other pleading. The petition shall be filed in the name of the state of Iowa. The accused shall be named as defendant, and the petition, unless filed by the attorney general, shall be verified. The petition shall state the charges against the accused and may be amended as in ordinary actions, and shall be filed in the office of the clerk of the district court of the county having jurisdiction. The petition shall be deemed denied but the accused may plead thereto.

1095. Notice. Upon the filing of a petition, notice of such filing and of the time and place of hearing shall be served upon the accused in the manner required for the service of notice of the commencement of an ordinary action. Said time shall not be less than ten days nor more than twenty days after completed service of said notice.

CHAPTER 59

VACANCIES IN OFFICE

1145. Holding over. Except when otherwise provided, every officer elected or appointed for a fixed term shall hold office until his successor is elected and qualified, unless he resigns, or is removed or suspended, as provided by law.

1. Right to hold over. Where the council of a city met at the time fixed by ordinance to elect a street commissioner and without doing so adjourned without date, held that the incumbent who thereafter gave bond as a hold-over officer was entitled to the office as against a person elected at a subsequent meeting of the council. *State v Alexander*, 107-177; 77 NW 841; see *Carter v McFarland*, 75-

196; 39 NW 268; *Wapello Co. v Bigham*, 10-39.

2. **Invalid election.** Where the ballots supplied to voters at an election were not such as required by the Austalian ballot law, held, that the election was entirely invalid and that the officers whose successors would be chosen at such election would hold over under this section. *State v Smith*, 94-616; 63 NW 453.

3. **Duration of hold-over term.** An officer who holds over after his term on account of a failure to elect a successor only holds until the vacancy in the office can be legallv filled by election. *Dyer v Bagwell*, 54-487; 6 NW 712.

4. **Resignation—when effective.** Three members of a board of school directors of five members constitute a legal quorum to elect a successor to one of said three members who had theretofore resigned with the intent (shared in by his fellow members) that the resignation would not take effect until his successor had been elected and had qualified. *Cowles v Sch. Dist.*, 204-689; 216 NW 83.

1147. Possession of office. When a vacancy occurs in a public office, possession shall be taken of the office room, the books, papers, and all things pertaining thereto, to be held until the qualification of a successor, as follows: Of the office of the county auditor, by the clerk of the district court; of the clerk or treasurer, by the county auditor; of any of the state officers, by the governor, or, in his absence or inability at the time of the occurrence, as follows: Of the secretary, by the treasurer; of the auditor, or superintendent of public instruction, by the secretary; of the treasurer, by the secretary and auditor, who shall make an inventory of the money and warrants therein, sign the same, and transmit it to the governor; and the secretary shall take the keys of the safe and desks, after depositing the books, papers, money and warrants therein, and the auditor shall take the key of the office room.

CHAPTER 60

SOLDIERS' PREFERENCE LAW

1159. Appointments and promotions. In every public department and upon all public works in the state, and of the counties, cities, towns, and school boards thereof, including those of cities acting under special charters, honorably discharged soldiers, sailors, marines, and nurses from the army and navy of the United States in the late civil war, Spanish-American war, Philippine insurrection, China relief expedition, or war with Germany, who are citizens and residents of this state, shall, except in the position of school teachers, be entitled to preference in appointment, employment, and promotion over other applicants of no greater qualifications.

1. **Constitutionality.** This section violates no constitutional provision. *Shaw v Marshalltown*, 131-128; 104 NW 1121; *Thurber v Duckworth*, 165-685; 147 NW 158.

2. **Limiting time of appointment.** The appointment of a veteran to a public service or employment of a continuous character for which no term is fixed by statute must be treated as continuous and the provisions of the statute cannot

be defeated by the action of the board in appointing him for a specified term. *Kitterman v Board*, 137-275; 115 NW 13; *Kitterman v Board*, 145-22; 123 NW 740.

3. Equal qualifications. If the qualifications of a soldier as applicant are not equal to those of the other persons under consideration for appointment he is not entitled to such appointment and the appointing board is authorized to determine that question. *McBride v City*, 134-501; 110 NW 157; *Ross v City*, 136-125; 113 NW 474; *Arnold v Wapello Co.*, 154-111; 134 NW 546.

4. Rival soldier applicants. The term of office being fixed, the incumbent who is a veteran has no better right to reappointment to the office than another applicant who is also a veteran. *King v Ottumwa*, 148-411; 126 NW 943.

5. Rival soldier applicants. There is no special obligation to make an investigation as between two applicants both of whom are honorably discharged soldiers and as between two such applicants an appointing officer or board may select at discretion without formal investigation as to their respective qualifications. *Kitterman v Board*, 137-275; 115 NW 13.

6. Justifiable discharge. An order of a city council to reduce the number of employees in a named department justifies the discharge of an ex-soldier employee whose duties are apparently inseparably connected with said department. *Rounds v City*, 213-52; 238 NW 428.

1160. Physical disability. The persons thus preferred shall not be disqualified from holding any position hereinbefore mentioned on account of age or by reason of any physical disability, provided such age or disability does not render such person incompetent to perform properly the duties of the position applied for.

1161. Duty to investigate and appoint. When such soldier, sailor, marine, or nurse shall apply for appointment or employment under this chapter, the officer, board, or person whose duty it is or may be to appoint or employ some person to fill such position or place shall, before appointing or employing anyone to fill such position or place, make an investigation as to the qualifications of said applicant for such place or position, and if the applicant is of good moral character and can perform the duties of said position so applied for, as hereinbefore provided, said officer, board, or person shall appoint said applicant to such position, place, or employment. Said appointing officer, board or *person shall set forth in writing and file for public inspection, the specific grounds upon which it is held that the person appointed is entitled to said appointment, or in the case such appointment is refused, the specific grounds for the refusal thereof.

*"of" in enrolled bill.

1162. Mandamus. A refusal to allow said preference, or a reduction of the salary for said position with intent to bring about the resignation or discharge of the incumbent, shall entitle the applicant or incumbent, as the case may be, to maintain an action of mandamus to right the wrong.

1162-g1. Appeals. In addition to the remedy provided in section 1162, an appeal may be taken by any person belonging

to any of the classes of persons to whom a preference is hereby granted, from any refusal to allow said preference, as provided in this chapter, to the district court of the county in which such refusal occurs. The appeal shall be made by serving upon the appointing board within twenty days after the date of the refusal of said appointing officer, board, or persons to allow said preference, a written notice of such appeal, stating the grounds of the appeal; a demand in writing for a certified transcript of the record, and all papers on file in his office affecting or relating to said appointment. Thereupon, said appointing officer, board, or person, shall, within ten days make, certify, and deliver to appellant such a transcript; and the appellant shall, within five days thereafter, file the same and a copy of the notice of appeal with the clerk of said court, and said notice of appeal shall stand as appellant's complaint and thereupon said cause shall be entered on the trial calendar of said court for trial the same as in case of an appeal from a justice of the peace. The court shall receive and consider any pertinent evidence, whether oral or documentary, concerning said appointment from which the appeal is taken, and if the court shall find that the said applicant is qualified as defined in section 1159, to hold the position for which he has applied, said court shall, by its mandate, specifically direct the said appointing officer, board or person as to their further action in the matter. An appeal may be taken from judgment of the said district court on any such appeal on the same terms as an appeal is taken in civil actions.

1163. Removal—certiorari to review. No person holding a public position by appointment or employment, and belonging to any of the classes of persons to whom a preference is herein granted, shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, and with the right of such employee or appointee to a review by a writ of certiorari.

1164. Burden of proof. The burden of proving incompetency or misconduct shall rest upon the party alleging the same.

1165. Exceptions. Nothing in this chapter shall be construed to apply to the position of private secretary or deputy of any official or department, or to any person holding a strictly confidential relation to the appointing officer.

CHAPTER 61

NEPOTISM

1166. Employments prohibited—exceptions. It shall hereafter be unlawful for any person elected or appointed to any public office or position under the laws of the state or by virtue

of the ordinance of any city or town in the state, to appoint as deputy, clerk, or helper in said office or position to be paid from the public funds, any person related by consanguinity or affinity, within the third degree, to the person elected, appointed, or making said appointment, unless such appointment shall first be approved by the officer, board, council, or commission whose duty it is to approve the bond of the principal; provided this provision shall not apply in cases where such person appointed receives compensation at the rate of six hundred dollars per year or less nor shall it apply to persons teaching in public schools.

1167. Payment prohibited. No person so unlawfully appointed or employed shall be paid or receive any compensation from the public money and such appointment shall be null and void and any person or persons so paying the same or any part thereof, together with his bondsmen, shall be liable for any and all moneys so paid.

CHAPTER 62

DUTIES RELATIVE TO PUBLIC CONTRACTS

1168. Unauthorized contracts. Officers empowered to expend, or direct the expenditure of, public money of the state shall not make any contract for any purpose which contemplates an expenditure of such money in excess of that authorized by law.

See chapter 23, public contracts and the state comptroller; chapter 63, sale of bonds; chapter 63-B1, maturity of bonds; chapter 452, labor and material in public contracts.

1170. Divulging contents of sealed bids. No public officer or deputy thereof, if any, shall directly or indirectly or in any manner whatsoever, at any other time or in any other manner than as provided by law, open any sealed bid or convey or divulge to any person any part of the contents of a sealed bid, on any proposed contract concerning which a sealed bid is required or permitted by law.

Referred to in § 1171.

1171. Penalty. A violation of the provisions of the preceding section shall, in addi ion to criminal liability, render the violator liable, personally and on his bond, if any, to liquidated damages in the sum of one thousand dollars for each violation, to inure to and be collected by the state, county, city, town, school district, or other municipal corporation of which the violator is an officer or deputy.

CHAPTER 62-B1

PREFERENCE FOR DOMESTIC PRODUCTS AND LABOR

1171-b1. Preference authorized—conditions. Every commission, board, committee, officer or other governing body of the state, or of any county, township, school district, city or town, and every person acting as contracting or purchasing agent for any such commission, board, committee, officer or other governing body shall use only those products and provisions grown and coal produced within the state of Iowa, when they are found in marketable quantities in the state and are of a quality reasonably suited to the purpose intended, and can be secured without additional cost over foreign products or products of other states.

1171-b2. Advertisement for bids—form. All requests hereafter made for bids and proposals for materials, products, supplies, provisions and other needed articles to be purchased at public expense, shall be made in general terms and by general specifications and not by brand, trade name or other individual mark. All such requests and bids shall contain therein a paragraph in easily legible print, reading as follows:

"By virtue of statutory authority, a preference will be given to products and provisions grown and coal produced within the state of Iowa."

1171-d1. Iowa labor. Every commission, board, committee, officer or other governing body of the state, or of any county, township, school district, city or town, and every person acting as contracting agent for any such commission, board, committee, officer or other governing body of the state, or of any county, township, school district, city or town, shall give preference to Iowa labor in the constructing or building of any public improvement or works, and every contract entered into by any such commission, board, committee, officer or other governing body of the state for the construction or building of any public improvement or works shall contain a provision requiring that preference shall be given to Iowa domestic labor in the constructing or building of such public improvement or works. The provisions of this and sections 1171-d2 and 1171-d3 shall not apply to the purchase of materials and supplies to be used in the construction of any road or highway.

1171-d2. "Person" defined. A person shall be deemed to be a domestic laborer of this state if he is a citizen and has resided in this state for more than six months.

1171-d3. Violations. Any officer or person who is connected with, or is a member or agent or representative of any commission, board, committee, officer or other governing body of this state, or of any county, township, school district, city or town, or contractor, who fails to give preference to Iowa

labor as required in sections 1171-d1 and 1172-d2, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not to exceed one hundred dollars, or by imprisonment in the county jail for not to exceed thirty days. Each separate case of failure to give preference to Iowa labor shall constitute a separate offense.

CHAPTER 62-F1

PUBLIC WARRANTS NOT PAID FOR WANT OF FUNDS

1171-f1. Applicability. This chapter shall apply to all warrants which are legally drawn on a public treasury, including the treasury of a city acting under special charter, and which, when presented for payment, are not paid for want of funds.

1171-f2. Indorsement and interest. When any such warrant is presented for payment, and not paid for want of funds, or only partially paid, the treasurer shall indorse the fact thereon, with the date of presentation, and sign said indorsement, and thereafter said warrant or the balance due thereon, shall draw interest at five per cent per annum on state and county warrants, and six per cent per annum on city, drainage and school warrants, unless the treasurer arranges for the sale of said warrant at par at a lower rate of interest.

1171-f3. Record of warrants. The treasurer shall keep a record of all warrants so indorsed, which record shall show the number and amount, the date of presentation, and the name and postoffice address of the holder, of each warrant.

1171-f4. Assignment of warrant. When any warrant shall be assigned or transferred after being so indorsed, the assignee or transferee shall be under duty, for his own protection, to notify the treasurer in writing of such assignment or transfer and of his postoffice address. Upon receiving such notification, the treasurer shall correct the aforesaid record accordingly.

1171-f5. Call for payment. When the treasurer has funds on hand in the fund on which such warrants are drawn, sufficient to pay a warrant, he shall, by notice posted at his office and in a place readily accessible to the public, call said warrant or warrants for payment, giving the number thereof. Said warrants shall be paid in the order of presentation.

1171-f6. Mailing notice—terminating interest. In addition to the posting aforesaid, the treasurer shall mail to each holder of a warrant, in accordance with the aforesaid record, a notice of his readiness to pay said warrant, describing it by number and amount, and note the date of such mailing on the record aforesaid. On the expiration of thirty days from the date

of said mailing, interest on said warrant shall cease irrespective of the posting aforesaid.

1171-f7. Indorsement of interest. When a warrant which legally draws interest is paid, the treasurer shall indorse upon it the date of payment, and the amount of interest allowed.

CHAPTER 63

AUTHORIZATION AND SALE OF PUBLIC BONDS

1171-d4. Bonds—election—vote required. When a proposition to authorize an issuance of bonds by a county, township, school district, city or town, or by any local board or commission, is submitted to the electors, such proposition shall not be deemed carried or adopted, anything in the statutes to the contrary notwithstanding, unless the vote in favor of such authorization is equal to at least sixty per cent of the total vote cast for and against said proposition at said election.

1. Primary road bonds. Section 4753-a11, C., '31, in so far as it authorizes the issuance of primary road bonds on a majority vote was impliedly repealed by the subsequent enactment of this section, requiring a favorable vote equal to 60 per cent of all the votes cast. *Waugh v Shirer*, 216-468; 249 NW 246.

1172. Notice of sale. When public bonds are offered for sale, the official or officials in charge of such bond issue shall, by advertisement published for two or more successive weeks in at least one official newspaper of the county, give notice of the time and place of sale of said bonds, the amount to be offered for sale, and any further information which may be deemed pertinent.

See chapter 23, public contracts and the state comptroller; chapter 63-B1, maturity of bonds; chapter 452, labor and material in public contracts; chapter 62, duties relative to public contracts.

1173. Sealed and open bids. Sealed bids may be received at any time prior to the calling for open bids. After the sealed bids are all filed, the official or officials shall call for open bids. After all of the open bids have been received the substance of the best open bid shall be noted in the minutes. The official or officials shall then open any sealed bids that may have been filed and they shall note in the minutes the substance of the best sealed bid.

1174. Rejection of bids. Any or all bids may be rejected, and the sale may be advertised anew, in the same manner, or the bonds or any portion thereof may thereafter be sold at private sale to any one or more of such bidders, or other persons, by popular subscription or otherwise. In case of private sales, the said bonds shall be sold upon terms not less favorable to the public than the most favorable bid made by a bona fide and responsible bidder at the last advertised sale.

1175. Selling price. No public bond shall be sold for less than par, plus accrued interest.

1176. Commission and expense. No commission shall be paid, directly or indirectly, in connection with the sale of a public bond. No expense shall be contracted or paid in connection with such sale other than the expenses incurred in advertising such bonds for sale.

1177. Penalty. Any public officer who fails to perform any duty required by this chapter or who does any act prohibited by this chapter, shall be guilty of a misdemeanor.

1179. Exchange of bonds. Nothing in this chapter shall be deemed to prevent the exchange of bonds for legal indebtedness evidenced by bonds, warrants, or judgments as otherwise provided by law.

CHAPTER 63-B1

MATURITY AND PAYMENT OF BONDS

1179-b1. Mandatory retirement. Hereafter issues of bonds of every kind and character by counties, cities, towns, and school districts shall be consecutively numbered. The annual levy shall be sufficient to pay the interest and approximately such portion of the principal of the bonds as will retire them in a period not exceeding twenty years from date of issue. Each issue of bonds shall be scheduled to mature serially in the same order as numbered.

See chapter 23, public contracts and the state comptroller; chapter 62, duties relative to public contracts; chapter 63, sale of bonds; chapter 452, labor and material in public contracts; 4403, levy by board to pay interest and principal on bonds; 7181, procedure when board fails to make levy.

1179-b2. Mandatory levy. The governing authority of these political subdivisions before issuing bonds shall, by resolution, provide for the assessment of an annual levy upon all the taxable property in such public corporation sufficient to pay the interest and principal of such bonds within a period named not exceeding twenty years. A certified copy of this resolution shall be filed with the county auditor or auditors of the counties, as the case may be, in which such public corporation is located; and the filing thereof shall make it a duty of such officer or officers to enter annually this levy for collection until funds are realized to pay the bonds in full.

1179-c1. Tax limitations. Tax limitations in any law for the issuance of bonds shall be based on the latest equalized valuation then existing and shall only restrict the amount of bonds which may be issued.

See 4403, tax limitation to pay interest and principal on bonded indebtedness.

1179-b3. Permissive application of funds. Whenever the governing authority of such political subdivision shall have on hand funds derived from any other source than taxation which may be appropriated to the payment either of interest or principal, or both principal and interest, of such bonds such funds may be so appropriated and used and the levy for the payment of the bonds correspondingly reduced.

1179-f1. Place of payment. The principal and interest of all bonds of any public body in this state, issued subsequent to this act becoming effective, shall be payable at the office of the treasurer or public official charged with the duty of making payment.

CHAPTER 66

ADMINISTRATION OF OATHS

1215. General authority. The following officers are empowered to administer oaths and to take affirmations:

1. Judges of the supreme, district, superior, municipal, and police courts.
2. Official court reporters of district, superior, and municipal courts in taking depositions under appointment or by agreement of counsel.
3. Clerks and deputy clerks of the supreme, district, superior, police, and municipal courts.
4. Justices of the peace within the county of their residence.
5. Notaries public within the county of their appointment, and within any adjoining county in which they have filed with the clerk of the district court of said adjoining county a certified copy of their certificate of appointment.

See Art. XI, sec. 5, Constitution of Iowa, oath required by constitution; 1054, form of oath, chapter 53, time and manner of qualifying; 1216, 4216-c28, who may administer oath.

1. Affidavits in general. See § 11342.

2. The court. The court, that is, the judge while holding court, is authorized to administer an oath. *State v Caywood*, 96-367; 65 NW 385.

3. Deputy clerk. A deputy clerk has power to administer oaths. *Wheelock v Hull*, 124-752; 100 NW 863.

1216. Limited authority. The following officers and persons are empowered to administer oaths and to take affirmations in any matter pertaining to the business of their respective office, position, or appointment:

1. Governor, secretary of state, secretary of agriculture, auditor of state, treasurer of state, attorney general.
2. Members of all boards, commissions, or bodies created by law.
3. All county officers other than those named in section 1215.

4. Mayors and clerks of cities and towns, judges and clerks of election, township clerks, assessors and surveyors.
5. All duly appointed referees or appraisers.
6. All investigators for old age assistance as provided for under chapter 266-F1.

See Art. XI, sec. 5, Constitution of Iowa, oath required by constitution; 1054, form of oath; chapter 53, time and manner of qualifying; 1215, 4216-c28, who may administer oath.

CHAPTER 67

SALARIES, FEES, MILEAGE, AND EXPENSES IN GENERAL

1225-d1. Charge for use of automobile. When a public officer or employee is entitled to be paid his expenses in performing a public duty, no charge shall be made, allowed, or paid for the use of an automobile in excess of five cents per mile of actual and necessary travel.

1225-d2. Mileage and expenses—prohibition. No law shall be construed to give to a public officer or employee both mileage and expenses for the same transaction.

1225-d3. Mileage and expenses—when unallowable. No public officer or employee shall be allowed either mileage or transportation expense when he is gratuitously transported by another, nor when he is transported by another public officer or employee who is entitled to mileage or transportation expense.

1. Removal from office. Allegations that a public officer drew statutory mileage on account of official journeys when the travel (1) was without cost to himself, or (2) was by means of a conveyance owned and supplied by the public, does not state facts constituting grounds for removal from office. *State v Naumann,* 213-418; 239 NW 93.

CHAPTER 70

WORKMEN'S COMPENSATION

1362. Compulsory when. Where the state, county, municipal corporation, school district, or city under any form of government is the employer, the provisions of this chapter for the payment of compensation and amount thereof for an injury sustained by an employee of such employer shall be exclusive, compulsory, and obligatory upon both employer and employee, except as otherwise provided in section 1361.

NOTE 1. None of the exceptions in section 1361 apply to schools.
NOTE 2. Section 1362 does not require the school district to purchase workmen's compensation insurance, but merely provides that in event of an injury sustained by an employee, the district shall be liable as provided under the workmen's compensation law, and that the statute is compulsory only as to amount of compensation to be paid in event of injury. Opinion attorney general.

1. Workmen's compensation act —emergency after working hours. An employee is in the course of his employment when, after returning home at the close of his work for the day, he starts to return to his place of work in order there to adjust an unexpected difficulty within the scope of his usual duties, and an injury, received during such return trip by being run over by a passing vehicle, arises out of his employment and is compensable. *Kyle v Green High School*, 226 NW 71.

2. Nonemployee of city. One may not be said to be in the employ of a city, and therefore within the benefits of this chapter, when, at the time of his injury, he was performing work which he had donated, in furtherance of a plan of public spirited citizens to beautify a plot of municipally owned land as a city park, which plan the city council had approved, provided it be carried out without expense to the city. *Norman v City*, 206-790; 221 NW 481.

1421. Definitions. In this and chapters 71 and 72, unless the context otherwise requires, the following definitions of terms shall prevail:

1. "Employer" includes and applies to any person, firm, association, or corporation, state, county, municipal corporation, city under special charter and under commission form of government, school district, and the legal representatives of a deceased employer.

2. "Workman" or "employee" means a person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship, for an employer, except as hereinafter specified.

3. The following persons shall not be deemed "workmen" or "employees":

a. A person whose employment is purely casual and not for the purpose of the employer's trade or business.

b. A person engaged in clerical work only, but clerical work shall not include anyone who may be subject to the hazards of the business.

c. An independent contractor.

d. A person holding an official position, or standing in a representative capacity of the employer, or an official elected or appointed by the state, county, school district, municipal corporation, city under special charter or commission form of government.

4. The term "workman" or "employee" shall include the singular and plural of both sexes. Any reference to a workman or employee who has been injured shall, when such workman or employee is dead, include his dependents as herein defined or his legal representatives; and where the workman or employee is a minor or incompetent, it shall include his guardian, next friend, or trustee.

5. The words "injury" or "personal injury" shall be construed as follows:

a. They shall include death resulting from personal injury.

b. They shall not include injury caused by the wilful act of a third person directed against an employee for reasons personal to such employee, or because of his employment.

c. They shall not include a disease unless it shall result from the injury.

6. The words "personal injury arising out of and in the course of the employment" shall include injuries to employees whose services are being performed on, in, or about the premises which are occupied, used, or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.

7. The word "court" wherever used in this and the two succeeding chapters, unless the context shows otherwise, shall be taken to mean the district court.

1. Emergency after working hours. An employee is in the course of his employment when, after returning home at the close of his work for the day, he starts to return to his place of work in order there to adjust an unexpected difficulty within the scope of his usual duties; and an injury received during such return trip by being run over by a passing vehicle arises out of his employment, and is compensable. *Kyle v High School*, 208-1037; 226 NW 71.

2. Employees within and without the act. If an employee is not engaged in work of a "purely casual nature" he is entitled to the benefits of the compensation act although the employment was "not for the purpose of the employer's trade or business"; and vice versa, if his employment is "for the purpose of the employer's trade or business", he is entitled to the benefits of the act though his employment is of a "purely casual nature". In other words, in order to put the employee outside the workmen's act it must appear that the employment was both "purely casual" and "not for the purpose of the employer's trade or business". *Gardner v Trustees*, 250 NW 740.

3. "Independent contractor" defined. An independent contractor in fact under the common law is an independent contractor under the workmen's compensation act, and may be defined as one who carries on an independent business and contracts to do a piece of work according to his own methods, subject to the employer's control only as to results. *Arthur v School Dist.*, 209-280; 228 NW 70; *Mallinger v Oil Co.*, 211-847; 234 NW 254; *Burns v Eno*, 213-881; 240 NW 209.

4. Employee (?) or independent contractor (?). A party becomes an independent contractor and not an employee, under the workmen's compensation act, when he contracts with a consolidated school district, under a contract terminable instanter by the board, to transport school children to and from school for a stated time (a work which would consume each day but a small part of his time) and, to this end, agrees (1) to furnish at his own expense his own conveyance (except the body thereof) and full equipment for the protection of the children while on the road, and (2) to operate said conveyance at his own expense and personally or by a competent driver satisfactory to the board; and the relation of employer and independent contractor exists in such case even though the operator is required to comply with certain rules of the board designed to protect the children in their moral and physical welfare. *Arthur v Sch. Dist.*, 209-280; 228 NW 70.

CHAPTER 71

INDUSTRIAL COMMISSIONER

1434. Reports of injuries. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, sustained by

his employees in the course of their employment and resulting in incapacity for a longer period than one day. Within forty-eight hours, not counting Sundays and legal holidays, after the employer has knowledge of the occurrence of an accident resulting in personal injury causing incapacity for a longer period than one day, a report shall be made in writing by the employer to the industrial commissioner on blanks to be procured from the commissioner for that purpose.

1435. Additional reports. Upon the termination of the disability of the injured employee, or if such disability extends beyond a period of sixty days, at the expiration of such period the employer shall make a supplemental report on blanks to be procured from the commissioner for that purpose. The said reports shall contain the name and nature of the business of the employer, the location of the establishment, the name, age, sex, and occupation of the injured employee, and shall state the date and hour of the accident, the nature and cause of the injury, and such other information as may be required by the commissioner.

Any employer who fails to make the report required by this and section 1434 shall be liable to a penalty of fifty dollars for each offense, to be recovered by the commissioner. The commissioner shall be represented by the county attorney in the county in which such proceeding is brought.

1436. Compensation agreements. If the employer and the employee reach an agreement in regard to the compensation, a memorandum thereof shall be filed with the industrial commissioner by the employer or employee, and unless the commissioner shall, within twenty days, notify the employer and employee of his disapproval of the agreement by registered letter sent to their addresses as given on the memorandum filed, the agreement shall stand approved and be enforceable for all purposes, except as otherwise provided in this and chapters 70 and 72.

In case the injured employee is a minor, either he or his trustee may execute the memorandum of agreement and may give a valid and binding release for the compensation paid on his account.

Such agreement shall be approved by said commissioner only when the terms conform to the provisions of this and the preceding chapter.

1. Nonapproval. An agreement between the employer and employee as to the amount due for injury may be binding though not approved by the commissioner. *Den Adel v Cas. Co.*, 188-1; 175 NW 846.

2. Agreement as to compensation—limitation. An employer and the surviving dependent wife of a deceased employee have no legal right to agree that a stated lump

sum shall be paid, in any and all events, by the employer for the death of the employee. Such agreement can legally go no further than to determine what sum shall be paid per week. *Comingore v Shenandoah Co.*, 208-430; 226 NW 124.

3. Jurisdiction to correct entry. If a memorandum of agreement as to what compensation shall be paid by an employer for the injury or death of an employee, and the approving entry indorsed thereon by the industrial commissioner, are susceptible of both a legal and an illegal construction, the commissioner has ample power, on due application, notice, and hearing, to make such supplemental entries as will show the legal construction. *Comingore v Shenandoah Co.*, 208-430; 226 NW 124.

CHAPTER 72

COMPENSATION LIABILITY INSURANCE

1467. Insurance of liability required. Every employer subject to the provisions of this and the two preceding chapters, unless relieved therefrom as hereinafter provided, shall insure his liability thereunder in some corporation, association, or organization approved by the commissioner of insurance.

Every such employer shall exhibit, on demand of the insurance commissioner, evidence of his compliance with this section; and if such employer refuses, or neglects to comply with this section, he shall be liable in case of injury to any workman in his employ under the common law as modified by statute and in the same manner and to the same extent as though such employer had legally exercised his right to reject the provisions relating to compensation for injury to employees.

NOTE 1. A school district is liable under the workmen's compensation law for injuries to employees while engaged in the performance of their official duties but it is optional with the board whether to carry insurance to protect the district against such liability.

1. Compelling insurance. That feature which requires an employer to insure his liability, is not violative of the "due process" clause of our constitutions, on the theory that the maintenance of such insurance exacts a tax for a purely private purpose. *Hawkins v Bleakley*, 220 Fed 378; *Hunter v Colfax Cons. C. Co.*, 175-245; 154 NW 1037; 157 NW 145.

2. Refusal to insure liability. The failure of the employer to take out insurance, as provided under the law, has the same force and effect as the rejection of the law by the employer. *Elks v Conn*, 186-48; 172 NW 173; see *Sylcord v Horn*, 179-936; 162 NW 249; *Paucher v Enterprise C. M. Co.*, 182-1084; 164 NW 1035.

CHAPTER 76

CHILD LABOR

1526. Child labor—age limit—exception. No person under fourteen years of age shall be employed with or without compensation in any mine, manufacturing establishment, factory, mill, shop, laundry, slaughter house, or packing house, or in

any store or mercantile establishment where more than eight persons are employed, or in any livery stable, garage, place of amusement, or in the distribution or transmission of merchandise or messages; but nothing in this section shall be construed as prohibiting any child from working in any of the above establishments or occupations when operated by his parents.

1. Workmen's compensation act. The workmen's compensation act does not apply to a master who has assumed to employ a child who is under the prohibited employment age, and false representation by the child as to its age is no defense to an ordinary action for damages. *Sechlich v Harris-Emery Co.*, 184-1025; 169 NW 325; 169 NW 327.

2. False representation as to age. A minor, under 14 years of age and of average intelligence, who obtains employment in a manufacturing establishment by false representation as to her age, may not claim absolute liability on the part of a master who employs her in good faith and without being put on inquiry as to her age. *Haller v Quaker Oats Co.*, 181-389; 164 NW 863.

3. Right of mother to use child in her own occupation. A mother whose occupation is that of devising and furnishing theatrical entertainment for a compensation paid to her by the owner of the theater wherein the act of entertainment is performed, is not guilty of violating this section by causing her son, who is under fourteen years of age, to perform in such theater, under her direction and supervision, a part of said entertainment act. *State v Erle*, 210-974; 232 NW 279.

1527. Hours of labor—noon intermission. No person under sixteen years of age shall be employed at any of the places or in any of the occupations specified in the preceding section before the hour of seven o'clock in the morning or after the hour of six o'clock in the evening, and if such person is employed exceeding five hours of each day, a noon intermission of not less than thirty minutes shall be given between the hours of eleven and one o'clock, and such person shall not be employed more than eight hours in any one day, exclusive of the noon hour intermission; nor shall any such person be employed more than forty-eight hours in any one week.

1528. Where part-time school prevails. When in any organized school district there shall have been established a part-time school, department, or class, no person under sixteen years of age shall be employed for more than forty hours in any one week.

1529. Cleaning or operating machinery. The following acts shall be unlawful:

1. Directing or permitting any boy under sixteen or girl under eighteen years of age to clean machinery while it is in motion.

2. Permitting any boy or girl under sixteen years of age to operate or assist in operating any freight or passenger elevator.

3. Permitting any boy or girl under sixteen years of age

to operate or assist in operating dangerous machinery; but this provision shall not apply to pupils working under an instructor in manual training departments in public schools of the state or under an instructor in a school, shop, or industrial plant, in a course of vocational education approved by the state board for vocational education.

1. Negligence per se. The statutory provision that the owner or person in charge of a manufacturing or other establishment where machinery is used shall not allow persons under a specified age to assist in cleaning machinery while in motion renders a violation of such provisions negligence per se. *Bromberg v Evans L. Co.*, 134-38; 111 NW 417.

2. Voluntary meddler. This section has no application to a case where a child under said age, and of average intelligence, voluntarily departs from his known and understood line of duty, without the consent of the master, and is injured while operating such dangerous machinery. *Haller v Quaker Oats Co.*, 181-389; 164 NW 863.

3. Assumption of risk. The doctrine of assumption of risk is not to be invoked to defeat recovery by employees of immature years for whose protection the statute is specially designed. *Woolf v Nauman Co.*, 128-261; 103 NW 785; *Bromberg v Evans L. Co.*, 134-38; 111 NW 417.

1530. Permit for child labor. No child under sixteen years of age shall be employed, permitted, or suffered to work in or in connection with any of the establishments mentioned in section 1526 unless the person, firm, or corporation employing such child procures and keeps on file, accessible to any officer charged with the enforcement of this chapter, a work permit issued as hereinafter provided, and keeps two complete lists of the names and ages of all such children under sixteen years of age employed in or for such establishments or in such occupations, one on file in the office and one conspicuously posted near the principal entrance of the place or establishment in which such children are employed.

On termination of the employment of a child whose permit is on file, such permit shall be returned by the employer within two days to the officer who issued it with a statement of the reasons for the termination of such employment.

A work permit shall be issued for every position obtained by a child between the ages of fourteen and sixteen years. The permit in no case shall be issued to the child, parents, guardian, or custodian, but to its prospective employer.

1531. Labor permit—how obtained. A work permit shall be issued only by the superintendent of schools or by a person authorized by him in writing, or, where there is no superintendent of schools, by a person authorized in writing by the local school board in the community where such child resides, upon the application of the parent, guardian, or custodian of the child desiring such permit. The person authorized to issue work permits shall not issue any such permit, except as provided in sections 1537 and 1538, until he has received, examined, approved, and filed:

1. A written agreement from the person, firm, or corporation into whose service the child under sixteen years of age is about to enter, promising to give such child employment, describing the work to be performed and agreeing to return the work permit of such child to the office from which it was issued within two days after the termination of the employment of such child.

2. The school record of such child filled out and signed by the superintendent of the school which such child has last attended certifying that the child is able to read intelligently and write legibly simple sentences in the English language and has completed a course of study equivalent to six yearly grades in reading, writing, spelling, English language, geography, and arithmetic. Such school record shall give also the name, date of birth, and residence of the child as shown on the records of the school and also the name of its parent, guardian, or custodian. In exceptional cases where a child is strong, healthy, and well developed physically, superintendents or local school boards may, with the approval of the labor commissioner, issue permits for boys and girls between the ages of fourteen and sixteen, with less educational acquirements, good for vacation only.

3. A certificate signed by a medical inspector of schools, or if there be no such inspector, then by a physician appointed by the board of education, certifying that the applicant for the work permit has reached the normal development of a child of its age and is in sufficiently sound health and physically able to perform the work for which the permit is sought.

4. Evidence of age showing that the child is fourteen years old, or more, which shall consist of one of the following proofs required in the order herein designated as follows:

a. A transcript of the birth certificate filed according to law with a registrar of vital statistics or other officer charged with the duty of recording births.

b. A passport or a transcript of a certificate of baptism showing the date of birth and place of baptism of such child.

c. A school census record.

d. In cases where none of the above named proofs are obtainable, a certificate signed by the local medical inspector of schools, or if there be no such inspector, then by a physician appointed by the local board of education, certifying that in his opinion the applicant for the work permit is fourteen years of age or more.

1532. What permit shall show. Every such work permit shall state the name, sex, the date and place of birth, the residence of the child in whose name it is issued, the color of hair and eyes, the height and weight, the proof of age, the school grade completed, the name and location of the establishment where the child is to be employed, the work for which the

permit is issued, that the papers required for its issuance have been duly examined, approved, and filed, and that the person named therein has personally appeared before the officer issuing the permit and has been examined.

1533. Duplicate permit filed. A duplicate of every such work permit issued shall be filled out and forwarded to the office of the labor commissioner between the first and the tenth day of the month following the month in which it is issued.

1534. Superintendent of public instruction. The blank forms for the work permit, the employer's agreement, the school record, and the physician's certificate shall be formulated by the superintendent of public instruction and furnished by him to the local school authorities.

1535. Authority of officers. Any officer whose duty it is to enforce the provisions of this chapter shall have authority to demand of any employer in or about whose place or establishment a child apparently under the age of sixteen years is employed, permitted, or suffered to work, and whose permit is not filed as required by this chapter, that such employer shall either furnish him within ten days the same documentary evidence of age of such child as is required upon the issuance of a work permit, or shall cease to employ or permit or suffer such child to work in such place or establishment.

1536. Life, health, or morals endangered. No person under sixteen years of age shall be employed at any work or occupation which, by reason of its nature or the place of employment, the health of such person may be injured, or morals depraved, or at any work in which the handling or use of gunpowder, dynamite, or other like explosive is required, or in or about any mine during the school term, or in or about any hotel, cafe, restaurant, bowling alley, pool or billiard room, cigar store, barber shop, or in any occupation dangerous to life or limb.

No female under twenty-one years of age shall be employed in any capacity where the duties of such employment compel her to remain constantly standing.

1. Evidence in re danger. An allegation that a plant was "dangerous to health, life, and limb", because of the presence (1) of gas fumes, and (2) of dangerous wires and machinery, may not be supported by testimony to the effect that signs bearing the word "Danger" were posted on the buildings, generally. *Duncan v Iowa R. & L. Co.*, 194-469; 187 NW 486.

2. Negligence—instruction. On the issue whether a child under 16 years of age had been employed in an occupation "dangerous to health, life, or limb", the jury must be specifically instructed as to each and every fact essential to be established in order to base a finding that the child labor law had been violated and that the master had been negligent per se. *Duncan v Iowa R. & L. Co.*, 194-469; 187 NW 486.

1537. Street occupations forbidden. No boy under eleven years of age nor girl under eighteen years of age shall be employed, permitted, or suffered to work at any time in any city of ten thousand or more inhabitants within this state in or in connection with the street occupations of peddling, bootblacking, the distribution or sale of newspapers, magazines, periodicals, or circulars, nor in any other occupations in any street or public place, except that in such cities, the superintendent of schools or person authorized by him, upon sufficient showing made by a judge of the superior, municipal, or juvenile court, may, in exceptional cases issue a permit to a boy under eleven years of age.

1538. Street occupations for boys. No boy between eleven and sixteen years of age shall be employed or permitted to work in any such city in connection with any of the occupations mentioned in section 1537 unless he complies with all the requirements for the issuance of work permits as described in this chapter except the filing of an employer's agreement, but the school record so required shall certify only that the boy is regularly attending school and that the work in which he wishes to engage will not interfere with his progress at school. Upon compliance with these requirements such boy shall be entitled to receive from the officer authorized to issue work permits a badge which shall authorize such boy to engage in the above-mentioned occupations at such time or times, between four a. m. and seven-thirty p. m. each day, as the public schools of the city or district where such boy resides are not in session, but at no other time, except that during the summer school vacation such boy may engage in such occupation until the hour of eight-thirty p. m. All such badges issued in the same calendar year shall be of the same color, which color shall be changed each year, and shall become void upon the first day of January following their issuance.

1539. Night work prohibited. No person under eighteen years of age shall be employed in the transmission, distribution, or delivery of goods or messages between the hours of ten in the evening and five in the morning in any city of ten thousand or more inhabitants.

1540. Violations—penalties. Any parent, guardian, or other person, who having under his control any person under sixteen years of age causes or permits said person to work or be employed in violation of the provisions of this chapter, or any person making, certifying to, or causing to be made or certified to, any statement, certificate, or other paper for the purpose of procuring the employment of any person in violation of said provisions, or who makes, files, executes, or delivers any such statement, certificate, or other paper con-

taining any false statement for the purpose of procuring the employment of any person in violation of this chapter, or for the purpose of concealing the violation thereof in such employment, and any person, firm, or corporation, or the agent, manager, superintendent, or officer of any person, firm, or corporation, whether for himself or such person, firm, corporation, either by himself or acting through any agent, foreman, superintendent, or manager, who employs any person, or permits any person to be employed in violation of the provisions of this chapter, or who shall refuse to allow any authorized officer or person to inspect any place of business under said provisions, if demand is made therefor at any time during business hours, or who shall wilfully obstruct such officer or person while making such inspection, or who shall fail to keep posted the lists containing the names of persons employed under sixteen years of age and other information as required by this chapter, or who shall knowingly insert any false statement in such list, shall be deemed guilty of a misdemeanor, and, upon conviction shall be fined not to exceed one hundred dollars or be imprisoned in the county jail not to exceed thirty days.

The parent or person in charge of any child who shall engage in any street occupation in violation of any of the provisions of this chapter shall be punished by a fine of not more than fifteen dollars.

Whoever furnishes or sells to any minor any article of any description with the knowledge that said minor intends to sell said article in violation of the provisions of this chapter relating to street occupations, shall be punished by a fine of not less than fifteen dollars nor more than one hundred dollars for each offense.

Whoever violates any other provision of this chapter, shall be fined not to exceed one hundred dollars.

1541. Enforcement—duties of officers. It shall be the duty of the labor commissioner, his deputies, inspectors, and assistants, to enforce the provisions of this chapter. It shall also be the duty of all mayors and police officers, town and city marshals, sheriffs and their deputies, school superintendents, school truant and attendance officers, within their several jurisdictions, to cooperate in the enforcement of such provisions and furnish the labor commissioner, his deputies and assistants all information coming to their knowledge regarding any violations of such provisions. All such officers and any person authorized in writing by any court of record shall have authority to enter for purposes of investigation any of the establishments and places mentioned in this chapter and to freely question any person therein as to any violations of such provisions.

It shall be the duty of county attorneys to investigate all

complaints made to them of violations of any such provisions, and to prosecute all such cases of violation within their respective counties.

CHAPTER 77

STATE EMPLOYMENT BUREAU AND EMPLOYMENT AGENCIES

1546. Failure to procure employment. Every person, firm, or corporation who shall agree or promise, or who shall advertise through the public press, or by letter, to furnish employment or situations to any person or persons, and in pursuance of such advertisement, agreement, or promise, shall receive any money, personal property, or other valuable thing whatsoever, and who shall fail to procure for such person or persons acceptable situations or employment as agreed upon, within the time stated or agreed upon, or if no time be specified then within a reasonable time, shall upon demand return all such money, personal property, or valuable consideration of whatever character.

1546-a1. Limitation of fee. No such person, firm, or corporation shall charge or exact a fee for the furnishing or procurement of any situation or employment, including registration and all other incidentals, which shall exceed five per cent of the wages offered for the first month of any such employment or situation furnished or procured.

The provisions of this section shall not apply to the furnishing or procurement of employment in any profession for which a license or certificate to engage therein is required by the laws of this state, nor to the furnishing or procurement of vaudeville acts, circus acts, theatrical, stage or platform attractions or amusement enterprises.

1. "Employers' association." Articles of incorporation and the course of business carried on thereunder reviewed, and held to constitute an "employers' association" within the meaning of this section as amended. *Employ. Bur. v Com.*, 209-1046; 229 NW 677.

1546-a2. Unlawful practices—civil liability. No person, firm, or corporation shall send an application for employment to an employer who has not applied to such person, firm, or corporation for help or labor. Nor shall any person, firm, or corporation engaged in the business of operating an employment agency or bureau, fraudulently promise or deceive either through a false notice or advertisement or other means, any applicant for help or employment with regard to the service to be rendered by such person, firm, corporation, agency, or bureau. Any person who violates any of the provisions of this section shall be liable in a civil suit for damages to any person who is damaged or injured thereby and shall also be guilty of a misdemeanor, and upon conviction, shall be punished as provided in section 1551.

1547. Copy of application or agreement. It shall be unlawful for any person, firm, or corporation to receive any application for employment from, or enter into any agreement with, any person to furnish or procure for said person any employment unless there is delivered to such person making such application or contract, at the time of the making thereof, a true and full copy of such application or agreement, which application or agreement shall specify the fee or consideration to be paid by the applicant.

1548. Division of fees prohibited. It shall be unlawful for any person, firm, or corporation, or any person employed or authorized by such person, firm, or corporation, to receive any part of any fee or any percentage of wages or any compensation of any kind whatever, that is agreed upon to be paid by any such employee to any employment bureau or agency for services rendered to any such employee in procuring for him employment with such person, firm, or corporation.

1549. Records required. Every person, firm, or corporation operating an employment agency or engaged in the business of finding employment for others, for which any fee is charged, shall keep a record of the applications received and what, if any, employment was found or furnished to the applicant, giving the name of each applicant and the name and address of his employer, if employment is found, and the fee charged each applicant.

1550. Investigation by labor commissioner. The labor commissioner, his deputy or inspectors, and the chief clerk of the bureau shall have authority to examine at any time the records, books, and any papers relating in any way to the conduct of any employment agency or bureau within the state, and must investigate any complaint made against any such employment agency or bureau, and if any violations of law are found he shall at once file or cause to be filed, an information against any person, firm, or corporation guilty of such violation of law.

1551. Violations. Any person, firm, or corporation violating any of the provisions of this chapter, or who shall refuse access to records, books, or other papers relative to the conduct of such agency or bureau, to any person having authority to examine same, shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not to exceed thirty days.

CHAPTER 77-C1

LICENSE FOR EMPLOYMENT AGENCIES

1551-c1. License. Every person, firm or corporation who shall keep or carry on an employment agency for the purpose of procuring or offering to procure help or employment, or

the giving of information as to where help or employment may be procured either directly or through some other person or agency, and where a fee, privilege, or other thing of value is exacted, charged or received either directly or indirectly, for procuring, or assisting or promising to procure employment, work, engagement or situation of any kind, or for procuring or providing help or promising to provide help for any person, whether such fee, privilege, or other thing of value is collected from the applicant for employment or the applicant for help, shall before transacting any such business whatsoever procure a license from a commission, consisting of the secretary of state, the industrial commissioner, and the labor commissioner, all of whom shall serve without compensation.

1551-c2. Application. Application for such license shall be made in writing to the commission provided in section 1551-c1. It shall contain the name of the applicant, and if applicant be a firm, the names of the members, and if it be a corporation, the names of the officers thereof; and the name, number and address of the building and place where the employment agency is to be conducted. It shall be accompanied by the affidavits of at least two reputable citizens of the state in no way connected with applicant certifying to the good moral character and reliability of the applicant, or, if a firm or corporation, of each of the members or officers thereof, and that the applicant is a citizen of the United States, if a natural person; also a surety company bond in the sum of two thousand dollars to be approved by the labor commissioner and conditioned to pay any damages that may accrue to any person or persons because of any wrongful act, or violation of law, on the part of applicant in the conduct of said business. There shall also be filed with the application a schedule of fees to be charged for services rendered to patrons, which schedule shall not be changed during the term of license without consent being first given by the commission.

Any person, firm, or corporation applying for a license, as provided in this chapter, to operate an employment agency for furnishing or procuring of employment shall furnish the commission with its contract form, which form shall distinctly provide that no fee or other thing of value in excess of one dollar shall be collected in advance of the procuring of employment and no license shall be issued unless such contract form contains such provision. Thereafter, any person, firm, or corporation to whom a license has been issued that violates this provision of its contract shall have his license canceled.

1551-c3. Issuance or refusal. The commission shall fully investigate all applicants for the license required by section 1551-c1, and shall not issue any license earlier than one week after the application therefor is filed, provided, however, that the commission shall either grant or refuse such license within

thirty days from the date of the filing of the application. All licenses issued under the provisions of this chapter shall expire on June thirtieth next succeeding their issuance.

1551-c4. Fee. The annual license fee shall be fifty dollars.

1551-c5. Revocation of license. The commission may revoke at any time any such a license issued by it upon good cause shown and when there has been a substantial violation of any of the provisions of law regulatory of such business.

1551-c6. Violations. Any person in any manner undertaking to do any of the things described in section 1551-c1, without first securing a license as herein provided, shall be guilty of a misdemeanor.

CHAPTER 78

CIGARETTES AND TOBACCO

1553. Sale or gift to minor prohibited. No person shall furnish to any minor under twenty-one years of age by gift, sale, or otherwise, any cigarette or cigarette paper, or any paper or other substance made or prepared for the purpose of use in making of cigarettes. No person shall directly or indirectly by himself or agent sell, barter, or give to any minor under sixteen years of age any tobacco in any other form whatever except upon the written order of his parent or guardian or the person in whose custody he is.

1554. Violation. Any person who shall violate any of the provisions of section 1553 shall for the first offense be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than thirty days. For a second or any subsequent violation such person shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than one month nor more than six months or by both such fine and imprisonment.

1555. Minors required to give information. Any minor under twenty-one years of age in any place other than at the home of his parent or parents, being in the possession of a cigarette or cigarette papers, shall be required at the request of any peace officer, juvenile court officer, truant officer, or teacher in any school to give information as to where he or she obtained such article.

1556. Violation. Any minor under twenty-one years of age refusing to give information as required by section 1555 shall be guilty of a misdemeanor and if eighteen years of age or over, shall be punished by a fine not exceeding five

dollars or by imprisonment in the county jail not exceeding five days, or by both such fine and imprisonment.

If such minor shall be under the age of eighteen years he or she shall be certified by the magistrate or justice of the peace before whom the case is tried, to the juvenile court of the county for such action as said court shall deem proper.

If any minor having been convicted of violating section 1555 shall give information which shall lead to the arrest of the person or persons having violated any of the provisions of section 1553 and shall give evidence as a witness in any proceedings that may be prosecuted against said person or persons, the court in its discretion may suspend sentence against the offending minor.

1585. Advertisement near public schools. No bills, pictures, posters, placards, or other matter used to advertise the sale of tobacco in any form shall be distributed, posted, painted, or maintained within four hundred feet of premises occupied by a public school or used for school purposes. This provision shall not apply to advertisement in newspapers regularly published and distributed to subscribers and purchasers as such.

1586. Penalty. Any person violating any of the provisions of section 1585 shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding thirty days.

CHAPTER 80

STATE FIRE MARSHAL

1651. Fire drills in public schools. It shall be the duty of the state fire marshal and his deputy to require teachers of public and private schools, in all buildings of more than one story, to have at least one fire drill each month, and to require all teachers of such schools, whether occupying buildings of one or more stories, to keep all doors and exits of their respective rooms and buildings unlocked during school hours.

1652. Bulletin. The state fire marshal shall prepare a bulletin upon the causes and dangers of fires, arranged in not less than four divisions or chapters, and under the direction of the executive council shall publish and deliver the same to the public schools throughout the state.

CHAPTER 82

FIRE ESCAPES AND OTHER MEANS OF ESCAPE FROM FIRE

1660. Fire escapes. All buildings, structures, and enclosures of three or more stories in height, and such other buildings of a less number of stories as are in this chapter specially

designated, shall be equipped with such protection against fire, and means of escape therefrom, as in this chapter provided.

1661. Terms defined. The word "building" as used in this chapter shall include all structures or enclosures of each of the classes mentioned or referred to herein. The word "story" shall include a basement story when such basement story is on the average five feet or more above the ground.

1662. Fire escapes required. Every building, structure, or enclosure of three or more stories, and every schoolhouse of two stories and not provided with two stairways located approximately at each end of the hallway in the second story, and every structure having a stage, and every theater or opera house of more than one story, or having balconies or galleries, shall have at least the number of fire escapes of the kind prescribed by law as determined by the following formula:

Number of fire escapes shall equal C times P.

P equals the average maximum number of persons on the story with the highest number above the first story.

C is a coefficient and is fixed, and shall be taken for the various classes of buildings as follows:

1. Buildings having wooden or combustible walls, C equals .020.
2. Buildings having brick or combustible walls with combustible interior, C equals .014.
3. Buildings having brick or incombustible walls and incombustible roof and slow burning construction, C equals .012.
4. Buildings of fireproof construction throughout, C equals .007.
5. Buildings of wooden or combustible walls equipped with efficient water sprinkler system, C equals .014.
6. Buildings having brick or incombustible walls with combustible interior equipped with efficient water sprinkler system, C equals .008.
7. Buildings having brick or incombustible walls and incombustible roof and slow burning construction equipped with efficient water sprinkler system, C equals .006.
8. Fireproof buildings equipped with efficient water sprinkler system, C equals .003.

When the result of the said formula is one or any fraction thereof, the number of escapes shall be one. The number of additional escapes required shall include any fraction as a unit, except when such fraction shall be thirty-three hundredths or less, in which case the fraction may be dropped if permitted by the inspector.

1663. Location of fire escapes and exits. The following regulations as to location of fire escapes and exits are hereby established:

1. The first fire escape required by law shall be placed as far as possible from the existing inside stairway or passage to the lower floors of the building, taking into account the hazard and the path or route of access to the escape from such stairway.

2. The distance to the nearest fire escape from any inside stairway or passage to the lower floor shall not exceed two hundred feet by way of the path or route of access to such fire escape from such stairway or passage.

3. Additional fire escapes to those otherwise provided by law shall be provided wherever it is necessary to pass within twenty feet of any stairway or elevator shaft from any portion of the building more than twenty feet from such stairway or shaft to reach the fire escape required by the provisions of law and where there are peculiar, unusual, or extreme hazards, additional fire escapes may be required by those authorized by law to regulate and fix the number and requirements of fire escapes.

4. When the inspector shall deem it necessary on account of the height of any building or on account of the number of persons ordinarily occupying said building, either permanently or temporarily in the course of business, such building shall be equipped with a sufficient number of fire escapes to permit the exit of all occupants within the following periods of time:

a. Buildings with wooden or combustible walls, two minutes.

b. Buildings having brick or incombustible walls with combustible interior, three minutes.

c. Buildings having brick or incombustible walls and incombustible roof and slow burning interior construction, four minutes.

d. Buildings of fireproof construction throughout, fifteen minutes; or a less period of time if hazard of merchantable contents of such building may so require.

In estimating the period of time required the rate of descent on the fire escapes shall not be taken in excess of one and five-tenths feet of vertical distance, or height, per second, when said fire escapes are fully loaded, which rate of descent shall be estimated to permit the exit of not to exceed one person per second; but the time of complete exit as herein provided may be increased where efficient sprinkler systems are installed, such increase of time to be determined by the character and efficiency of the sprinkling system unless peculiar or unusual hazards exist.

1664. How constructed. All fire escapes shall be constructed as described in the following classifications:

Class A. Fire escapes of this class shall consist of those more safe and efficient than outside ladders and stairways and which shall have been approved as such by the labor commis-

sioner, and may include inside stairways and means of escape in fireproof buildings when approved by said commissioner.

Class B. Fire escapes of this class shall consist of a suitable outside stairway of not less than twenty-two inches clear width of steel or wrought iron constructed with platform and with stationary stairway carried down to within six and one-half feet of the ground, or with a drop or counterbalanced stairway from the second story platform or balcony to the ground.

Class C. Fire escapes of this class shall consist of at least one ladder, not less than eighteen inches in width, of steel or wrought iron construction, of sufficient size and strength for safety, attached to the outside walls of the building and provided with platforms of steel or wrought iron inclosed by suitable railings and of such dimensions and in such proximity to the windows of each story above the first as to render access to the ladder from each story easy and safe, the said ladder to extend to within six and one-half feet of the ground or to be provided with a drop ladder hung at the second story in such a manner that it can be easily lowered for use.

1665. Construction and arrangement.

1. All of the above classes of fire escapes shall be of suitable material, construction, arrangement, and location to make the same safe and efficient and no fire escape of a higher class shall be less safe and efficient than one of a lower class and the provisions of each lower class with respect to platform, access to windows and openings, and sufficiency of strength shall apply to the upper class except where allowed to be modified by those having authority.

2. All fire escapes reaching the top floor shall have suitable extensions reaching from the upper platform to safe landing on the roof of the building; but the commissioner may waive this provision when on examination he finds that such ladder would be an element of danger.

3. All fire escapes of any of the foregoing classes shall have such windows or openings leading to the platform or balconies of the same as shall be necessary to make the same safe and efficient, and all routes or paths of access to said fire escapes shall be safe and sufficient, with all doors of rooms leading to fire escapes one-half glass and equipped with mortise latches or equivalent so that the same may be easily and quickly opened by breaking the glass and turning the latches from the inside of the doors, all so as to render access to the fire escape from each floor above the first easy and safe. No window or door leading to the platform of a fire escape shall be fastened against exit.

4. The attachment of all fire escapes shall be made in a thorough and substantial manner and sufficient to carry the full load that may be placed on said fire escapes when the same are crowded, with a factor of safety of not less than four.

5. Suitable signs indicating the location of fire escapes shall be posted at all entrances to elevators, stairways, landings, and in all rooms.

6. In all buildings which are used for lodging or sleeping purposes, and in opera houses, theaters, and public assembly halls, and other buildings occupied or used at night where, in the judgment of the commissioner, this provision should apply, red lights shall be maintained at night or when the buildings are darkened, to indicate the place or opening through which access to the fire escape is obtained. Red lights shall not be used for lighting purposes in such buildings at locations where they may be mistaken for an exit light.

1666. Class of escapes—stairways.

1. Hotels, lodging houses, tenements, apartment buildings, schools, retail or department stores, seminaries, college buildings, office buildings, hospitals, asylums, opera houses, theaters, assembly halls, and factories required by law to be equipped with fire escapes shall be equipped with those of class "A" or class "B." All other buildings and structures required to be equipped with fire escapes shall be equipped with those of class "A," "B," or "C," or with a combination of such classes.

2. Class "C" shall not be used on any building over three stories in height in which more than five persons are at any one time allowed upon any one of the floors above said third story nor where any of the persons allowed upon any floor above the third story are females or minors; but the labor commissioner may under peculiar conditions and where the hazards are not great:

a. Permit fire escapes of class "C" to be used on buildings of more than three stories, but when ladder fire escapes are permitted on buildings more than three stories in height the ladders thereof must offset at the platforms and must not continue in the same line for more than one story.

b. Permit fire escapes of class "C" or other approved means of escape to be used on an ordinary dwelling of not more than three stories in height and temporarily used in part for lodging purposes when not more than five persons, none of whom are under sixteen years of age, occupy the third floor.

3. Where stairways not less than forty-four inches in clear width are provided they shall be taken as the equivalent of two or more single stairways in proportion to their width, provided the means of escape and efficiency and safety of said escapes are not thereby diminished.

1667. Doors to open outward. The entrance and exit doors of all hotels, churches, lodge halls, courthouses, assembly halls, theaters, opera houses, colleges, public schoolhouses, and other structures where the hazard is deemed sufficient by the inspector, and the entrance doors to all class and assembly rooms

in public school buildings, shall open outward and shall not be fastened against exit or so the same can not be easily opened from within.

1669. Supervision of fire escapes. The labor commissioner, except when otherwise specially provided by law, shall have general charge and supervision of the inspection and regulation of fire escapes and means of escape and of the enforcement of the law relating thereto, and for this purpose the inspectors named herein, and others upon whom there is imposed by law or ordinance any duty with reference to fire escapes, shall be subject to his direction and to the rules and regulations adopted by such commissioner.

1677. Violations. Any person who shall violate any of the provisions of law relating to fire escapes or means of escape from fire, or any owner, agent, or trustee having the full care and control of any building and who has been served with notice as provided herein and who shall, within sixty days of the service of the notice, or within the time as extended by the commissioner, fail and neglect to comply with the requirements of law, or of the inspector or the commissioner, or who shall fail, refuse, or neglect to perform any order or requirement fixed by law, or by the labor commissioner, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. Each additional week of neglect to comply with such notice, order, or requirement shall constitute a separate offense.

CHAPTER 88

FENCES

1846. Lawful fence defined. A lawful fence shall consist of:

1. Three rails of good substantial material fastened in or to good substantial posts not more than ten feet apart.
2. Three boards not less than six inches wide and three-quarters of an inch thick, fastened in or to good substantial posts not more than eight feet apart.
3. Three wires, barbed with not less than thirty-six iron barbs of two points each, or twenty-six iron barbs of four points each, on each rod of wire, or of four wires, two thus barbed and two smooth, the wires to be firmly fastened to posts not more than two rods apart, with not less than two stays between posts, or with posts not more than one rod apart without such stays, the top wire to be not more than fifty-four nor less than forty-eight inches in height.
4. Wire either wholly or in part, substantially built and kept in good repair, the lowest or bottom rail, wire, or board not more than twenty nor less than sixteen inches from the

ground, the top rail, wire, or board to be between forty-eight and fifty-four inches in height and the middle rail, wire, or board not less than twelve nor more than eighteen inches above the bottom rail, wire, or board.

5. Any other kind of fence which, in the opinion of the fence viewers, shall be equivalent thereto.

See 4377 and 4378, school yard fence; 4106(4) enforcement of law with reference to school fence.

1. **Section applied.** *Myers v Tallman,* 169-104; 149 NW 259.

2. **Former statute.** *Phillips v Oystee,* 32-257; *McKeever v Jenks,* 59-350; 13 NW 326.

3. **What constitutes lawful fence.** A bluff, a hedge, a trench, a wall, a trestle or the like may be held to be in fact a lawful fence. *Hilliard v C. & N. W. R. Co.,* 37-442.

CHAPTER 91-B1

REGISTERED ARCHITECTS

1905-b6. Certificate. Any person wishing to practice architecture in the state of Iowa under the title "Architect" shall secure from the board a certificate under the title "Architect" as provided by this chapter. Each member of a firm or corporation practicing architecture must have a certificate of registration under the provisions of this chapter. Any properly qualified person, who shall have been exclusively engaged in the practice of architecture in the state at the time this chapter takes effect, may, within ninety days after the approval of this chapter, apply for and will be granted a certificate of registration without examination, by payment to the board of the fee for certificate of registration as prescribed in section 1905-b11.

CHAPTER 107

LOCAL BOARD OF HEALTH

2237. Special duties. At least twice each year, and oftener if necessary, the health officer shall personally inspect, or cause to be inspected, the schools, public buildings, and public utilities within the jurisdiction of the local board, and he shall recommend to the local board the necessary measures to be taken by it for the maintenance of such schools, public buildings, and public utilities in a sanitary condition. In case of sickness where no physician is in attendance, the health officer shall investigate the character of such sickness and report his findings to the local board.

CHAPTER 108

CONTAGIOUS AND INFECTIOUS DISEASES

2249. Quarantinable and placard diseases. The physician attending any person infected with a quarantinable disease or

placard disease shall immediately report the same orally to the local board or to one of its officers and at once follow said report with a written report. The local board or officer thus informed shall report the same immediately to the post office where the quarantined family receives or dispatches mail. Such reports shall be made in accordance with the rules of the state department and the local board. In case there is no attending physician, the parents, guardian, school teacher, or the householder of the premises wherein such disease exists shall report the same.

CHAPTER 112

PUBLIC HEALTH NURSES

2362. Authority to employ. The board of supervisors of any county, the council of any city or town, or the school board of any school district may employ public health nurses at such periods each year and in such numbers as may be deemed advisable. The compensation and expenses thereof shall be paid out of the general fund of the political subdivision employing said nurses.

See 2363, power to appoint nurse; 3845, 3846, power of board in connection with vocational education; 4224, general powers of school board.

2363. Cooperation of political subdivisions. The said boards and councils within any county may cooperate in the employment of public health nurses and may apportion the expenses therefor to the various political subdivisions represented by said authorities.

See 2362, power to appoint nurse; 3845, 3846, power of board in connection with vocational education; 4224, general powers of school board.

2364. Duties of public health nurses. The authorities employing any public health nurses shall prescribe their duties which in a general way shall be for the promotion and conservation of the public health.

CHAPTER 138

FARM AID ASSOCIATIONS

2929. Powers of association. Such association shall have power:

1. To establish and maintain a permanent agricultural school, in which agriculture, horticulture, animal industry, and domestic science shall be taught.
2. To employ one or more teachers, experts, or advisers to teach, advance, and improve agriculture, horticulture, animal industry, and domestic science, in the county, under such terms, conditions, and restrictions as may be deemed advisable by the board of directors.

3. To use part or all of the sum annually received as dues from its members in payment of prizes offered in any department of its work, including agricultural fairs, short courses, or farmers' institutes.

4. To adopt by-laws.

5. To take by gift, purchase, devise, or bequest, real or personal property.

6. To do all things necessary, appropriate, and convenient for the successful carrying out of the objects of the association.

CHAPTER 187

PENITENTIARY AND MEN'S REFORMATORY

3760. Price lists to public officials. The board of control shall, from time to time, prepare classified and itemized price lists of articles and things manufactured at the state institutions controlled by it, and furnish such lists to all boards of supervisors, boards of school directors, city and town councils and commissions, township trustees, and all other departments and officials of the state, county, cities, and towns empowered to make purchase of supplies for public purposes.

3762. Purchase mandatory. No articles or supplies so listed, except in case of emergency, shall be purchased for public use by the aforesaid public officials, bodies, and departments from any private source unless the board of control is unable to promptly furnish such articles or supplies. Any public officer who wilfully refuses or wilfully neglects to comply with this section shall be punished by a fine of not more than one hundred dollars.

3763. Selling price. Such supplies, material, and articles manufactured by convict labor within the state shall be furnished by the board of control to the state, its institutions and political subdivisions, and the road districts of the state at a price not greater than that obtaining for similar products in the open market.

CHAPTER 190

SUPERINTENDENT OF PUBLIC INSTRUCTION

3829. Qualifications. The superintendent of public instruction shall be a graduate of an accredited university or college, or of a four-year course above high school grade in an accredited normal school, and shall have had at least five years' experience as a teacher or school superintendent.

See 515, election of superintendent of public instruction; 1063, amount of bond required.

3830. Office. The office of the superintendent of public instruction shall be in the capitol and be known as the department of public instruction.

3831. General powers. He shall have general supervision and control over the rural, graded, and high schools of the state, and over such other state and public schools as are not under the control of the state board of education or board of control of state institutions.

3832. Duties. The superintendent of public instruction shall:

1. *Filing and preserving reports.* File and preserve all reports, documents, and correspondence that may be of a permanent value, which shall be open for inspection under reasonable conditions by any citizen of the state.
2. *General record.* Keep a record of the business transacted by him.
3. *Inspection.* Ascertain, so far as practicable, by inspection or otherwise, the condition, needs, and progress of the schools under the supervision and control of his department.
4. *Recommendations.* Suggest, through public addresses, pamphlets, bulletins, and by meetings and conferences with school officers, teachers, parents, and the public generally, such changes and improvements relating to educational matters as he may think desirable, and publish and distribute such views and information as he may deem important.
5. *Promotion of interest in education.* Endeavor to promote among the people of the state an interest in education, including industrial and commercial education, agriculture, manual and vocational training, domestic science, and continuation work.
6. *Days for special observance.* Publish and distribute from time to time leaflets and circulars relative to such days and occasions as he may deem worthy of special observance in the public schools.
7. *Classification.* Classify and define the various schools under the supervision and control of his department, formulate suitable courses of study therefor, and publish and distribute such classifications and courses of study.
8. *Outline for teaching American citizenship.* Prepare and distribute to all elementary schools lists of books and texts and an outline of American citizenship for all grades from one to eight, inclusive.
9. *Distribution of outline of courses of study.* Distribute to all high schools, academies, and institutions ranking as secondary schools, lists of books and texts and an outline of a course of study in American history, civics of the state and nation, social problems, and economics, prepared under his direction.
10. *Manual on health training.* Prepare, or approve, and

distribute a manual on practical health training for the aid of teachers.

11. *Officers' and teachers' reports—forms.* Prescribe the reports, both regular and special, which shall be made by public school officers, superintendents, teachers, and other persons and officers having custody and control of public school funds or property, and prepare suitable forms and furnish blanks for such reports.

12. *Report to comptroller.* Report to the state comptroller on the first day of January of each year the number of persons of school age in each county.

13. *Report to governor.* Report biennially to the governor, at the time provided by law, the condition of the schools under his supervision, including the number and kinds of school districts, the number of schools of each kind, the number and value of schoolhouses, the enrollment and attendance in each county for the previous year, any measures proposed or plans matured for the improvement of the public schools, such financial and statistical information as may be of public importance, and such general information relating to educational affairs and conditions within the state or elsewhere as he may deem beneficial.

14. *Institutes.* Appoint at least one and not more than two county educational meetings or institutes to be held in each county each year and designate the time and place for holding them. The program therefor, and the instructors and lectures therein, shall be subject to his approval.

15. *Examinations.* Prepare and supply questions for the examination of applicants for teachers' certificates and pupils completing the eighth grade in the rural schools, and fix the times of such examinations.

16. *Plans and specifications for buildings.* When deemed necessary, cause to be prepared and published a pamphlet containing suitable plans and specifications for public school buildings, including the most approved means and methods of heating, lighting, and ventilating the same, together with information and suggestions for the proper and economical construction thereof.

17. *Printing of school laws.* During the months of June and July in the year 1925, and every four years thereafter, if deemed necessary, cause to be printed in book form all school laws then in force, with such forms, rulings, and decisions, and such notes and suggestions as may aid school officers in the proper discharge of their duties. A sufficient number shall be furnished to the county superintendent of each county to supply therein school officers, directors, superintendents, and to others in such numbers as may be reasonably requested.

18. *Printing of changes in school laws.* Cause to be printed in pamphlet form after each session of the general assembly, any amendments or changes in the school laws with necessary notes and suggestions to be distributed as above prescribed.

19. *Appeals.* Examine and determine all appeals taken to him, according to law, prescribe rules of practice therefor not inconsistent with law, and render written opinions upon questions submitted by school officers pertaining to their duties.

3832-e1. Uniform financial records. For the purpose of establishing a uniform cost accounting and financial record system in the public schools of the state, and to facilitate auditing the financial transactions of all school districts, the superintendent of public instruction shall prepare a system of financial records that designates the uniform classification headings under which all receipts and disbursements in public school funds shall be recorded, which system, when prepared, shall be used in all public schools on and after such date as the superintendent of public instruction shall designate, provided that no district shall be required to displace a system already in use if such system, in the discretion of the state superintendent of public instruction, records receipts and disbursements under the same classification headings and in at least the detail provided for in the state system.

3832-e2. Printing—sale. The system provided for in section 3832-e1 may, when prepared by the superintendent of public instruction, be printed by the state printing board as prepared and sold to the schools at cost.

3834. Reports from school officers and others—delinquency. The superintendent of public instruction may require from time to time reports under oath from all officers and persons who have any authority over, or who have any duties in connection with, public school affairs, or who have, or who have lately had, the custody or control of any public school funds or property. He shall furnish the proper blanks for such reports, and any such officer or person who unreasonably neglects or refuses to make a report required by him shall be deemed guilty of a misdemeanor.

3835. Deputy—chief clerk—inspectors. He may appoint a deputy, whose appointment must be approved by the governor. The qualifications of the deputy shall be the same as required for the superintendent. The deputy shall, in the absence or inability of the superintendent, perform the duties of the office. The superintendent of public instruction shall also appoint a chief clerk and such regular inspectors of the public schools of the state, including rural, graded, and high schools, as he may deem necessary, not exceeding three.

3836. Expenses. The superintendent of public instruction, his deputy, and the regular inspectors in his department shall receive their actual necessary traveling expenses incurred in the performance of their official duties.

CHAPTER 191

VOCATIONAL EDUCATION

3837. Federal act accepted. The provisions of the act of congress entitled, "An act to provide for the promotion of vocational education; to provide for cooperation with the states in the promotion of such education in agriculture and in the trades and industries; to provide for cooperation with the states in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure", approved February 23, 1917, and the benefit of all funds appropriated under said act, are accepted.

3838. State board for vocational education. The superintendent of public instruction, the president of the state board of education, and the labor commissioner shall constitute the state board for vocational education.

3839. Executive officer—assistants. The superintendent shall be chairman of the board and its executive officer, and shall, with its approval, appoint such assistants as may be necessary to carry out the provisions of this chapter.

3840. Duties of board. The board shall:

1. Cooperate with the federal board for vocational education in the administration of said act of congress.
2. Provide for making studies and investigations relating to prevocational and vocational training in agricultural, industrial, and commercial subjects, and home economics.
3. Promote and aid in the establishment in local communities and public schools of departments and classes giving instruction in such subjects.
4. Cooperate with local communities in the maintenance of such schools, departments, and classes.
5. Establish standards for teachers of such subjects in approved schools, departments, and classes.
6. Cooperate in the maintenance of teachers' training schools, departments, and classes, supported and controlled by the public, for the training of teachers and supervisors of such subjects.
7. Establish standards for, and annually inspect as a basis of approval, all schools, departments, and classes, and all teachers' training schools, departments, and classes, applying for federal and state moneys under the provisions of this chapter.

3841. Federal aid—conditions. Approved schools, departments, and classes, and approved teachers' training schools, departments, and classes shall be entitled to federal and state moneys so long as they are approved by such board as to site, plant, equipment, number and qualification of teachers, em-

ployment of teachers, admission and number of pupils, courses of study, methods of instruction, and expenditure of money.

3842. Definitions. "Approved school, department, or class" shall mean a school, department, or class approved by said board as entitled under the provisions of this chapter to federal moneys for the salaries of teachers of vocational subjects. "Approved teachers' training school, department, or class" shall mean a school, department, or class approved by the board as entitled under the provisions of this chapter to federal moneys for the training of teachers of vocational subjects.

3843. Advisory committee—qualifications—tenure—meetings. The board shall appoint a state advisory committee for vocational education, consisting of nine members. The term of each member shall be for three years. The terms of three members shall expire on the first day of July each year. The committee shall consist of three educators, one member experienced in agriculture, one an employer, one a representative of labor, one experienced in business and commerce, one experienced in social work, and one woman experienced in women's work. The committee shall meet in conference with the board at least twice a year, and at such other times as the board shall deem advisable.

3844. State aid to equal federal aid. For each dollar of federal money expended for the salaries of teachers in approved schools, departments, and classes, the local community must expend an amount equal to the amount of federal money which it receives for the same purpose for the same year.

3845. Local advisory committee. The board of directors of any school district having a population of more than five thousand persons, maintaining a school, department, or class receiving the benefit of federal moneys under the provisions of this chapter shall, as a condition of approval by such state board as herein provided, appoint a local advisory committee for vocational education, consisting of persons of experience in agriculture, industry, home economics, and business, to give advice and assistance to such board of directors in the establishment and maintenance of such schools, departments, and classes. The state board may require the board of directors of any school district that maintains an approved school, department, or class, to appoint such an advisory committee. Members of such advisory committee shall serve without compensation.

See 3846, power of board in connection with vocational education; 2362, 2363, power to appoint nurse; 4224, general powers of school board.

3846. Powers of district boards. The board of directors of any school district is authorized to carry on prevocational and vocational instruction in subjects relating to agriculture,

commerce, industry, and home economics, and to pay the expense of such instruction in the same way as the expenses for other subjects in the public schools are now paid.

See 2362, 2363, power to appoint nurse; 3845, power of board in connection with vocational education; 4224, general powers of school board.

3847. Salary and expenses. The board is authorized to make such expenditures for salaries of assistants, actual expenses of the board and the state advisory committee incurred in the discharge of their duties, and such other expenses as in the judgment of the board are necessary to the proper administration of this chapter.

3848. Custodian of funds—reports. The treasurer of state shall be custodian of the funds paid to the state from the appropriations made under said act of congress, and shall disburse the same on vouchers audited as provided by law. He shall report the receipts and disbursements of said funds to the general assembly at each biennial session.

3849. Biennial report. The superintendent of public instruction shall embrace in his biennial report a full report of all receipts and expenditures under this chapter, together with such observations relative to vocational education as may be deemed of value.

CHAPTER 192

VOCATIONAL REHABILITATION

3850. Acceptance of federal act. The state of Iowa does hereby, through its legislative authority, accept the provisions and benefits of the act of congress, entitled "An act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment", approved June 2, 1920 (Pub. No. 236, 66th Congress), and will observe and comply with all the requirements of such act.

3851. Custodian of funds. The treasurer of state is hereby designated and appointed custodian of all moneys received by the state from appropriations made by the congress of the United States for the vocational rehabilitation of persons disabled in industry or otherwise, and is authorized to receive and provide for the proper custody of the same and to make disbursement therefrom upon the requisition of the state board for vocational education.

3852. State agency. The board heretofore designated or created as the state board for vocational education to cooperate with the federal board for vocational education in the administration of the provisions of the vocational education act, approved February 23, 1917, is hereby designated as the state

board for the purpose of cooperating with the said federal board in carrying out the provisions and the purposes of said federal act providing for the vocational rehabilitation of persons disabled in industry or otherwise.

3853. Duties of state board. The state board for vocational education is hereby empowered and directed to:

1. Cooperate with the federal board for vocational education in the administration of said act of congress.

2. Administer any legislation pursuant thereto enacted by this state, and direct the disbursement and administer the use of all funds provided by the federal government and this state for the vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment.

3. Appoint such assistants as may be necessary to administer the provisions of this chapter and said act of congress in this state and fix the compensation of such persons.

4. Study and make investigations relating to the vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment and to formulate plans for the vocational rehabilitation of such persons.

5. Make such surveys with the cooperation of the state commissioner of labor and the state industrial commissioner as will assist in the vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment.

6. Maintain a record of all such persons together with all measures taken for their rehabilitation.

7. Utilize in the rehabilitation of persons disabled in industry or otherwise such existing educational facilities of the state as may be advisable and practicable, including public and private educational institutions, public or private establishments, plants, factories, and the services of individuals specially qualified for the instruction of physically handicapped persons.

8. Promote the establishment and assist in the development of training agencies for the vocational rehabilitation of persons disabled in industry or otherwise.

9. Supervise the training of such persons and confer with their relatives and others concerning their vocational rehabilitation.

10. Make every possible endeavor looking to the placement of vocationally rehabilitated persons in suitable remunerative occupations, including supervision for a reasonable time after return to civil employment.

11. Utilize the facilities of such agencies, both public and private, as may be practicable in securing employment for such persons; and any such public agency is hereby authorized and directed to cooperate with the state board for vocational education for the purpose stated.

12. Cooperate with any agency of the federal government or of the state, or of any county or other municipal authority within the state, or any other agency, public or private, in carrying out the purposes of this chapter.

13. Make such rules and regulations as may be necessary for the administration of this chapter and said act of congress within this state.

14. Do all things necessary to secure the rehabilitation of those entitled to the benefits of this chapter.

15. Report on call or biennially to the governor the conditions of vocational rehabilitation within the state, such report to designate the educational institutions, establishments, plants, factories, etc., in which training is being given, and to contain a detailed statement of the expenditures of the state and federal funds in the rehabilitation of persons disabled in industry or otherwise.

3854. Plan of cooperation. It shall be the duty of the state board for vocational education and the state labor commissioner and the state industrial commissioner as administrator of the workmen's compensation law to formulate a plan of cooperation in accordance with the provisions of this chapter and said act of congress, such plan to become effective when approved by the governor of the state.

3855. Gifts and donations. The state board for vocational education is hereby authorized and empowered to receive such gifts and donations from either public or private sources as may be offered unconditionally or under such conditions related to the vocational rehabilitation of persons disabled in industry or otherwise as in the judgment of the said state board are proper and consistent with the provisions of this chapter.

3856. Fund. All the moneys received as gifts or donations shall be deposited in the state treasury and shall constitute a permanent fund to be called the special fund for the vocational rehabilitation of disabled persons, to be used by the said board in carrying out the provisions of this chapter or for purposes related thereto.

3857. Report of gifts. A full report of all gifts and donations offered and accepted, together with the names of the donors and the respective amounts contributed by each, and all disbursements therefrom shall be submitted at call or biennially to the governor of the state by said state board.

CHAPTER 193

BOARD OF EDUCATIONAL EXAMINERS

3858. Members. The board of educational examiners shall consist of:

1. The superintendent of public instruction who shall be

president and executive officer of the board and four additional members to be appointed by the governor under the limitations provided in subsections 2, 3, 4, and 5.

2. The president of one of the three state institutions of higher learning.

3. The president of one of the privately endowed institutions of higher learning in the state that maintain teacher training courses.

4. A county superintendent of schools.

5. A city superintendent of schools.

Each appointee shall hold office for a term of four years and until his successor is appointed and qualified. The term of office of each appointee shall begin July first.

3858-e1. Powers. The board of educational examiners shall have authority to issue certificates to applicants who are eighteen years of age or over, physically competent and morally fit to teach, and who have the qualifications and training hereinafter prescribed.

1. Discretion to grant. The granting of teachers' certificates, regular or provisional, is committed to the discretion of the officers named for that purpose, and the exercise of that discretion will not be controlled or overruled by mandamus or injunction. *Bailey v Ewart*, 52-111; 2 NW 1009; *Clay v Ind. Sch. Dist.*, 187-89; 174 NW 47.

3859. Secretary—assistants. The board shall employ a secretary, and prescribe his duties. He shall receive his actual necessary expenses while engaged in the performance of his duties at places other than the capitol. The board may employ such persons as are necessary to assist in examinations and in reading answer papers.

3860. Meetings. The board shall meet for the transaction of business at such times and places as the president may direct, and shall annually hold at least two public examinations of teachers, to be conducted by a member or the secretary of the board, or by such qualified persons or persons as the board may select.

3861. Examinations. All examinations shall be conducted in accordance with rules adopted by the board, not inconsistent with the laws of the state, and a record shall be kept of all its proceedings.

3872-e1. Definition of fields. For the purposes of this act the elementary school field shall be construed to include the kindergarten and grades one to eight, inclusive; the secondary school field shall be construed to include the junior high school, the senior high school, and the four-year high school; and the administrative and supervisory field shall be construed to include all administrative and supervisory positions in the public schools.

3872-e2. Classes of certificates. The board of educational examiners is hereby authorized to issue four classes of regular certificates as follows:

1. Elementary teachers' certificates.
2. Secondary teachers' certificates.
3. Administrative and supervisory teachers' certificates.
4. Special teachers' certificates.

3872-e3. Kind of elementary certificates. The elementary teachers' certificates shall include the advanced elementary certificate and the standard elementary certificate and shall specify the division or divisions of the elementary school field for which the holders are especially trained.

1. *Advanced elementary certificate.* The advanced elementary certificate shall be issued to the holder of a diploma granted by an Iowa college accredited by the board of educational examiners certifying to the completion of a four-year course including such specific and professional training for teaching in some division of the elementary school field as the board shall prescribe. It shall be valid for teaching in the elementary school field and, when so designated on the certificate, in the ninth grade.

2. *Standard elementary certificate.* The standard elementary certificate shall be issued to the holder of a diploma or an official statement from an Iowa college accredited by the board of educational examiners certifying to the completion of a two-year course including such specific and professional training for teaching in some division of the elementary school field as the board shall prescribe. It shall be valid for teaching in the elementary school field and, when so designated on the certificate, in the ninth grade.

3872-e4. Kinds of secondary certificates. The secondary teachers' certificates shall include the advanced secondary certificate and the standard secondary certificate and shall specify the subjects or subject groups in the secondary school field for which the holders are especially trained.

1. *Advanced secondary certificate.* The advanced secondary certificate shall be issued to an applicant who has met the requirements for a standard secondary certificate and who is the holder of a standard master's degree. It shall be valid for teaching in the seventh and eighth grades, in a high school, and in a public junior college.

2. *Standard secondary certificate.* The standard secondary certificate shall be issued to the holder of a diploma granted by an Iowa college accredited by the board of educational examiners certifying to the completion of a four-year course including such specific and professional training for teaching two or more secondary school subjects as the board shall pre-

scribe. It shall be valid for teaching in the seventh and eighth grades and in a high school.

3872-e5. Kinds of administrative and supervisory certificates. The administrative and supervisory certificates shall include the superintendent's certificate, the principals' certificates, and the supervisor's certificate.

1. *Superintendent's certificate.* The superintendent's certificate shall be issued to an applicant who has met the requirements for an advanced elementary certificate or an advanced or a standard secondary certificate and who has in addition such other qualifications with reference to special training and experience as the board of educational examiners shall from time to time prescribe. It shall be valid for service as county superintendent, or as superintendent, principal, or teacher in any elementary or secondary school.

2. *Principals' certificates.* The principals' certificates shall include the secondary principal's certificate and the elementary principal's certificate.

a. *Secondary principal's certificate.* The secondary principal's certificate shall be issued to an applicant who has met the requirements for an advanced or a standard secondary certificate and who has in addition such other qualifications with reference to special training and experience as the board of educational examiners shall from time to time prescribe. It shall be valid for service as principal or teacher in a high school.

b. *Elementary principal's certificate.* The elementary principal's certificate shall be issued to an applicant who has met the requirements for an advanced or a standard elementary certificate and who has in addition such other qualifications with reference to special training and experience as the board of educational examiners shall from time to time prescribe. It shall be valid for service as principal or teacher in an elementary school and, when so designated on the certificate, in a junior high school.

3. *Supervisor's certificate.* The supervisor's certificate shall be issued to an applicant who has met the requirements for a standard elementary or a standard secondary certificate valid for teaching the subject or subjects over which supervision is to be exercised by the applicant and who has in addition such other qualifications with reference to special training and experience as the board of educational examiners shall from time to time prescribe. It shall be valid for teaching and for supervision of instruction in the subjects specified on the certificate in the elementary or the secondary school fields, or, when so designated on the certificate, in both the elementary and the secondary school fields.

3872-e6. Certification of applicants from other states. The board of educational examiners may at its discretion issue any teacher's certificate provided for in this act to an applicant from another state who files with the board evidence of the possession of the required qualifications or the equivalent thereof.

3872-e7. Terms of certificates. The superintendent's certificate, the principals' certificates, the supervisor's certificate, the advanced secondary certificate, the standard secondary certificate, the advanced elementary certificate, and the standard elementary certificate shall be valid for terms of five years. The special certificates shall be valid for terms of one to five years at the discretion of the board of educational examiners.

3872-e8. Renewal for term. Certificates authorized by this act shall be subject to renewal for term as follows:

1. *Renewal of five-year certificates.* Any five-year certificate issued under this act shall be subject to renewal at expiration for a term of five years upon the filing with the board of educational examiners of such evidence as the board may require, showing professional spirit, physical and moral fitness for work in the schools, and successful experience in administration, supervision, or teaching for at least nine months during the term for which the certificate was issued. The board of educational examiners may, at its discretion, accept credit earned in an approved college or graduate school in lieu of the teaching experience required for the renewal of five-year certificates.

2. *Renewal of special certificates.* The special certificate shall be subject to renewal under such conditions as the board of educational examiners shall prescribe.

3872-e9. Renewal for life. Any five-year certificate issued under this act may be renewed for life upon the filing with the board of educational examiners of such evidence as the board may require, showing professional spirit, physical and moral fitness for work in the schools, and five years of successful experience in administration, supervision, or teaching; provided that two years of this experience shall have immediately preceded the date of application for renewal for life. A certificate renewed for life shall lapse if the holder thereof shall cease to be employed in school work for any period of five consecutive years.

3872-e10. Fees. The fee for the issuance or the term renewal of any five-year or special certificate shall be two dollars. The fee for life renewal shall be five dollars.

3872-e11. Application for issuance or renewal—payment and deposit of fees. Applications for the issuance or for the

renewal of all special and five-year certificates shall be made to the president of the board of educational examiners. All fees for the issuance, renewal, or exchange of such certificates shall be paid to the president of the board of educational examiners who shall deposit the fees received from these sources in a state trust fund to be used to carry on the work of the board of educational examiners, including preparation and printing of courses of study to be used in teacher training and the supervision of such training.

3872-e12. Interpretive clause. No provision of this act shall affect or impair the validity of any certificate in force or renewable June 30, 1933.

3873. Examinations in counties. On the last Friday, and Wednesday and Thursday preceding, in the months of January, June, and October and on the first Friday in August and the Wednesday and Thursday preceding, the county superintendent shall meet and, with such assistance as may be necessary, examine all applicants for teachers' certificates. The questions used in such examinations shall be furnished by the superintendent of public instruction, who shall cause the same to be printed, and the examinations shall be conducted strictly under the rules prescribed by the board.

3875. Record kept. A record shall be kept by the county superintendent of all examinations taken within his county, with the name, age, and residence of each applicant and the date of examination.

3876. First grade uniform county certificate. The examination for the first grade uniform county certificate shall include competency in and ability to teach reading, handwriting, spelling, arithmetic, geography, grammar, history of the United States, elementary civics including constitution and government of the United States and of Iowa, elementary school music, physiology and hygiene including special reference to the effects of alcohol, stimulants and narcotics upon the human system, home economics or manual training, agriculture, rural school management, elementary algebra, elementary school methods, general science, and English composition.

The first grade uniform county certificate may also be issued to an applicant who is a resident of the state on a record of two years of college work together with ten semester hours in education as prescribed by the board of educational examiners, the complete record having been approved for that certificate by the board of educational examiners.

3877. College work in lieu of examination. Applicants who have graduated from a four-year course in an approved high

school may submit, in lieu of the examination in any one or more of the subjects of elementary algebra, general science, English composition, rural school management, elementary school methods, a showing that the applicant has done work and earned satisfactory grades in any one or more of these subjects in any collegiate institution approved by the state board of educational examiners for such purpose; but the study and work done in each subject must be of college grade and cover a course of not less than five hours per week for twelve weeks.

3878. Special certificates. The special certificates shall be issued to any applicant meeting the requirements prescribed by the board of educational examiners. It shall be valid for teaching the subject or subjects specified in the field or fields designated on the certificate and, when so designated on the certificate, for supervision of instruction in these subjects.

3879. First grade certificate — renewal. Applicants who have taught successfully for at least thirty-six weeks and whose examination entitles them to the first grade certificate, shall receive the same for a term of three years from the date thereof, and such certificates shall be renewable without examination provided the applicants shall show by testimonials from superintendents or principals who had immediate supervision of their professional study that at least one line of professional inquiry has been successfully conducted during the life of the certificate, it being made the duty of the board to forward with each certificate subject to renewal, outlines setting forth various lines of professional study. It is provided further that each application for renewal shall be accompanied by such proof of successful experience and professional spirit as the board of educational examiners may require.

3880. Second grade certificate—renewal. Applicants whose examination entitles them to second grade certificates only, shall receive the same for not to exceed two years with the privilege of renewal of the same without further examination under the same conditions as govern the renewal of first grade certificates. The holder of a second grade certificate may, at any of the examinations provided for in section 3873, take an examination in any one or more of the additional branches required for the issue of a first grade certificate, or he may at any such time be re-examined in any branch or branches in which he desires to raise his grade, and in each case the new per cent shall be placed on his certificate, and when he has thus successfully passed in all the branches required for the issue of a first grade certificate, such certificate shall then be issued to him, provided he has had at least thirty-six weeks' successful experience in teaching; if not,

then at the conclusion of such experience. In like manner third grade certificates may be changed into those of the second or first grade, and in all cases whether the certificate be of the first, second, or third grade, credit shall be given for all examinations taken under the auspices of the board, it being the intention of the law that an examination once taken shall be final unless the certificate holder desires to be re-examined in any one or more branches with a view of raising his per cent in such branches or his general average.

3881. Third grade certificate—renewal. Applicants whose examination entitles them to third grade certificates only, shall receive the same for one year, at the end of which time, upon proof of successful teaching and the payment of a fee of one dollar, one renewal shall be granted.

3882. Applicants without experience. Applicants who have had no experience in teaching, but whose examinations entitle them to the first grade, shall receive a second grade certificate for two years; provided that when they have taught successfully under such certificate for not less than thirty-six weeks they shall be entitled to receive a first grade certificate on the conditions herein provided for a renewal of a certificate.

3883. Fees. Each applicant for a certificate shall pay a fee of one dollar, one-half of which shall be paid into the state treasury on or before the first day of the succeeding month, and one-half shall be paid into the county institute fund.

See section 4106(14), county superintendent's duty to report fees monthly; 4107 and 84-e8, penalty for failure to report; 13309, failure to pay over; 13310, misappropriation; 13311, failure to record.

3884. Normal training required. All applicants for teachers' certificates shall have completed an approved four-year high school course or its equivalent and shall have had before receiving a certificate to teach, at least twelve weeks of normal training as approved by the state board of educational examiners, and shall furnish a certificate from the institution where such training has been received, which certificate shall have printed thereon the subjects taken and the standing in each subject; but the examination in all subjects other than didactics may be taken at any regular examination prior to, or after, the term of normal training has been taken; the examination shall not be complete until the normal training has been certified as herein provided.

3885. Exceptions. Section 3884 shall not apply to the regular graduates of the state university, state teachers college, state college of agriculture and mechanic arts, any accredited college of the state, or any school of like character outside the state.

3886. Didactic grades accepted. In the cases of graduates of four-year courses in approved or accredited high schools, the grades made in didactics in an approved normal training course in any of the institutions mentioned in section 3885 may be accepted by the state board of educational examiners and by the county superintendent in lieu of the examination in didactics.

3887. Experience as qualification. The provision of sections 3884 to 3886, inclusive, shall in no way bar any teacher who can furnish evidence of at least six months' successful teaching experience; provided such experience is not obtained on a provisional certificate.

3888. Registration of certificates and diplomas. All diplomas and certificates shall be valid in any county when registered therein, and no person shall teach in any public school whose certificate has not been registered with the county superintendent of the county in which the school is located.

3889. Third grade certificates not registered. In case a sufficient number of life diplomas, state certificates, first grade certificates, special certificates, and second grade certificates are held in any county to supply the schools thereof, it shall not be incumbent on the county superintendent to register third grade certificates.

3890. Provisional certificates. When a sufficient number of licensed teachers can not be secured to fill the schools of any county, the board of examiners may, upon the request of the county superintendent, appoint a special examination for such county to be conducted in all respects as a regular examination and the answer papers to be forwarded to the president of the board as required in regular examinations, and thereupon provisional certificates, valid for the remainder of the school year, may be issued by the board of educational examiners.

1. Presumption of validity. Certificates, in the absence of evidence to the contrary, will be presumed to be valid. *Clay v Ind. Sch. Dist.*, 187-89; 174 NW 47.

2. Controlling discretion. The granting of a teacher's certificate, regular or provisional, is a matter of discretion with the tribunal empowered to issue the same and the exercise of said discretion cannot be controlled by mandamus or injunction. *Bailey v Ewart*, 52-111; 2 NW 1009; *Clay v Ind. Sch. Dist.*, 187-89; 174 NW 47.

3891. Certificates—where valid. All certificates issued as provided by law shall be valid in any county within the state, when registered in such county, but a provisional certificate shall be valid, upon registration, only in the county in which it is issued, and shall be issued for the same time and subject to the same extension as a third grade certificate, but no person shall be entitled to receive more than one provisional

certificate, except upon the approval of the county superintendent.

3892. Revocation by board. Any diploma or certificate issued by the board may be revoked by it for any cause which would have authorized or required a refusal to grant the same, and the holder shall have ten days' notice by registered mail and be allowed to be present and make defense.

3893. Revocation by county superintendent. When in the judgment of the county superintendent there is probable cause for the revocation of a certificate or diploma held by any teacher employed in his county, or when complaint is filed, supported by affidavits, charging incompetency, immorality, intemperance, cruelty, or general neglect of the business of the school, the county superintendent shall within ten days transmit to such person a written statement of the charges preferred and set the time, not less than ten days thereafter, and place for the hearing of the same at which trial the teacher may be present and make defense.

NOTE 1. A county superintendent's refusal to issue an order of revocation after a hearing on a complaint supported by affidavits as provided in section 3893 is final; there is no provision in law whereby the complainant may file an appeal to the superintendent of public instruction.

3894. Trial—order. The trial and making and preservation of the record shall be, so far as applicable, in conformity with the provisions of the law relating to the trial of civil actions in the district court. If upon the trial it appears to the county superintendent that there is sufficient ground for the revocation of the diploma or certificate, he shall at once issue in triplicate an order revoking the diploma or certificate, and the same shall become effective, unless an appeal is taken, fifteen days thereafter. One copy of the order shall be filed and recorded in his office, one mailed to the superintendent of public instruction, and the other sent by registered mail to the holder of the certificate.

3895. Appeal. The person aggrieved by such order shall have the right of appeal to the superintendent of public instruction within ten days from the date of such mailing, and in case of appeal the revocation shall not be effective until the same is affirmed, after full hearing, by the superintendent of public instruction. In the case of life state certificates the revocation shall not be effective until affirmed by the board of educational examiners after full hearing and review by said board.

3896. Expenditures. All expenditures authorized to be made by the board of educational examiners and by the county superintendents in connection with examinations and applications for certificates, shall be certified by the superintendent

of public instruction to the state comptroller, and if found correct, he shall approve the same and draw warrants therefor upon the treasurer of state, but not to exceed the fees paid into the treasury by the board and county superintendents.

3897. Accounts. The board shall keep an accurate and detailed account of all money received and expended, which, with a list of those receiving certificates or diplomas, shall be published by the superintendent of public instruction in his annual report.

3898. Printing. The board of educational examiners shall have authority to obtain all the necessary printing for the performance of their duties, as required by law, in the same manner as the printing is provided for state officers.

CHAPTER 194

NORMAL TRAINING OF TEACHERS

3899. Training of teachers—normal courses. For the purpose of increasing the facilities for training teachers for the rural schools by requiring a review of such common branches as may be deemed essential by the superintendent of public instruction, and for instruction in elementary pedagogy and the art of teaching elementary agriculture and home economics, provision is hereby made for normal courses of study and training in such four-year high schools, or as a fifth year in such high school, as the superintendent of public instruction may designate, provided that such high schools shall be selected and distributed with regard to their usefulness in supplying trained teachers for the rural schools of all portions of the state, and with regard to the number of teachers required for rural schools in each portion of the state. Provided further, that credits earned by a student completing the fifth year course in such high school shall be accepted by the state institutions of higher learning as meeting the requirements of the first year in regular teacher training courses maintained in such institutions.

It is further provided that where a township high school or a consolidated school organized in accordance with the provisions of chapter 209, can meet the requirements of the superintendent of public instruction, it shall be given preference over a city high school.

3900. Conditions. No high schools shall be approved as entitled to state aid unless a class of ten or more shall have been organized, maintained, and instructed during the preceding semester in accordance with the provisions of this chapter and the regulations of the superintendent of public instruction.

3901. Private and denominational schools. Private and denominational schools are eligible to the provisions of this chapter, except as to receiving state aid.

3902. State aid. Each high school approved under the provisions of this chapter shall receive state aid to the amount of seven hundred fifty dollars per annum, payable in two equal installments at the close of each semester as hereinafter provided.

3903. Report required. The superintendent of each approved training school shall at the close of each semester file such report with the superintendent of public instruction as said officer may require.

3904. Warrant. Upon receipt of a satisfactory report, the superintendent of public instruction shall issue a requisition upon the state comptroller for the amount due the school corporation of said high school for said semester, whereupon the comptroller shall draw a warrant on the state treasury payable to said school corporation for the amount of said requisition and forward the same to the secretary of said school corporation.

3905. Admission and graduation. The superintendent of public instruction shall prescribe the conditions of admission to the normal training classes, the course of instruction, the rules and regulations under which such instruction shall be given, and the requirements for graduation, subject to the provisions of this chapter.

3906. Examination for graduation. On the third Friday in January and the Wednesday and Thursday immediately preceding and on the third Friday in May and the Wednesday and Thursday immediately preceding, each year, in each high school, and private or denominational school, approved under this chapter, an examination for graduation from the normal course shall be conducted under such rules as the state board of examiners shall prescribe, but the county superintendent of the county in which an approved high school, and private or denominational school may be located shall be designated as the conductor of said examination.

3907. Additional examination. Candidates for a certificate of graduation from the normal course, failing in the examination in one or more subjects, may be permitted to enter the above examinations or the regular July teachers' examination under such regulations as the superintendent of public instruction shall prescribe.

3908. Fees. Each applicant for a certificate of graduation from the normal course in a county shall pay a fee of one dollar, which shall entitle him to one examination in each sub-

ject required; provided, however, that applicants rewriting the examination in one or more subjects at the July teachers' examination as herein provided shall pay an additional fee of one dollar.

3909. Distribution of fees. One-half of the fees from the normal training examinations shall be paid to the state comptroller on or before the first day of the succeeding month, and the remaining one-half shall be paid into the county institute fund of the county wherein the examination is held.

See section 84-e8 and 4107, penalty for failure to report; 4106(14), county superintendent's duty to report fees monthly; 13309, failure to pay over; 13310, misappropriation; 13311, failure to record.

3910. Certificate—license to teach—renewal. A certificate of graduation from the normal training course provided for in this chapter shall be issued by the superintendent of public instruction, and shall be a valid license to teach in any public school in the state for a term of two years, subject to registration as provided for other teachers' certificates. At the expiration of said certificate the superintendent of public instruction is authorized to renew it for a period of three years under the same conditions that apply to the renewal of first grade uniform county certificates.

3911. Record of students. At the close of each school year, the principal or superintendent of each accredited school shall file with the board of examiners a sworn statement, showing the name, age, postoffice address, studies, and attendance of each of the students in his school taking the prescribed teachers' course.

CHAPTER 195

STATE BOARD OF EDUCATION

3912. Membership. The state board of education shall consist of nine members, who shall be selected from the state at large solely with regard to their qualifications and fitness to discharge the duties of the office. Not more than five members shall be of the same political party. Not more than one alumnus of each of the institutions of higher learning, the state university, the college of agriculture and mechanic arts, and the Iowa state teachers college, shall be members of said board at one time.

3913. Term of office. The term of each member of said board shall be for six years. The terms of three members of the board shall expire on the first day of July of each odd-numbered year.

3914. Appointment. During each regular session of the legislature, the governor shall appoint, with the approval of

two-thirds of the members of the senate in executive session, three members of said board to succeed those whose terms expire on the first day of July next thereafter.

3916. Removals. The governor, with the approval of a majority of the senate during a session of the general assembly, may remove any member of the board for malfeasance in office, or any cause which would render him ineligible for appointment or incapable or unfit to discharge the duties of his office, and his removal, when so made, shall be final.

3917. Suspension. 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 to the approval of the senate when next in session.

3918. Vacancies. All vacancies on said board which may occur when 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 after the general assembly next convenes. Vacancies occurring during a session of the general assembly shall be filled before the end of said session in the same manner in which regular appointments are required to be made.

3919. Institutions governed. The state board of education shall govern the following institutions:

1. The state university of Iowa.
2. The college of agriculture and mechanic arts, including the agricultural experiment station.
3. The Iowa state teachers college.
4. The state school for the blind.
5. The state school for the deaf.

3920. Meetings. The board shall meet four times a year. Special meetings may be called by the board, by the president of the board, or by the secretary of the board upon written request of any five members thereof.

3921. Powers and duties. The board shall:

1. Each even-numbered year elect, from its members, a president of the board, who shall serve for two years and until his successor is elected and qualified.
2. Elect a president of each of said institutions of higher learning; a superintendent of each of said other institutions; a treasurer and a secretarial officer for each institution annually; professors, instructors, officers, and employees; and fix their compensation.
3. Make rules for admission to and for the government of said institutions, not inconsistent with law.
4. Manage and control the property, both real and personal, belonging to said institutions.

5. With the approval of the executive council, acquire real estate for the proper uses of said institutions, and dispose of real estate belonging to said institutions when not necessary for their purposes.

6. Accept and administer trusts deemed by it beneficial to and perform obligations of the institutions.

7. Direct the expenditure of all appropriations made to said institutions, and of any other moneys belonging thereto, but in no event shall the perpetual funds of the state college of agriculture and mechanic arts, nor the permanent funds of the university derived under acts of congress be diminished.

8. Collect the highest rate of interest, consistent with safety, obtainable on daily balances in the hands of the treasurer of each institution.

9. With the approval of the executive council, publish, from time to time, and distribute, such circulars, pamphlets, bulletins, and reports as may be in its judgment for the best interests of the institutions under its control, the expense of which shall be paid out of any funds in the treasury not otherwise appropriated.

10. With consent of the inventor and in the discretion of the board, secure letters patent or copyright on inventions of students, instructors and officials, or take assignment of such letters patent or copyright and may make all necessary expenditures in regard thereto. That the letters patent or copyright on inventions when so secured shall be the property of the state, and the royalties and earnings thereon shall be credited to the funds of the institution in which such patent or copyright originated.

11. Perform all other acts necessary and proper for the execution of the powers and duties conferred by law upon it and the finance committee.

1. Liability for official acts. The trustees of a public institution, who are charged by the statute with its general supervision, and required to perform all acts necessary to render it efficient, are not personally liable in damages for the cancellation of a contract of employment made by them, and a refusal to allow the employee to enter upon his duties thereunder, though such action upon their part is wrongful, unjust, and illegal. *Chamberlain v Clayton et al*, 56 Iowa 331.

2. Forfeiture of land contract. *Henn v State University*, 22-185.

3922. Purchases—prohibitions. No sale or purchase of real estate shall be made save upon the order of the board, made at a regular meeting, or one called for that purpose, and then in such manner and under such terms as the board may prescribe and only with the approval of the executive council. No member of the board or finance committee nor any officer of any institution, shall be directly or indirectly interested in such purchase or sale.

3923. Record. All acts of the board relating to the management, purchase, disposition, or use of lands and other property of said institutions shall be entered of record, which shall show the members present, and how each voted upon each proposition.

3924. Finance committee — organization — duties. The board shall appoint a finance committee of three from outside its membership and shall designate one of such committee as chairman and one as secretary. Not more than two of its members 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 board. In addition to the duties imposed upon the finance committee by law, the committee and members thereof shall make such investigations and reports and perform such ministerial duties as the board by resolution may direct, and the committee may make such recommendations to the board as it may deem proper.

3925. Secretary of board and committee—duties. The secretary shall be secretary of the board and of the committee, and shall separately keep and carefully preserve complete files of documents and records of the proceedings of the board and the committee.

3926. Loans—conditions. The finance committee may loan funds belonging to said institutions, subject to the following regulations:

1. Each loan shall be secured by a mortgage paramount to all other liens upon approved farm lands in this state, accompanied by abstract showing merchantable title in the borrower. The loan shall not exceed fifty per cent of the cash value of the land, exclusive of buildings.
2. Each such loan shall be for a term not exceeding ten years, at a rate of interest to be fixed by said board, payable annually provided, however, that the rate of interest be not less than four per cent per annum, and the borrower shall have the privilege of paying one hundred dollars or any multiple thereof on any interest pay day.
3. Any portion of said funds may be invested by the finance committee on order of the board in bonds of the United States, or this state, or some county thereof, the rate of interest to be determined by the state board of education.
4. Any gift accepted by the Iowa state board of education for the use and benefit of any institution under its control may be invested in securities designated by the donor, but whenever such gifts are accepted and the money invested according to the request of the said donor, neither the state, the Iowa state board of education, the finance committee, nor any member thereof, shall be liable therefor or on account thereof.

5. A register containing a complete abstract of each loan and investment, and showing its actual condition, shall be kept by the secretary of said committee, and be at all times open to inspection.

3927. Foreclosure and collections. The finance committee shall have charge of the foreclosure of all mortgages and of all collections from delinquent debtors to said institutions. All actions shall be in the name of the state board of education, for the use and benefit of the appropriate institution.

3928. Satisfaction of mortgages. When loans are paid, the finance committee shall release mortgages securing the same as follows:

1. By a satisfaction piece signed and acknowledged by the chairman or secretary of said committee, which shall be recorded in the office of the recorder of the county where said mortgage is of record; or

2. By entering a satisfaction thereof on the margin of the record of said mortgage, dated, and signed by the chairman or secretary of the committee.

3929. Bidding in property. In case of a sale upon execution, the premises may be bid off in the name of the board of education, for the benefit of the institution to which the loan belongs.

3930. Deeds in trust. Deeds for premises so acquired shall be held for the benefit of the appropriate institution and such lands shall be subject to lease or sale the same as other lands.

3931. Actions not barred. No lapse of time shall be a bar to any action to recover on any loan made on behalf of any institution.

3932. Business offices—visitation. A business office shall be maintained at each of the institutions of higher learning. The committee shall, once each month, attend each of the institutions for the purpose of transacting any business that may properly come before it, and the performance of its duties.

3933. Expenses—official residences. The members of the finance committee shall devote their entire time to the work of said institutions. The members of the finance committee and other employees shall maintain their official residences at the places designated by the board, and shall be entitled to their necessary traveling expenses therefrom by the nearest traveled and practicable route incurred in visiting the different institutions and other places and returning therefrom when on official business, and such other expenses as are actually and necessarily incurred in the performance of their official duties.

3934. Comptroller's report. The state comptroller shall include in his report to the governor the amount paid for such services and expenses and to whom paid.

3935. Duties of treasurer. The treasurer of each of said institutions shall:

1. Receive all appropriations made by the general assembly for said institution, and all other funds from all other sources, belonging to said institution.
2. Pay out said funds only on order of the board of education, or of the finance committee, on bills duly audited in accordance with the rules prescribed by said board.
3. Retain all bills, so paid by him, with receipts for their payment as his vouchers.
4. Keep an accurate account of all revenue and expenditures of said institution, so that the receipts and disbursements of each of its several departments shall be apparent at all times.
5. Annually, and at such other times as the board may require, report to it said receipts and disbursements in detail.

3936. Reports of executive officers. The executive officer of each of said institutions shall, on or before the first day of August of each even-numbered year, make a report to the board, setting forth such observations and recommendations as in his judgment are for the benefit of the institution, and also his recommendations of a budget for the several colleges and departments of the institution, in detail, and estimates of the amount of funds required therefor for the ensuing biennium.

3937. Reports of secretarial officers. The secretarial officer shall, for the institution of which he acts as secretary, on or before August first of each year, report to the board in such detail and form as it may prescribe:

1. The funds available each fiscal year from all sources for the erection, equipment, improvement, and repair of buildings.
2. Interest on endowment and other funds, tuition, state appropriations, laboratory and janitor fees, donations, rents, and income from all sources affecting the annual income of the support funds of said institution.
3. How the funds so received were expended, giving under separate heads the cost of instruction, administration, maintenance and equipment of departments, and the general expense of the institution.
4. The number of professors, instructors, fellows, and tutors, and the number of students enrolled in each course during each year, stating separately the number of students attending short courses.
5. The amount of unexpended balances of departments re-

maining in the hands of the treasurer, and the amounts undrawn from the state treasury on June thirtieth of each year.

The report for the state college of agriculture and mechanic arts shall also show the receipts of the experiment station from all sources for each fiscal year, and how the same were expended.

3938. Report of board. The board shall, biennially, at the time provided by law, report to the governor and the legislature such facts, observations, and conclusions respecting each of such institutions as in the judgment of the board should be considered by the legislature. Such report shall contain an itemized account of the receipts and expenditures of the board and finance committee, and also the reports made to the board by the executive officers of the several institutions or a summary thereof, and shall submit budgets for biennial appropriations deemed necessary and proper to be made for the support of the several institutions and for the extraordinary and special expenditures for buildings, betterments, and other improvements.

3939. Colonel of cadets. The commandant and instructor of military science and tactics at each of the institutions for higher learning is given the rank of colonel of cadets, and the governor shall issue such commission upon the request of the president of such institution.

3940. Appropriations — monthly installments. All appropriations made payable annually to each of the institutions under the control of the board of education shall be paid in twelve equal monthly installments on the last day of each month on order of said board.

1. **Appropriation construed.** *State v Sherman*, 46-415.

3941. Expenses—filing and audit. All claims for the actual necessary expenses of the board and of the finance committee and of their assistants shall be filed with and allowed by the state comptroller in the same manner as may now or hereafter be required in the case of claims for similar expenses by state officers.

3942. Contracts for training teachers. The board of directors of any school district in the state of Iowa may enter into contract with the state board of education for furnishing instruction to pupils of such school district, and for training teachers for the schools of the state in such particular lines of demonstration and instruction as are deemed necessary for the efficiency of the Iowa state teachers college, state university of Iowa, and college of agriculture and mechanic arts as training schools for teachers.

See 4065, contract between state board of education and board of district in which Iowa State Teachers College is situated and of contiguous districts.

3943. Payment. The contract for such instruction shall authorize the payment for such service furnished the school district or for such service furnished the state, the amount to be agreed upon by the state board of education and the board of the school district thus co-operating.

3944. Contract—time limit. Such contracts shall be in writing and shall extend over a period of not to exceed two years, and a copy thereof shall be filed in the office of the superintendent of schools of the county.

3944-d1. Fire protection contracts. The state board of education shall have power to enter into contracts with the governing body of any city, town, or other municipal corporation for the protection from fire of any property under the control of the board, located in any such municipal corporation or in territory contiguous thereto, upon such terms as may be agreed upon.

3945. Improvements—advertisement for bids. When the estimated cost of construction, repairs, or improvement of buildings or grounds under charge of the state board of education shall exceed ten thousand dollars, the said board shall advertise for bids for the contemplated improvement or construction and shall let the work to the lowest responsible bidder; provided, however, if in the judgment of the board bids received be not acceptable, the said board may reject all bids and proceed with the construction, repair, or improvement by such method as the board may determine. All plans and specifications for repairs or construction, together with bids thereon, shall be filed by the board and be open for public inspection. All bids submitted under the provisions of this section shall be accompanied by a deposit of money or a certified check in such amount as the board may prescribe.

DORMITORIES

3945-a1. Dormitories at state educational institutions. The state board of education is authorized to:

1. Erect from time to time at any of the institutions under its control such dormitories as may be required for the good of the institutions.

2. Rent the rooms in such dormitories to the students, officers, guests, and employees of said institutions at such rates as will insure a reasonable return upon the investment.

3. Exercise full control and complete management over such dormitories.

3945-a2. Purchase or condemnation of property. The erection of such dormitories is a public necessity and said board is vested with full power to purchase or condemn at said in-

stitutions, or convenient thereto, all real estate necessary to carry out the powers herein granted.

3945-a3. Title to property. The title to all real estate so acquired and the improvements erected thereon shall be taken and held in the name of the state of Iowa.

3945-a4. Borrowing money and mortgaging property. In carrying out the above powers, said board may:

1. Borrow money.
2. Mortgage any real estate so acquired and the improvements erected thereon in order to secure necessary loans.
3. Pledge the rents, profits, and income received from any such property for the discharge of mortgages so executed.

3945-a5. Nature of obligation—discharge. No obligation created hereunder shall ever be or become a charge against the state of Iowa but all such obligations, including principal and interest, shall be payable solely:

1. From the net rents, profits, and income arising from the property so pledged or mortgaged,
2. From the net rents, profits, and income which has not been pledged for other purposes arising from any other dormitory or like improvement under the control and management of said board, or
3. From the income derived from gifts and bequests made to the institutions under the control of said board for dormitory purposes.

3945-a6. Limitation on discharging obligations. In discharging obligations under section 3944-a5 the dormitories at each of said institutions shall be considered as a unit and the rents, profits, and income available for dormitory purposes at one institution shall not be used to discharge obligations created for dormitories at another institution.

3945-a7. Exemption from taxation. All obligations created hereunder shall be exempt from taxation.

3945-a8. Limitation on funds. No state funds shall be loaned or used for this purpose. This shall not apply to funds derived from the net earnings of dormitories now or hereafter owned by the state of Iowa.

CHAPTER 196

STATE UNIVERSITY

3946. Objects—departments. The university shall never be under the control of any religious denomination. Its object shall be to provide the best and most efficient means of imparting to men and women, upon equal terms, a liberal

education and thorough knowledge of the different branches of literature and the arts and sciences, with their varied applications. It shall include colleges of liberal arts, law, medicine, and such other colleges and departments, with such courses of instruction and elective studies as the state board of education may determine from time to time. If a teachers' training course is established by the board it shall include the subject of physical education. Instruction in the liberal arts college shall begin, so far as practicable, at the points where the same is completed in high schools.

1. Action against university. The state university is not a corporation and cannot be sued. *Weary v State University*, 42-335.

3947. Degrees. No one shall be admitted to courses of instruction in the university who has not completed the elementary instruction in such branches as are taught in the common schools throughout the state. Graduates shall receive degrees or diplomas, or other evidences of distinction such as are usually conferred and granted by universities and are authorized by the state board of education.

See 8588, 8588-b1, power to confer degrees.

3948. Cabinet of natural history. For the purpose of supplying a cabinet of natural history, all geological and mineralogical specimens which are collected by the state geologists, or by others appointed by the state to investigate its natural history and physical resources, shall belong to and be the property of the university, under the charge of the professors of those departments.

3949. Homeopathic materia medica and therapeutics. The state board of education is hereby authorized and directed to establish and maintain a department of homeopathic materia medica and therapeutics in the college of medicine of the state university of Iowa, with suitable and sufficient hours and rooms for said department. The use of the university homeopathic hospital shall be left to the discretion of the board.

3950. Iowa child welfare research station. The state board of education is hereby authorized to establish and maintain at Iowa City as an integral part of the state university the Iowa child welfare research station, having as its objects the investigation of the best scientific methods of conserving and developing the normal child, the dissemination of the information acquired by such investigation, and the training of students for work in such fields.

3951. Management. The management and control of such station shall be vested in a director appointed by the said board of education and an advisory board of seven members to be appointed by the president of the university from the faculty of the graduate college of said university.

3952. Bacteriological laboratory—investigations. The bacteriological laboratory shall be a permanent part of the medical college of the university. It shall make or cause to be made bacteriological and chemical examinations of water, and necessary investigations by both laboratory and field work to determine the source of epidemics of disease, and to suggest methods of overcoming and preventing the recurrence of the same, whenever requested to do so by any state institution or by any citizen, school, or municipality when in the judgment of the local board of health the same is necessary in the interests of the public health and for the purpose of preventing epidemics of disease.

3953. Reports — tests. Such examination shall be made without charge, except for transportation and actual cost of examination, not to exceed two dollars for each. A copy of the report of each epidemiological examination and investigation shall be promptly sent to the state department of health.

In addition to its regular work, the laboratory shall perform all bacteriological, serological, and epidemiological examinations and investigations which may be required by the state department of health, and said department shall establish rules therefor.

CHAPTER 199

MEDICAL AND SURGICAL TREATMENT OF INDIGENT PERSONS

4005. Complaint. Any adult resident of the state may file a complaint in the office of the clerk of any juvenile court, charging that any legal resident of Iowa residing in the county where the complaint is filed is pregnant or is suffering from some malady or deformity that can probably be improved or cured or advantageously treated by medical or surgical treatment or hospital care, and that neither such person nor persons legally chargeable with his support are able to pay therefor.

4006. Duty of public officers and others. It shall be the duty of physicians, public health nurses, members of boards of supervisors and township trustees, overseers of the poor, sheriffs, policemen, and public school teachers, having knowledge of persons suffering from any such malady or deformity, to file or cause such complaint to be filed.

CHAPTER 200

STATE COLLEGE OF AGRICULTURE AND MECHANIC ARTS

GENERAL PROVISIONS

4031. Grants accepted. Legislative assent is given to the purposes of the various congressional grants to the state for

the endowment and support of a college of agriculture and mechanic arts, and an agricultural experiment station as a department thereof, upon the terms, conditions, and restrictions contained in all acts of congress relating thereto, and the state assumes the duties, obligations, and responsibilities thereby imposed. All moneys appropriated by the state because of the obligations thus assumed, and all funds arising from said congressional grants, shall be invested or expended in accordance with the provision of such grant, for the use and support of said college located at Ames.

1. Sale of college lands—advance payment. *Burtis v Humboldt Co. Bank*, 77-103; 41 NW 585.

2. Condemnation over agricultural lands. *C., M. & St. P. R. Co. v Bean*, 69-257; 28 NW 585.

3. Terms of sale or lease. The legislature can fix and enforce the terms and conditions of a lease or sale of lands of the agricultural college belonging to the state. *Smith v Trustees*, 28-500.

4. Interest of lessee. A stipulation in a lease of agricultural college lands entitling the lessee to purchase on terms stipulated, does not convey an interest which may be levied on and sold under execution and such interest is not susceptible to mortgage. *Conn v Tonner*, 86-577; 53 NW 320.

4032. Courses of study. There shall be adopted and taught at said college practical courses of study, embracing in their leading branches such as relate to agriculture and mechanic arts, mines and mining, and ceramics, and such other branches as are best calculated to educate thoroughly the agricultural and industrial classes in the several pursuits and professions of life, including military tactics. If a teachers' training course is established it shall include the subject of physical education.

4033. Investigation of mineral resources. The said college shall provide, as a part of its engineering experiment station work, for the investigation of clays, cement materials, fuels, and other mineral resources of the state with especial reference to their economic uses, and for the publication and dissemination of information useful to such industries, and for the testing of the products thereof.

4034. Cooperative agricultural extension work. The assent of the legislature of the state of Iowa is hereby given to the provisions and requirements of an act of congress approved May 8, 1914, providing for cooperative agricultural extension work between the agricultural colleges in the several states receiving the benefits of the act of congress approved July 2, 1862, and amendments thereto.

4035. State agency. The state board of education is hereby authorized and empowered to receive the grants of money appropriated under said act and to organize and conduct agricultural and home economics extension work, which shall

be carried on in connection with the state college of agriculture and mechanic arts in accordance with the terms and conditions expressed in the act of congress aforesaid.

4035-b1. Purnell act. The assent of the legislature of the state of Iowa be and is hereby given to the provisions and requirements of the congressional act approved February 24, 1925, commonly known as the Purnell act; and that, in accordance with the requirements thereof, the state agrees to devote the moneys thus received to the more complete endowment and maintenance of the agricultural experiment station of the Iowa state college of agriculture and mechanic arts as provided in said act.

4035-b2. Receiving agent. The treasurer of the Iowa state college of agriculture and mechanic arts is hereby authorized and empowered to receive the grants of money appropriated under the said act.

CHAPTER 202

IOWA STATE TEACHERS COLLEGE

4063. Official designation. The normal school at Cedar Falls, for the special instruction and training of teachers for the common schools, shall be officially designated and known as the "Iowa State Teachers College".

4064. Branches of study. Physical education, including physiology and hygiene, shall be included in the branches of study regularly taught to and studied by all pupils in the college, and special reference shall be made to the effect of alcoholic drinks, stimulants, and narcotics upon the human system.

4065. Contract with school districts. The state board of education may contract in writing with the board of directors of the school district in which the college is situated and those contiguous thereto, for a period not exceeding two years at a time, to receive the pupils thereof into the state teachers college and furnish them with instruction; and payment thereof shall be made out of the general funds of such districts, but shall not exceed fifty cents per week for each pupil. A copy of such contract shall be filed with the county superintendent, and all reports required by law to be made to the board of directors of such townships or schools and the county superintendent by the teachers thereof shall be made by the president of the college. All sums received for tuition shall be placed to the credit of the general fund of the college.

See sections 3942-3945, contracts with state institutions.

1. Employment of normal school students as teachers. The directors of a school district in which or adjacent to which a state normal school is conducted, may contract with such normal school to receive

and instruct the pupils of such district school. Students of such normal school may practice teaching in the public schools of such school district, without compensation, and under the supervision of a public school teacher, and are not required to have a teacher's certificate. *Clay v Ind. Sch. Dist.*, 187-89; 174 NW 47.

CHAPTER 203

SCHOOL FOR THE BLIND

4066. Admission. All blind persons and persons whose vision is so defective that they cannot be properly instructed in the common schools, who are residents of the state and of suitable age and capacity, shall be entitled to an education in the school for the blind at the expense of the state. Nonresidents also may be admitted to the school for the blind if their presence would not be prejudicial to the interests of residents, upon such terms as may be fixed by the state board of education.

See 4426 to 4432, inclusive, special classes for blind in public schools.

4067. Expenses—residence of indigents. The provisions of sections 4071 to 4075, inclusive, are hereby made applicable to the school for the blind.

CHAPTER 204

SCHOOL FOR THE DEAF

4068. Superintendent. The superintendent of the school for the deaf shall be a trained and experienced educator of the deaf. His salary may include residence in the institution and board from the funds or supplies thereof, but no such allowance shall be made except by express contract in advance.

4069. Labor of pupils. The board may utilize the labor of any pupil of the institution on the farm, in the workshops, in erection of buildings for the institution, or in domestic service, so far as practicable, without interference with their proper education.

4070. Admission. Every resident of the state who is not less than five nor more than twenty-one years of age, who is deaf and dumb, or so deaf as to be unable to acquire an education in the common schools, and every such person who is over twenty-one and under thirty-five years of age who has the consent of the state board of education, shall be entitled to receive an education in the institution at the expense of the state, and nonresidents similarly situated may be entitled to an education therein upon such terms as may be fixed by the state board of education. The fee for nonresidents shall

be not less than the average expense of resident pupils and shall be paid in advance.

See 4426 to 4432, inclusive, special classes for deaf in public schools.

4071. Clothing and transportation. When pupils are not supplied with clothing, or transportation, it shall be furnished by the superintendent, who shall make out an account therefor against the parent or guardian, if the pupil be a minor, and against the pupil if he have no parent or guardian, or has attained the age of majority, which bill shall be certified by him to be correct, and shall be presumptive evidence thereof in all courts.

4072. Certification to state comptroller. The superintendent shall, on the first day of June and December of each year, certify to the state comptroller the amounts due from the several counties, and the comptroller shall thereupon pass the same to the credit of the institution, and charge the amount to the proper county.

4073. Certification to auditor — collection. The superintendent shall, at the time of sending certificate to the state comptroller, send a duplicate copy to the auditor of the county of the pupil's residence, who shall, when ordered by the board of supervisors, proceed to collect the same by action if necessary, in the name of the county, and when so collected, shall pay the same into the county treasury.

4074. Payment by county. The county auditor shall, upon receipt of said certificate, pass the same to the credit of the state, and thereupon issue a notice to the county treasurer authorizing him to transfer the amount from the general county fund to the general state revenue, which shall be filed by the treasurer as his authority for making such transfer, and shall include the amount in his next remittance of state taxes to the treasurer of state, designating the fund to which it belongs.

4075. Residence during vacation. The residence of indigent or homeless children may, by order of the state board of education, be continued during the vacation months.

CHAPTER 206

COUNTY SUPERINTENDENT

GENERAL PROVISIONS

4096. Term of office. There shall be a county superintendent of schools of each county in the state, whose term of office shall be for three years, from the first secular day of Septem-

ber following his election and until his successor is elected and qualified. A regular term began in 1918.

See 1065, bonds; 5232, salary; 5233, expenses; 5234, deputy; 5133, office; 5134, supplies.

4097. Qualifications of county superintendent. The county superintendent may be of either sex, shall be the holder of a superintendent's certificate and shall have had at least five years' experience in administrative or supervisory work or in teaching, but anyone serving as county superintendent at the time of the passage of this act shall be deemed eligible to reelection.

See sections 3872-e5(1), 3872-e3(1), and 3872-e4(1) (2), requirements for superintendent's certificate; 1065, bonds of county superintendent.

1. Under former statutes. *State v Huegle*, 135-100; 112 NW 234.
Huff v Cook, 44-639; *Brown v McCollum*, 76-479; 41 NW 197.
2. Women under former statutes.

4098. Election by convention. The county superintendent shall be elected by a convention held on the second Tuesday in May preceding the expiration of his regular term of office, composed of representatives of school districts organized in the county as follows: One for each school township, one for all the rural independent districts in each civil township, one for each city, town, or village independent district, and one for each consolidated district. Each representative shall be entitled to one vote. All representatives to such convention shall serve until a county superintendent is elected and qualified.

See 4119, duty of convention to elect county board of education.

4099. Representatives at convention. Each school corporation except rural independent districts shall be represented at the convention by the president of the school board, or, in his absence or inability to act, by some member of such board to be selected by the board. When such selection is made, the secretary of the board shall at once notify the county auditor thereof. Rural independent districts shall be represented by some person selected by the presidents of the boards of such districts at a meeting to be held at such time and place as the county auditor shall fix in the call for the convention, and the secretary of the meeting shall notify the county auditor of the person so selected.

4100. Calling convention. Such convention shall be called by the county auditor by mailing a written notice to the president and secretary of each school corporation and by the publication of such notice in the official newspapers published in the county at least ten days prior to the date of such convention. Such notice shall also fix the time and place of the meet-

ing of the presidents of rural independent districts in the several townships for the election of representatives to the convention.

4101. Convention—quorum. At the time and place fixed, the county auditor shall call the convention to order, shall submit a list of school corporations entitled to participate in such convention and of the representatives, and shall be secretary of the convention. The convention shall be the judge of the qualifications of its own members and a majority of the legal representatives shall constitute a quorum. Said convention shall select a chairman, and when so organized shall elect a county superintendent of schools.

4102. Committee to elect. The convention may, by a majority vote, elect a committee of five members who shall investigate the various candidates for the office and report to said convention at a date to which the convention may adjourn; or the convention may, by a three-fourths vote, authorize said committee to elect a county superintendent, and file its election with the county auditor, and thereupon said person shall be deemed duly elected.

4103. Vacancies. Vacancies in the office of county superintendent shall be filled at special conventions called and held in the same manner as regular conventions.

4104. Mileage. Each representative shall be paid from the county treasury ten cents per mile one way for the distance necessarily traveled in attending the convention.

4105. Certificate of election. Whenever a county superintendent is elected and has qualified, the county auditor shall forward to the superintendent of public instruction a certificate thereof.

4106. Duties. The county superintendent shall:

1. *Means of communication.* Under the direction of the superintendent of public instruction, serve as a means of communication between the department of public instruction and the various officers and instructors in the county, and transmit or deliver to them all books, papers, circulars, and communications designed for them.

2. *Visiting schools.* Visit each public school in the county at least once during each school year; and when requested so to do by a majority of the directors of any school corporation, visit the schools therein.

3. *Special visit and report upon schools.* At the request of the superintendent of public instruction, visit and report upon such school as may be designated.

4. *Enforcement of school laws.* See that all provisions of the school law, so far as it relates to the schools or school

officers within his county, are observed and enforced, especially those relating to the fencing of schoolhouse grounds with barbed wire, the introduction and teaching of such divisions of physiology and hygiene as relate to the effects of alcohol, stimulants, and narcotics upon the human system, those relating to compulsory attendance of pupils, and those relating to the exclusive use of the English language as the medium of instruction in the schools, and to this end he may require the assistance of the county attorney, who shall at his request bring any action necessary to enforce the law or recover penalties incurred.

5. *Conduct examinations—assistants.* Conduct, in accordance with the regulations of the board of educational examiners, examinations for teachers' certificates, and as soon as the examination is completed, forward to the president of the board of educational examiners a list of all applicants examined, with the standing of each in didactics and oral reading, and his estimate of each applicant's personality and general fitness other than scholarship for the work of teaching. He shall, at the same time, forward to the president of the board of educational examiners the answer papers written, with the exception of those in didactics. Such examinations shall be held at the county seat, in a suitable room provided by the board of supervisors, but the county superintendent may, in his discretion, cause examinations to be held at the same time in some other place in the county. The county superintendent may employ such assistants as may be necessary for this purpose and the bills for their services and expenses shall be verified and filed with the county auditor.

6. *Requirements of proof of good character.* Before admitting anyone to the examination, be satisfied that the person seeking a certificate is of good moral character, of which fact he may require proof, and is in all respects other than in scholarship possessed of the necessary qualifications as an instructor.

7. *Uncertificated teaching may be enjoined.* Order to be closed any public school or schoolroom taught by any teacher not certificated as required by law. If his order is not immediately obeyed, he may enforce the same against the teacher and the school board by the procurement of an injunction from any court of competent jurisdiction.

See 4336, certificate required of all teachers.

8. *Record of examinations.* Keep a record of all examinations taken within his county, with the name, age, and residence of each applicant and the date of examination.

9. *Report of applicants for teachers' certificates.* Report monthly to the county auditor the names of all applicants for teachers' certificates.

10. *Appointment of school directors.* When any school cor-

poration is organized or reorganized according to law, and no director has been elected, or any director elected has not qualified, or has qualified and resigned, so that the matter of the completion of the organization or reorganization of such school corporation is prevented, and the objects of its organization are thereby defeated, appoint a director or board of directors of such corporation, who shall act as such until their successors have been elected and qualified, and designate which term or terms each director appointed shall fill. In consolidated districts such appointments shall be made by the county superintendent of the county in which the petition was filed.

11. *Report to superintendent of public instruction.* Annually, on the last Tuesday in August, report to the superintendent of public instruction, giving a full abstract of the several reports made to him by the secretaries and treasurers of school boards, stating the manner in and extent to which the requirements of the law regarding instruction in physiology and hygiene are observed, and such other matters as he may be directed by the state superintendent to include therein, or he may think important in showing the actual condition of the schools in his county. He shall file a duplicate of such report with the county board of education.

12. *Report of persons of school age.* Annually, on the last Tuesday in August, file with the county auditor a statement of the number of persons of school age in each school township and independent district in the county.

13. *Reports.* Report on or before August first each year, to the superintendent of the college for the blind, the name, age, residence, and postoffice address of every person resident of the county, without regard to age, so blind as to be unable to acquire an education in the common schools; to the superintendent of the school for the deaf with the same detail persons under age thirty-five, whose faculties with respect to speech and hearing are so deficient as to prevent them from obtaining an education in the common schools; and to the institution for the feeble minded all persons of school age who, because of mental defects, are entitled to admission therein.

14. *Transmission of fees.* On the first secular day of each month, transmit to the county treasurer and the state treasurer each one-half of all moneys received for examination fees; and to the county treasurer the state appropriation for institutes when received.

15. *Annual report of financial transactions.* Report to the board of supervisors on the first day of January annually a summary of his official financial transactions for the previous year.

16. *Administration of oaths.* Have power to administer the oath of office to any school officer.

1. Unauthorized examinations—expenses. *Farrell v Webster Co.*, 49-245.

4107. Penalty. Should he fail to make any report required of him by law to the superintendent of public instruction or the county auditor, he shall forfeit to the school fund of his county the sum of fifty dollars, to be recovered in an action brought by the county for the use of the school fund, and in addition shall be liable for all damages occasioned thereby.

See section 84-e8, penalty for failure to report; 4106(14), county superintendent's duty to report fees monthly; 13309, failure to pay over; 13310, misappropriation; 13311, failure to record.

CHAPTER 206-D1

PROFESSIONAL TEACHERS' MEETINGS DEMONSTRATION TEACHING, AND FIELD WORK

4118-d1. Improvement of instruction. The county superintendent shall arrange for such professional teachers' meetings, demonstration teaching or other field work for the improvement of instruction as may best fit the needs of the public schools in his county and as directed by the superintendent of public instruction.

4118-d2. Plans approved by state superintendent. All arrangements concerning plans for said improvement of instruction shall be subject to the final approval by the superintendent of public instruction.

4118-d3. Adjournment of schools. The school board of every school district shall allow its teachers to attend said meetings or to participate in such work for not more than one day in each school year without loss of salary.

4118-d4. Certificate of attendance. The county superintendent shall notify the secretary of the school boards as to the cooperation and attendance of its teachers in said meetings and any teacher failing to attend when requested by the county superintendent to do so, shall forfeit his average daily salary for that day of nonattendance, except when excused by the county superintendent for physical disability to perform his duties in the schoolroom.

4118-d5. Funds. The fund for carrying out the purpose of this chapter shall consist of:

1. Fifty dollars annually, which is hereby appropriated.
2. One-half of all examination fees collected in the county.
3. One hundred fifty dollars from the general county fund

in any county having a population of thirty thousand or less, which amount shall be appropriated by the board of supervisors of such county at the January session of each year. Two hundred dollars from the general county fund in any county having a population of over thirty thousand, to be appropriated by the board of supervisors in like manner.

4. Such reasonable sum as may be appropriated by the board from the general fund of any city independent district.

4118-d6. Use of fund. No part of this improvement of instruction fund may be used for any other purpose than to pay the expenses of the plans formed and approved for this work.

4118-d7. Disbursement requirements. All disbursements from the fund provided by this chapter shall be by warrants drawn by the county auditor upon the written order of the county superintendent, and said written order must be accompanied by an itemized bill for services rendered or expenses incurred in connection therewith, which bill must be signed and sworn to by the party in whose favor the order is made and must be verified by the county superintendent. All said orders and bills shall be kept on file in the auditor's office until the final settlement of the county superintendent with the board of supervisors at the close of his term of office. No warrant shall be drawn by the auditor in excess of the amount then in the county treasury.

4118-d8. Itemized account of funds. The county superintendent shall furnish to the county board of supervisors a certified itemized account of all receipts and disbursements for the improvement of instruction. They shall examine and audit the account and publish a summary thereof with the proceedings of the regular June meeting of the board. The county superintendent shall also make such reports to the superintendent of public instruction as required by him.

CHAPTER 207

COUNTY BOARD OF EDUCATION

4119. Membership—election. The county board of education shall consist of the county superintendent ex officio, and six reputable citizens of the county, of either sex, of good educational qualifications, no two of whom shall be from the same school corporation. Each regular convention held for the election of county superintendent shall elect three members of said board, whose terms of office shall begin on the following Tuesday and shall be for six years, and until their successors are elected and qualified. Vacancies in the board may be filled by the board until the next regular convention, when the same shall be filled by the convention. A majority

of said board shall constitute a quorum. If the membership be reduced below a quorum, a special convention shall be called to fill the vacancies.

See 4098, duty of convention to elect county superintendent.

4120. Oaths. The members of said board shall take the oath of office required of county officers, and, except the county superintendent, shall serve without pay; but shall be allowed their actual, necessary expenses in performing their duties, not to exceed forty dollars each annually, to be audited by the board of supervisors and paid out of the general fund.

4121. Meetings — chairman — records. Meetings of the board shall be held on the second Monday of August and February in each year at the office of the county superintendent, and at such other times as may be fixed by the county superintendent, or by written request of three members filed with him. The county superintendent shall in all cases be chairman of the county board of education and a full and complete record shall be kept of their proceedings in a book kept for that purpose in the office of the county superintendent.

1. **Attempted official action over telephone.** A decision or action by the county board of education which has no other sanction than an assent thereto by the individual members, separately, over the telephone cannot supplant the previous contrary official action of the board. *State v Orr*, 192-1021; 184 NW 326.

4122. Duties. The board shall perform all duties imposed upon it by law, and shall act in an advisory capacity upon all matters referred to it by the county superintendent, and cooperate with him in formulating plans and regulations for the advancement and welfare of the schools under his supervision.

4122-c1. Federal cooperation. The county board of education or a school board in a county wherein is located an Indian reservation shall have power to enter into a contract with the United States government to operate and maintain a school or schools to be operated as a public school approved as provided for by the laws of this state for the purpose of educating Indian children. The expense of such operation and maintenance shall be paid by the United States government.

CHAPTER 208

SCHOOL DISTRICTS IN GENERAL

4123. Powers and jurisdiction. Each school district now existing shall continue a body politic as a school corporation, unless hereafter changed as provided by law, and as such may sue and be sued, hold property, and exercise all the powers granted by law, and shall have exclusive jurisdiction in all school matters over the territory therein contained.

1. Adoption of C., '73—effect on districts. *Hancock v Dist. Tp.*, 78-550; 43 NW 527; *Russell v Dist. Tp.*, 97-573; 66 NW 771.

2. General powers. A school district is a body corporate with the power to hold property and be a party to suits and contracts. *Baker v Chambles*, 4 Gr 428.

3. Political corporation. A district township is a political corporation within the meaning of Const., Art. XI, § 3, fixing the limit of indebtedness of political and municipal corporations. *Winspear v Dist. Tp.*, 37-542.

4. Real estate. A school district is a body corporate with power to acquire and hold real estate for schoolhouse sites. *Ind. Dist. v Fagen*, 94-676; 63 NW 456.

5. Rescission of conveyance. While the district has power to hold property for any purpose for which property is authorized to be acquired by it, yet if it has by action of the board taken a conveyance of property for a new site and the action of the board in establishing such site is reversed on appeal to the county superintendent, the conveyance becomes invalid and inoperative without any action on the part of the board for rescission. *Ind. Sch. Dist. v McClure*, 136-122; 113 NW 554.

6. Injunction to restrain illegal conduct. A school township may maintain an action in equity to enjoin persons from assuming without authority to act as officers of a district within such township. *Sch. Tp. v Wiggins*, 122-602; 98 NW 490.

7. Mandamus to compel issuance of diploma and grades. Mandamus is not available to a pupil in a public school to compel the school board to issue to him a certificate of graduation. *Sweitzer v Fisher*, 172-266; 154 NW 465; *Contra Valentine v Ind. Sch. Dist.*, 187-555; 174 NW 334; 191-1100; 183 NW 434.

8. De facto organization. A de facto school corporation exists as soon as the electors officially adopt a proposition to create an independent district out of the territory of an existing district and territory adjoining. *Herbst v Held*, 194-679; 190 NW 153.

9. Subject to action. A school district may be sued, and a judgment recovered on an order properly drawn and not paid. Mandamus is not the only, even if the proper, remedy. *Cross v Dist. Tp.*, 14-28.

10. Liability for negligence. The school district, being a public corporation or quasi corporation, is not liable for personal injuries sustained on account of the negligent construction of its schoolhouses or negligence in keeping them in repair. *Lane v Dist. Tp.*, 58-462; 12 NW 478.

11. Conversion of property. Whether a district township can be made liable for unlawful acts of officers in converting the property of others, quaere; but where such officer allowed lumber, levied on under attachment but subsequently released, to be used in a school building, held, that the district township was not liable for its conversion. *Charnock v Dist. Tp.*, 51-70; 50 NW 286.

12. Division of township—effect. The division of a township by the board of supervisors, under § 5531, C., '24, does not have the effect of dividing an existing school district. *Christensen v Board*, 201-794; 208 NW 291.

13. Employment of counsel. The board of directors has implied power in good faith to employ attorneys to defend against a proceeding for the dissolution of the district and to contract for a reasonable compensation for such services. *Rural Ind. Sch. Dist. v Daly*, 201-286; 207 NW 124.

4123-g1. Minimum size of school districts. No new school district shall be formed, nor shall the boundary lines of any existing school district be so changed as to make it contain an area less than four government sections of land; but nothing herein shall be construed to prevent the boundary lines of an existing school district from being changed so that it

shall be included in and consolidated with other districts, or joined to another district to form a single school district, nor shall it be construed to permit the formation of a consolidated district with an area of less than sixteen government sections of land or to permit the reduction of an existing consolidated district below an area of sixteen government sections of land.

4124. Names. School corporations composed of subdistricts shall be called school townships, and shall be designated as the school township of (naming civil township), in the county of (naming county), state of Iowa.

If there are two or more school corporations composed of subdistricts in any civil township, in addition to the foregoing they should be designated by number.

Other school corporations shall be designated as follows: The independent school district of (naming city, town, township, or village, and if there are two or more districts therein, including some appropriate name or number), in the county of (naming county), state of Iowa; or, the rural independent school district of (some appropriate name or number), township of (naming township), in the county of (naming county), state of Iowa; or, the consolidated school district of (some appropriate name or number), in the county of (naming county), state of Iowa.

1. "Independent district" defined. A "consolidated" school district is an "independent school district", within the meaning of § 4230, C., '24, authorizing the school board to elect a superintendent for a period not exceeding three years. *Cons. Sch. Dist. v Griffin*, 201-63; 206 NW 86.

4125. Directors. The affairs of each school corporation shall be conducted by a board of directors, the members of which in all independent school districts shall be chosen for a term of three years, except that in independent school districts which embrace a city and which have a population of one hundred twenty-five thousand or more, the term of directors shall be six years, and in all subdistricts of school townships for a term of one year.

See Chap. 211-C1, election of directors.

1. Discretion of board. The management of school affairs is left to the discretion of the board of directors, and such discretion will not be interfered with by the courts so far as it is exercised within the scope of the powers conferred upon the board. *Kinzer v Ind. Sch. Dist.*, 129-441; 105 NW 686.

2. Noninterference by courts. The courts will not interfere with the conclusion of the school board of a consolidated independent district that it is advisable for the time being to erect a temporary structure at a cost of not to exceed $2,000 for the purpose of supplementing the present inadequate school quarters. *James v Cons. Ind. Dist.*, 194-1224; 191 NW 60.

3. Mandamus. The board of directors being given exclusive control over the affairs of the school corporation subject to appeal to the county superintendent, an action of mandamus will lie to compel the board to comply with the orders of the superintendent in a

matter as to which the board has exclusive jurisdiction. *State v Thomas*, 152-500; 132 NW 842.

4. Employment of counsel. The board of directors has implied power in good faith to employ attorneys to defend against a proceeding for the dissolution of the district and to contract for a reasonable compensation for such services. *Rural Dist. v Daly*, 201-286; 207 NW 124.

4126. Division of school township—alterations. The board of any school township may, by a vote of a majority of all the members thereof, at the regular meeting in July, or at any special meeting called thereafter for that purpose, divide the school township into subdistricts such as justice, equity, and the interests of the people require, and may make such alterations of the boundaries of subdistricts heretofore formed as may be deemed necessary.

See 4131, boundary lines of district changed by county superintendent; 4132, restoration of land detached by county superintendent; 4133, changing of district boundaries by board; 4141, forming district with city, town, or village of 100 population as nucleus; 4143, single subdistrict containing village of 75 may become independent; 4150, all subdistricts of township become independent; 4151, rural independent districts of township become subdistricts; 4152, subdistricts of independent districts; 4153, uniting independent districts; chapter 209, formation of consolidated districts.

See 4143, subdistrict containing village may become independent; 4150, all subdistricts may become independent.

1. Adoption C., '73—effect on districts. *Russell v Dist. Tp.*, 97-573; 62 NW 661; 66 NW 771.

2. Applicability of section. The provision as to change of boundaries of subdistricts does not apply to independent districts; the boundaries of which can be changed, if at all, only under other statutory provisions. *Eason v Douglass*, 55-390; 7 NW 643; *Ind. Dist. v Ind. Dist.*, 65-590; 22 NW 689.

3. Section applied—Power of directors to redistrict the township. The board of directors of a district township have power, in the exercise of the discretion conferred by section 1796 of the code, to redistrict the township at any time that they may see proper, and a party aggrieved may appeal to the county superintendent; (Code, section 1829;) but he cannot enjoin the board from exercising such power, on the ground that the township has only recently been redistricted, and that such recent redistricting has been approved, on appeal, by the county superintendent. *Morgan v Wilfley et al*, 70 Iowa 338.

4. Readjustment of districts. After portions of an independent district have been taken away in the formation of a new consolidated district, the board may readjust subdistricts so as to obviate inconveniences resulting from some of the subdistricts being left with inadequate territory. *School Dist. Tp. v Ind. Sch. Dist.*, 149-480; 128 NW 848.

4127. Plat and record—filing. The board shall designate such subdistricts and all subsequent alterations in a distinct and legible manner upon a plat of the school township provided for that purpose, and shall cause a written description of the same to be recorded in the records of the school township, a copy of which shall be delivered by the secretary to the county treasurer and also to the county auditor, who shall record the same in his office.

See 4140, filing plat of district.

1. Parol evidence of formation. Whether parol evidence is competent to establish the formation of a subdistrict in the absence of a showing that a record of such formation did exist at one time, quaere, but evidence reviewed and held quite insufficient to show such formation. *State v Cons. Ind. Sch. Dist.*, 193-300; 187 NW 11.

4128. Boundaries. The boundaries of subdistricts shall conform to the lines of congressional divisions of land.

4129. Order—when effective. The formation or alteration of subdistricts as contemplated in sections 4126 to 4128, inclusive, shall not take effect until the next regular election thereafter, at which time a director shall be elected for any subdistrict newly formed.

4130. New township—election—notice. When a new civil township is formed, the same shall constitute a school township, which shall go into effect at the next regular election following the completed organization of the civil township. The notices of the first election shall be given by the county superintendent, and at such election a board of three directors shall be chosen.

1. Division of township—effect. The division of a township by the board of supervisors under § 5531, C., '24, does not have the effect of dividing an existing school district. *Christensen v Board*, 201-794; 208 NW 291.

4131. Attaching territory to adjoining corporation. In any case where, by reason of natural obstacles, any portion of the inhabitants of any school corporation in the opinion of the county superintendent cannot with reasonable facility attend school in their own corporation, he shall, by a written order, in duplicate, attach the part thus affected to an adjoining school corporation, the board of the same consenting thereto, one copy of which order shall be at once transmitted to the secretary of each corporation affected thereby, who shall record the same and make the proper designation on the plat of the corporation. Township or county lines shall not be a bar to the operation of this section.

See 4126, changing subdistrict boundary lines; 4132, restoration of land detached by county superintendent; 4133, changing of district boundaries by board; 4141, forming district with a city, town, or village of 100 population as nucleus; 4143, single subdistrict containing village of 75 may become independent; 4150, all subdistricts of township become independent; 4151, rural independent districts of township become subdistricts; 4152, subdistricts of independent districts; 4153, uniting independent districts; chapter 209, formation of consolidated districts.

1. Adoption of C., '73—effect on districts. *Dist. Tp. v Ind. Dist.*, 80-495; 45 NW 907; *Russell v Dist. Tp.*, 97-573; 66 NW 771; see *Hancock v Dist. Tp.*, 78-550; 43 NW 527; *Dist. Tp. v Ind. Dist.*, 82-10; 47 NW 1033.

2. Holding under former statute. *Ind. Dist. v Ind. Dist.*, 62-616; 17 NW 895.

3. Boundary lines not coinciding with civil township. *Dist. Tp. v Ind. Dist.*, 41-30.

4. Intertownship districts. There is now no authority for attaching territory situated within one dis-

trict township to another district township for school purposes except as here provided. *Large v Dist. Tp.*, 53-663; 6 NW 1; see *Troy Dist. Tp. v Dist. Tp.*, 53-667; 6 NW 34.

5. Jurisdiction. The action of the county superintendent as herein provided is essential. *Townsend v Garrett*, 170-409; 152 NW 565.

6. Jurisdiction. Where no natural obstacles exist there is nothing on which the county superintendent may base an order, and an action of his with reference to change of boundaries is without jurisdiction. *Sch. Tp. v Ind. Sch. Dist.*, 110-30; 81 NW 184.

7. Irregularities in effecting change. In a particular case held that what was done by the superintendent and the board of directors was sufficient to make an effectual change of the boundary attempted, notwithstanding some irregularities in the way in which it was done. *Newlon v Ind. Dist.*, 109-169; 80 NW 316.

8. Acquiescence in change. Where a property owner has acquiesced in the attempted change of boundary and recognized it as valid, he cannot afterwards, nor can his grantee, question its validity. *Newlon v Ind. Dist.*, 109-169; 80 NW 316.

9. Mandamus to determine district. The question as to whether certain territory shall be deemed part of the district township so that the district township is bound to furnish school facilities to such territory may be determined by action of mandamus. *Hancock v Dist. Tp.*, 78-550; 43 NW 527.

10. Payment of taxes. Whether a portion of one district township which is annexed to another district township for school purposes is properly so annexed or not, taxes levied and collected upon the certificate of the township to which the territory is attached should be paid to such township, and not to the township to which the territory properly belongs. *Dist. Tp. v Floete*, 59-109; 12 NW 809.

11. Inadequate district. By virtue of the provisions of this section it is possible that an independent district may be reduced in size to less than four sections of land. *Rural Ind. Sch. Dist. v New Ind. Sch. Dist.*, 120-119; 94 NW 284.

4132. Restoration. When the natural obstacles by reason of which territory has been set off by the county superintendent from one school district and attached to another in the same or an adjoining county, as provided in section 4131, have been removed, such territory may, upon the concurrence of the respective boards, be restored to the school district from which set off and shall be so restored by said boards upon the written application of two-thirds of the electors residing upon the territory so set off together with the concurrence of the county superintendent and the board of the school district from which such territory was originally set off by the county superintendent.

See 4126, changing subdistrict boundary lines; 4131, boundary lines of district changed by county superintendent; 4133, changing of district boundaries by board; 4141, forming district with city, town, or village of 100 population as nucleus; 4143, single subdistrict containing village of 75 may become independent; 4150, all subdistricts of township become independent; 4151, rural independent districts of township become subdistricts; 4152, subdistricts of independent districts; 4153, uniting independent districts; chapter 209, formation of consolidated districts.

1. Applicability. The provision for restoration of territory applies as well to territory incorporated into an independent district at the time of its organization as to such as is subsequently attached thereto. *Albin v Board*, 58-77; 12 NW 134; contra: see *Williams v Core*, 124-213; 99 NW 732.

2. Peremptory provision. *Bar-*

nett v Board, 73-134; 34 NW 780; *Odendahl v Russell*, 86-669; 53 NW 336.

3. Jurisdiction. If one of the townships has no district board, the restoration cannot be made even upon the written application here provided for, as the concurrence of the board is necessary though they are given no discretion. *Ind. Dist. v Durland*, 45-53.

4. When restoration effective. Where a restoration of territory is agreed to and no time fixed therefor, it will be considered as taking place the first of March following; and taxes collected prior to that time should be paid to the township to which the territory had previously been attached. *Dist. Tp. v Floete*, 59-109; 12 NW 809.

5. Transfer of original territory. School boards may not, by joint action under this section detach and set off to one of the districts territory which was part of the territory of a consolidated independent district as originally formed. *Zaiser v Cons. Ind. Sch. Dist.*, 193-974; 186 NW 66.

4133. Boundary lines changed—consolidation. The boundary lines of contiguous school corporations may be changed by the concurrent action of the respective boards of directors at their regular meetings in July, or at special meetings thereafter, called for that purpose. The corporation from which territory is detached shall, after the change, contain not less than four government sections of land, and its boundary lines must conform to the lines of congressional divisions of land. In the same manner, the boundary lines of contiguous school corporations may be so changed that one corporation shall be included in and consolidated with the other as a single corporation.

See 4126, changing subdistrict boundary lines; 4131, boundary lines of district changed by county superintendent; 4141, forming district with city, town, or village of 100 population as nucleus; 4143, single subdistrict containing village of 75 may become independent; 4150, all subdistricts of township become independent; 4151, rural independent districts of township become subdistricts; 4152, subdistricts of independent districts; 4153, uniting independent districts; chapter 209, formation of consolidated districts; 4132, restoration of land detached by county superintendent.

1. Power to change boundaries. *Eason v Douglass*, 55-390; 7 NW 643; *Ind. Dist. v Ind. Dist.*, 65-590; 22 NW 689.

2. Holdings under former statutes. *Hightower v Overhaulser*, 65-347; 21 NW 671; *Dist. Tp. v Ind. Dist.*, 72-687; 34 NW 472; *Ind. Dist. v Dist. Tp.*, 82-169; 47 NW 1030.

3. Consolidation of different independent districts. *State v Grefe*, 139-18; 117 NW 13; *State v Spellman*, 191-1181; 183 NW 577.

4. Boundary lines — changes — limitation. When the boundary line between a school township and an independent school district is also the line between civil townships, the school boards have no power by concurrent action to change such boundary line (§ 4135, C., '27) notwithstanding the broad and sweeping provisions of section 4133 of said code. *Thomasson v Warren Grove Ind. Sch. Dist.*, 206-1183; 221 NW 776.

4134. Board in new district—settlement. When boundary lines are changed by concurrent action, school districts affected thereby shall not be required to elect new boards of directors, and the boards then in office may make final settlement of all assets and liabilities as provided in sections 4137 and 4138

and in case of a consolidation of districts under this and the preceding section the officers and members of the board of directors of the independent district having the larger number of inhabitants, shall continue to be the officers and directors of the independent district as consolidated for the period for which such officers and directors were elected.

4136. Board in new district—organization. Whenever any new school corporation has been established, such corporation shall organize according to sections 4144, 4144-a1, and 4144-a2, or 4148, and if such new board is elected, it shall organize as provided in chapter 213 except that such organization shall be effected at any time prior to the second day of July following the election of the directors. Upon the election and organization of the new boards, the old boards shall cease to exist except for the purpose specified in the two following sections.

4137. Division of assets and distribution of liabilities. Within twenty days after the organization of the new boards, they shall meet jointly with the several boards of directors whose districts have been affected by the organization of the new corporation or corporations and all of said boards acting jointly shall recommend to the several boards an equitable division of the assets of the several school corporations or parts thereof and an equitable distribution of the liabilities of such school corporations or parts thereof among the new school corporations.

1. Applicability. The provisions as to division of assets in case of division of boundary or division of the district township are not applicable in case of an action by one district township against another. *Dist. Tp. v Dist. Tp.*, 52-73; 2 NW 965.

2. Jurisdiction. The directors constitute a special tribunal to make division of assets and liabilities. Their jurisdiction for that purpose is exclusive and their decision cannot be collaterally attacked. *Ind. Sch. Dist. v Ind. Sch. Dist.*, 43-444; *Dist. Tp. v Dist. Tp.*, 45-104.

3. Conclusiveness of adjudication. The adjudication of the directors in the division of assets is final and conclusive until reversed by proper proceedings. *Ind. Sch. Dist. v Ind. Sch. Dist.*, 45-391.

4. Mandamus. A person who has ceased to be a resident of the district and a patron of the school, but is still a taxpayer, may bring action to compel the board of directors to make the apportionment here required. *Case v Blood*, 71-632; 33 NW 144.

5. Equitable action. Where the proper board of directors has made a division of assets and liabilities upon the organization of subdistricts into independent districts and then has ceased to exist, an action in equity may be maintained to effect such division, where it appears that the one originally made was inequitable and unjust, and there was no negligence on the part of the plaintiff in not having a proper division made by the board while in existence. *Ind. Sch. Dist. v Ind. Sch. Dist.*, 41-321.

6. Party defendant. After the division of a district township the old district township goes out of existence entirely, and action by the new township for division of assets may be brought against the independent districts formed out of the other portion of the old dis-

trict township. In such case an action against the old district could be of no avail and no jurisdiction would be acquired thereby. *Dist. Tp. v Ind. Dist.*, 63-188; 18 NW 859.

7. Limitations. In making the division of assets and liabilities here contemplated the arbitrators are limited to those existing between the parties at the time the new district was organized. *Ind. Dist. v Dist. Tp.*, 107-73; 77 NW 525.

8. Manner of division. The division of assets on the severance of the territory from an independent district necessitates either the sale of the schoolhouse and grounds of such district or the payment to the district to which the severed territory should be attached, of a portion of the value of such property. *Williams v Core*, 124-213; 99 NW 732.

9. Schoolhouses and real estate. In making the division, schoolhouses and real estate used for school purposes are to be taken into account, but such division need not result in the partition of the real estate. *Dist. Tp. v Dist. Tp.*, 36-216.

10. Schoolhouses. The schoolhouse and all its belongings are the property of the original district until awarded to the newly formed independent district. Such division must be made by the board, and not by the courts. *Dist. Tp. v Wiggins*, 110-702; 80 NW 432.

11. Bonds. Where a portion of an independent district is severed and restored to a district township, to which it geographically belongs, it seems that bonds issued by the independent district must be taken into account in apportioning the liabilities between it and the district township, although the district township cannot issue such bonds: *Albin v Board*, 58-77; 12 NW 134.

12. Bonds. In a suit by the holder of bonds of a district which has ceased to exist by reason of subdivision of its territory into new districts, a court of equity may enforce payment by the new districts in accordance with an equitable apportionment of the liability on the basis of taxable property and population. *Gamble v Rural Ind. Sch. Dist.*, 146 Fed 113.

13. Bonds. The holder of bonds against the original district may maintain an action in equity against the new districts created out of the original district to enforce the payment of his bonds. *Everett v Ind. Sch. Dist.*, 109 Fed 697.

14. Liability on old indebtedness. A district which is created from another district is liable for its proportion of the indebtedness of the parent district regardless of whether such indebtedness is in excess of the constitutional limitation of indebtedness which the new district might create. *Taylor v Sch. Dist.*, 97 Fed 753.

4138. Arbitration. If the boards can not agree on such division and distribution, the matters on which they differ shall be decided by disinterested arbitrators, one selected by each board having an interest therein, and if the number thus selected is even, then one shall be added by the county superintendent. The decision of the arbitrators shall be made in writing and filed with the secretary of the new corporation, and any party to the proceedings may appeal therefrom to the district court by serving notice thereof on such secretary within twenty days after the decision is filed. Such appeal shall be tried in equity and a decree entered determining the entire matter, including the levy, collection, and distribution of any necessary taxes.

1. Mandamus. Where it appears that the respective boards of directors have met and failed to agree, mandamus may be maintained to compel a choice of arbitrators, but not to compel the making of equita-

ble division. *Case v Blood*, 68-486; 27 NW 470.

2. Setting aside award. Where the boards of the two districts appoint arbitrators to make division of assets and liabilities, a court of equity has jurisdiction to set aside their award for gross error in computation, etc. In such a case an appeal would not lie to the county superintendent. *Dist. Tp. v Dist. Tp.*, 54-286; 6 NW 295.

3. Judgment on award. The arbitration here contemplated is a statutory arbitration and a court cannot enter up judgment for a different amount than that taxed in the award. *Dist. Tp. v Ind. Dist.*, 60-141; 14 NW 201.

4. Method of service. As to proper method of service when statute simply requires the notice to be "served", and specifies no method of service, see *Town of Casey v Hogue*, 204-3; 214 NW 729.

4139. Taxes to effect equalization. If necessary to equalize such division and distribution, the new board or boards may provide for the levy of additional taxes upon the property of any corporation or part of corporation and for the distribution of the same so as to effect such equalization.

4140. Plats of school districts. The board of directors of each school corporation shall file in the office of the county superintendent a plat showing the boundaries of the district, and, in school townships, indicating the boundaries of the subdistricts. Any change thereafter made in the boundaries of any school district or subdistrict shall be reported to the county superintendent by the secretary of the board of the district affected thereby, and all changes shall be indicated by the county superintendent on the plats. Said superintendent shall furnish each the county auditor and the treasurer with a copy of said plat and of any changes therein when made.

See 4127, filing plat of subdistrict.

4141. Formation of independent district. Upon the written petition of any ten voters of a city, town, or village of over one hundred residents, to the board of the school corporation in which the portion of the city or town having the largest number of voters is situated, such board shall establish the boundaries of a proposed independent district, including therein all of the city, town, or village, and also such contiguous territory as is authorized by a written petition of a majority of the resident electors of the contiguous territory proposed to be included in said district, in subdivisions not smaller than the smallest tract as made by the government survey in the same or any adjoining school corporations, as may best subserve the convenience of the people for school purposes, and shall give the same notices of an election as required in other cases.

See 4126, changing subdistrict boundary lines; 4131, boundary lines of district changed by county superintendent; 4143, single subdistrict containing village of 75 may become independent; 4150, all subdistricts of township become independent; 4133, changing of district boundaries by board; 4151, rural independent districts of township become subdistricts; 4152, subdistricts of independent districts; 4153, uniting independent

districts; chapter 209, formation of consolidated districts; 4132, restoration of land detached by county superintendent.

1. Holding under former statute. *Rural Ind. Sch. Dist. v New Ind. Sch. Dist.*, 120-119; 94 NW 284.

2. Several districts within same city or town. *Ind. Sch. Dist. v Jones*, 142-8; 120 NW 315.

3. Dual methods of forming districts. *Sch. Dist. Tp. v Ind. Sch. Dist.*, 149-480; 128 NW 848.

4. Incorporation of town—effect. The original incorporation of territory as a town embracing parts of several independent school districts does not affect the boundaries of such school districts. *Ind. Sch. Dist. v Jones*, 142-8; 120 NW 315.

5. Extension of city limits—effect. The extension of the limits of the city does not have the effect of enlarging the limits of the school district before existing. *State v Ind. Sch. Dist.*, 46-425.

6. Jurisdiction. It is a prerequisite that there shall be the specified number of inhabitants, and that matter may be inquired into by quo warranto. *State v Ind. Sch. Dist.*, 29-264.

7. Jurisdiction — territory. A written petition of ten voters is essential before the board acquires jurisdiction to act. The territory with reference to which there is no petition can not be included, but the proposed district need not necessarily contain all the territory for which the petition is presented. *Munn v Sch. Tp.*, 110-652; 82 NW 323.

8. Jurisdiction. The jurisdiction of the board of the school corporation attaches upon the presentation of the first petition signed by ten voters and the fact that it erred in its conclusion in canvassing the petition signed by the electors of contiguous territory did not defeat its jurisdiction. *Sch. Corp. v Ind. Sch. Dist.*, 162-257; 144 NW 20; see *Ind. Sch. Dist. v Ind. Sch. Dist.*, 153-598; 134 NW 75.

9. What lands are "contiguous". Whether territory is so contiguous to a town as to be properly included with it in the same independent district is a question to be settled, at least in the first instance, by the school officers. *Ind. Dist. v Board*, 51-658; 2 NW 590.

10. Questions of fact. The desirability or necessity for the independent district is for the determination of the electors. The board is to say whether the village contains one hundred residents and whether the requisite number of electors have signed the respective petitions, and having so found, no option is left save to fix the boundaries of the proposed district and order the election. *Munn v Sch. Tp.*, 110-652; 82 NW 323.

11. Questions of fact. The question whether the inclusion of contiguous territory subserves the convenience of the people for school purposes is one to be determined by the board to which the petition is directed and, on appeal, by the county superintendent. It is not a matter for determination by the court in passing upon the validity of the consolidation. *Sch. Dist. Tp. v Ind. Sch. Dist.*, 149-480; 128 NW 848.

12. Trial on appeal. On appeal from the action of the board to the county superintendent, the latter determines the question de novo, and may enter such order as ought to have been entered by the board. *Munn v Sch. Tp.*, 110-652; 82 NW 323.

13. Permissible territory. An independent district may be formed from territory lying in adjoining townships, either in the same or different counties, and no concurrent action of the school authorities of the two townships is necessary. *Ind. Sch. Dist. v Board*, 25-305; *Dist. Tp. v Ind. Dist.*, 4130.

14. Extent of district. *Rural Ind. Sch. Dist. v New Ind. Sch. Dist.*, 120-119; 94 NW 284.

15. Extent of territory. The extent of the territory which may be included with the city or town in the independent district is not limited. *Ft. Dodge City Sch. Dist. v Dist. Tp.*, 15-434.

16. Territorial limitation — conflicting statutes. An independent school district may be legally formed under this section with less than two sections of land, irrespective of such limitation in C., '97, § 2798 [C., '24, § 4152]. *Cutler v Board*, 172-361; 154 NW 671.

17. Consent to severance. An independent district may be formed which includes territory theretofore a part of a school township, and it is not essential that the board of directors of the township out of which the new district is formed shall concur in the formation thereof. *Sch. Tp. v Ind. Sch. Dist.*, 134-349; 112 NW 5.

18. Priority. Where territory is included in each of two independent districts the one first taking steps to organize is entitled to it. *Ind. Dist. v Board*, 51-658; 2 NW 590.

19. Unauthorized severance. When the acquiescence of the majority of the outside voters is given and acted upon, a portion of such voters cannot have their land severed from the independent district by proceedings in accordance with C., '97, § 2792 [C., '24, § 4132]. *Williams v Core*, 124-213; 99 NW 732.

20. Unauthorized restoration. Territory added, under this section, to an independent school district, may not be detached and restored, under C., '97, § 2792 [C., '24, § 4132], to the district from which taken, even though, since the addition was made, no expense had been incurred beyond the ordinary expense of maintaining the school. *Swain v Rogers*, 178-830; 160 NW 231.

21. Annexation of territory. Territory of the district township out of which an independent district has been formed may subsequently be annexed thereto by proper action of the respective boards. *Ind. Dist. v Dist. Tp.*, 82-169; 47 NW 1030.

22. Conduct of election. An election upon the question as to the organization of an independent district must be conducted as to the time of opening the polls, etc., according to the provisions as to other school elections, and if not so conducted the proceedings will be void. *Dist. Tp. v Ind. Dist.*, 34-306.

23. Void election. Where the question of a separate organization was submitted only to the voters within the city, and not to those within the territory included in the contemplated district, but outside of the city, the election was held void although the majority in the city was greater than the total number of voters in such other territory. *Fort Dodge City Sch. Dist. v Dist. Tp.*, 17-85.

24. Extension of consolidated district. This section is available to a consolidated school district which wishes to extend its boundaries by adding thereto part of the territory of an adjoining consolidated school district. Section 4133 does not provide the exclusive procedure. *Chambers v Housel*, 211-314; 233 NW 502.

4142. Vote by ballot—separate ballot boxes. At the election all voters upon the territory included within the contemplated independent district shall be allowed to vote by ballot for or against such independent organization. When it is proposed to include territory outside the city, town, or village, the voters residing upon such outside territory shall vote separately upon the proposition for the formation of such new district. If a majority of the votes so cast is against including such outside territory, then the proposed independent district shall not be formed. When such territory is included in an independent district, adequate school facilities shall be provided for the increased attendance.

1. Majority vote in additional territory. An existing independent school district composed of the territory within a city or town and certain rural territory may not be formed into a new independent district composed of the existing territory and additional rural territory unless a majority of the voters in such additional territory vote in favor of such new district. *State v Van Peursem*, 202-545; 210 NW 576.

4143. Subdistrict organized into independent district. A subdistrict containing a village with a population of seventy-five or more may, under the provisions of sections 4141 and 4142, organize into an independent school district.

See 4126, changing subdistrict boundary lines; 4131, boundary lines of district changed by county superintendent; 4132, restoration of land detached by county superintendent; 4133, changing of district boundaries by board; 4141, forming district with city, town, or village of 100 population a nucleus; 4150, all subdistricts of township become independent; 4151, rural independent districts of township become subdistricts; 4152, subdistricts of independent districts; 4153, uniting independent districts; chapter 209, formation of consolidated districts.

1. Holding under former statute. *Allen v Dist. Tp.*, 70-434; 30 NW 684.

4144. When district deemed formed. If a majority of the votes cast at such election is in favor of the proposition, the formation of said independent district shall be deemed effected.

4144-a1. Ex officio officers. The board of directors and other officers of the school corporation then holding office in the district affected having the largest population, shall be, ex officio, the officers of said new district in all cases where the population, outside said major district and within the newly formed district, does not exceed twenty-five per cent of the population of said major district.

4144-a2. Tenure of ex officio officers. Said ex officio officers shall serve until the expiration of the time for which they were originally elected.

4145. Offices abolished—officers of districts outside. The terms of office of all other directors, treasurers, and officers of boards in territory lying wholly within said new district shall terminate; but in districts lying partly without the new district, the directors, officers, and treasurers shall continue to have authority over the territory lying within their districts and without the new district.

4146. Contracts of employment not affected. The terms of employment of superintendents, principals, and teachers for any current school year shall not be affected by the formation of the new district.

4147. Election expenses. The expense of such election shall be borne by the independent district, in case such district shall be formed, otherwise by the separate districts in proportion to the assessed valuation thereof within the proposed independent district.

4148. New board and treasurer. If the population of the newly formed district, outside the major district specified in

section 4144-a1, does exceed twenty-five per cent of the population of such major district, the board of directors of said latter district shall give the usual notice of an election to choose a board of directors, and a treasurer in case such treasurer is required to be elected by the voters.

1. Officers de facto without election. The board of directors of an independent school corporation which has been supplanted by the official organization of a new and larger district, became de facto officers of the new corporation by openly, notoriously, in good faith, and with the apparent acquiescence of the people, acting for and on behalf of such new corporation. The acts of such de facto officers may not be collaterally assailed. *Herbst v Held*, 194-679; 190 NW 153.

4149. Taxes certified and levied. The organization of such independent district shall be effected on or before the first day of August of the year in which it is attempted, and, when completed, all taxes certified for the school township or townships of which the independent district formed a part shall be void so far as the property within the limits of the independent district is concerned, and the board of such independent district shall fix the amount of all necessary taxes for school purposes, including schoolhouse taxes, at a meeting called for such purpose at any time before the third Monday of August, which shall be certified to the board of supervisors on or before the first Monday of September, and it shall levy said tax at the same time and in the same manner that other school taxes are required to be levied.

1. Applicability. *Munn v Sch. Tp.*, 110-652; 82 NW 323.

2. Effect of new organization. Whether the organization of an independent district will render void taxes levied prior to such organization to pay debt for the erection of a schoolhouse therein, quaere; but such organization cannot prejudice the rights of a party having a valid claim against the whole district prior to such organization. *Stevenson v Dist. Tp.*, 35-462.

4150. School township divided. At any time before the first day of August, upon the written request of one-third of the legal voters in each subdistrict of any school township, the board shall call an election in the subdistricts, giving at least thirty days' notice thereof by posting three notices in each subdistrict in each school township, at which election the voters shall vote by ballot for or against rural independent district organization. If a majority of the votes cast in each subdistrict shall be favorable to such independent organization, then each subdistrict shall become a rural independent district, and the board of the school township shall then call an election in each rural independent district for the choice of three directors, to serve one, two, and three years, respectively, and the organization of the said rural independent district shall be completed.

1. Effect of reorganization. When a district township is thus divided into independent districts, the old district township ceases to

exist. *Dist. Tp. v Ind. Dist.*, 36-220.

2. Organization — sufficiency. Where a subdistrict had been formed but no director elected, and in pursuance of steps taken before the formation of the new district the subdistricts of the township, including the new one, voted for organization into independent districts, and the new subdistrict then properly completed its organization as an independent district, held, that it was properly organized. *Ind. Sch. Dist. v Ind. Sch. Dist.*, 48-157.

3. Legalization act — effect. Where the legislature legalized the organization of an independent district, held, that such legalization did not operate to make a part of the district territory which had previously been organized into a separate independent district. *Ind. Sch. Dist. v Ind. Sch. Dist.*, 48-157.

4. Prior creditors. The new independent district is not liable for the debts of the original subdistricts from which it is formed. Such debts, being claims against the district township, may be enforced by action against all the independent districts which have been formed out of it, and a judgment may be rendered against them jointly, which may be enforced against any one of them, leaving the question as to the apportionment of such judgment to be settled between the districts themselves. *Stevenson v Dist. Tp.*, 35-462; *Knoxville National Bank v Ind. Dist.*, 40-612; *Ind. Sch. Dist. v Dist. Ct.*, 48-182; *Kennedy v Ind. Sch. Dist.*, 48-189; *White Oak Dist. Tp. v Dist. Tp.*, 52-73; 2 NW 965.

5. Action in equity. Suit against the new districts on indebtedness of the old district must be brought in equity. *Fairfield v Rural Ind. Sch. Dist.*, 111 Fed 108.

6. Action at law. If the new districts have by agreement divided and apportioned between them the indebtedness of the old district, then an action against them may be at law. *Fairfield v Rural Ind. Sch. Dist.*, 111 Fed 453.

4151. Rural independent districts united. A township which has been divided into rural independent districts may be erected into a school township by a vote of the electors, to be taken upon the written request of one-third of the legal voters residing in such civil township.

Upon presentation of such written request to the county superintendent, he shall call a special election at the usual place or places of holding the township election, upon giving at least ten days' notice thereof by posting three written notices in each rural independent district in the township, and by publication in a newspaper, if one be published in such township, at which election the said electors shall vote by ballot for or against a school township organization.

If a majority of the votes cast at such election be in favor of such organization, each rural independent district shall become a subdistrict of the school township, and within thirty days thereafter shall hold a special election in the manner and for the purpose provided by law for regular subdistrict elections in school townships divided into an even or an odd number of subdistricts as the case may be, except that the required notices shall be posted by the secretary of each of the rural independent districts. The officers first elected shall qualify on or before their organization as a board of directors of the school township, which organization shall be within thirty days next following their election and shall serve until the third Monday in March.

The board of each of the rural independent districts with its secretary and treasurer shall meet at the time of the organization of the newly elected school township board, examine the books of and settle with its secretary and treasurer, turn over the assets and liabilities of the district to the school township board and make such reports as are required by law; for these purposes they shall continue to serve until the organization of the school township board at which time their terms of office shall terminate. Thereafter all elections shall be as provided in chapter 211-C1 and the organization of the board shall be as provided in section 4220.

1. Holding under former statutes. *State v Ind. Sch. Dist.*, 29-264.

4152. Subdivision of independent districts. Independent districts may subdivide for the purpose of forming two or more independent districts, the board of directors of the original independent district to establish the boundary lines of the districts thus formed, but no such new district shall be organized except on a majority vote of the electors of each proposed district nor with territory less than that required by section 4123-g1.

1. Territorial limitation. *Cutler v Board*, 172-361; 154 NW 671.

4153. Uniting independent districts. Independent districts located contiguous to each other may unite and form one and the same independent district in the manner following: At the written request of any ten legal voters residing in each of said independent districts, or, if there be not ten, then a majority of such voters, their respective boards of directors shall require their secretaries to give at least ten days' notice of the time and place of an election in each of such districts, by posting written notices in at least five public places in each of said districts, at which election the electors shall vote by ballot for or against a consolidated organization of said independent districts, and, if a majority of the votes cast at the election in each district shall be in favor of uniting said districts, the secretaries shall give similar notice of an election as provided for by law for the organization of independent districts, including cities and towns.

1. Jurisdiction. Where there is no written request of electors nor proper action of the board of directors looking toward the consolidation of independent districts, and the notice of election does not properly specify its object, an election on the question of consolidation will be void, and the original and independent districts will be still in existence. *State v Leverton*, 53-483; 5 NW 613.

2. Waiver of irregularity. The invalidity of the petition and notice cannot be urged by electors who were present and voted upon the proposition for consolidation. *Molyneaux v Molyneaux*, 130-100; 106 NW 370.

3. Conduct of election. The elec-

tions in the different districts with reference to the consolidation need not be held on the same day and at the same time. If any such requirement is contemplated by the statute it is directory merely. *Molyneaux v Molyneaux,* 130-100; 106 NW 370.

4. Different methods of consolidating districts. *State v Spellman,* 191-1181; 183 NW 577.

CHAPTER 209

CONSOLIDATED SCHOOL DISTRICTS

4154. Consolidated corporations. Consolidated school corporations containing an area of not less than sixteen government sections of contiguous territory in one or more counties may be organized as independent districts for the purpose of maintaining a consolidated school, in the manner hereinafter provided.

1. Different methods of forming consolidated independent district. *State v Spellman,* 191-1181; 183 NW 577.

2. Applicability. *Wallace v. Ind. Sch. Dist.,* 150-711; 130 NW 804.

3. Government section. Although a government section does not necessarily include 640 acres, it cannot be construed to include the unsurveyed part of a certain section covered by a lake. *Rural Ind. Sch. Dist. v Ventura Cons. Dist.,* 185-968; 171 NW 576; see *Powers v Harten,* 183-764; 167 NW 693.

4. Fraud in fixing boundaries. Fraud may not be predicated on the fact that the boundary lines of a consolidated independent school district were very irregular. *State v Thompson,* 190-1160; 181 NW 434.

5. Adjustment of accounts. The right of a school corporation which has, by the organization of a consolidated district, been deprived of a certain territory, is to adjust its accounts with the new district. *Smith v Blairsburg Ind. Sch. Dist.,* 179-500; 159 NW 1027.

6. Second or additional consolidation. A consolidated school district, may, after effecting such consolidation, again avail itself of the same provision of law and effect a further or second consolidation. *Arnold v Sch. Dist.,* 173-199; 155 NW 278; *State v Thompson,* 190-1160; 181 NW 434.

7. Teachers—power to employ. A "consolidated" school district is an "independent school district" within the meaning of § 4230, C., '24, authorizing the school board to elect a superintendent for a period not exceeding three years. *Cons. Sch. Dist. v Griffin,* 201-63; 206 NW 86.

8. "Independent" district. A "consolidated" school district is an "independent school district" within the meaning of § 4230, C., '24, authorizing the school board to elect a superintendent for a period not exceeding three years. *Cons. Dist. v Griffin,* 201-63; 206 NW 86.

9. "Government section" defined. The statutory provisions that consolidated school corporations shall not be organized with less than, nor reduced below, "sixteen government sections" of contiguous territory, do not mean "sixteen square sections" of land, but mean an area equal to sixteen government sections of land. *Chambers v Housel,* 211-314; 233 NW 502.

4155. Petition. A petition describing the boundaries of the territory and asking for the establishment of boundaries for a proposed school corporation, signed by one-third of the voters residing within the limits of the territory described, shall be filed with the county superintendent of the county in which the greater number of the qualified electors reside.

1. **Sufficiency.** A petition for a consolidated school district, which specifically describes contiguous territory surrounding the independent district with which it is filed, will be construed as embracing the territory within such independent district, though such territory is not specifically mentioned in the petition. *Smith v Blairsburg Ind. Sch. Dist.*, 179-500; 159 NW 1027.

2. **Erroneous recital in petition.** A petition is not nullified by an erroneous recital therein as to the section of the statute under which the proceedings are instituted. *State v Hall*, 190-1283; 181 NW 633.

3. **Extraneous matter — effect.** The legality of the election is not affected by the petition calling for the location of the schoolhouse at or near a particular locality. *Cons. Ind. Sch. Dist. v Martin*, 170-262; 152 NW 623.

4. **Describing boundary of lands.** The "boundaries" of the territory proposed to be included in a consolidated school district may be sufficiently described by setting forth contiguous territory by governmental descriptions. *Smith v Blairsburg Ind. Sch. Dist.*, 179-500; 159 NW 1027.

5. **What constitutes "filing".** *Smith v Blairsburg Ind. Sch. Dist.*, 179-500; 159 NW 1027.

6. **Effect of "filing".** *Smith v Blairsburg Ind. Sch. Dist.*, 179-500; 159 NW 1027.

7. **When jurisdiction attaches.** Jurisdiction attaches when the proper and approved petition is filed. *State v Rowe*, 187-1116; 175 NW 32.

8. **Refusal to permit inspection.** It is immaterial that school officials refused to permit an inspection of a petition for a consolidated school district after such petition had been declared sufficient and after time for appeal from such finding had expired. *Smith v Blairsburg Ind. Sch. Dist.*, 179-500; 159 NW 1027.

9. **Subsequent action by other districts—effect.** The jurisdiction acquired by the filing of a petition for the organization of a consolidated school district, duly determined, by the calling of an election thereon, to be legally sufficient, is not defeated by the subsequent joint action of the boards of two adjoining districts in transferring, prior to said election, territory affected by said proposed consolidated district. *Ind. Sch. Dist. v Gwinn*, 178-145; 159 NW 687.

10. **Remedy for irregularities.** *State v Rowe*, 187-1116; 175 NW 32.

11. **Method of review under former statute.** *Smith v Blairsburg Ind. Sch. Dist.*, 179-500; 159 NW 1027.

4156. Affidavit—presumption. Such petition shall be accompanied by an affidavit showing the number of qualified electors living in the territory described in the petition and signed by a qualified elector residing in the territory, and if parts of the territory described in the petition are situated in different counties, the affidavit shall show separately as to each county, the number of qualified electors in the part of the county included in the territory described. The affidavit shall be taken as true unless objections to it are filed on or before the time fixed for filing objections as provided in section 4157.

1. **Who are "electors"?** Formerly male voters alone were counted in determining the sufficiency of a petition. *Hutchins v City*, 176-189; 157 NW 881; *McEvoy v Christensen*, 178-1180; 159 NW 179; *Sears v City*, 183-1104; 166 NW 700.

2. **"Electors".** Where a proposed consolidated school district comprised territory within two adjoining counties, held, that an elector who had resided in the proposed district for more than sixty days, but had moved from one county to the other less than sixty days prior to the election to consolidate, was not qualified. *Taylor v Ind. Sch. Dist.*, 181-544; 164 NW 878.

4157. Objections—time of filing—notice. Within ten days after the petition is filed, the county superintendent shall fix a final date for filing objections to the petition in the office of the county superintendent, and give notice for at least ten days, by one publication in a newspaper published within the territory described in the petition, or if none be published therein, in the next nearest town or city in any county in which any part of the territory described in the petition is situated. Objections shall be in writing in the form of an affidavit and may be made by any person residing or owning land within the territory described in the petition, or who would be injuriously affected by the formation of such new corporation, and shall be on file not later than twelve o'clock noon of the final day fixed for filing objections.

1. Retracing steps to avoid illegality. A publication within the statutory time of notice of hearing on a petition gives the county superintendent such jurisdiction over the subject matter that, upon later discovering his inadvertent disregard of material provisions of law, he may validly retrace his steps, republish the notice, and proceed as in case of an original filing. *State v Cons. Ind. Sch. Dist.*, 195-637; 192 NW 5.

4158. Hearing — decision — publication of order. On the final date fixed for filing objections, interested parties may present evidence and arguments, and the county superintendent shall review the matter on its merits and within five days after the conclusion of any hearing, shall rule on the objections and shall enter an order fixing such boundaries for the proposed school corporation as will in his judgment be for the best interests of all parties concerned, having due regard for the welfare of adjoining districts; or dismiss the petition. The county superintendent shall at once publish this order in the same newspaper in which the original notice was published.

1. Approval by county superintendent. *Smith v Blairsburg Ind. Sch. Dist.*, 179-500; 159 NW 1027.

2. Approval by county superintendent. A petition for a consolidated school district, embracing land wholly within one county, need only be approved by the county superintendent of such county, even though part of the territory proposed to be appropriated by the consolidated district is taken from another district, which, for all school purposes, is under the jurisdiction of the county superintendent of a different county. *Ind. Sch. Dist. v Gwinn*, 178-145; 159 NW 687.

3. Qualified approval by superintendent. A county superintendent under prior statutes, had no power to qualify his approval of a petition. *State v Rowe*, 187-1116; 175 NW 32.

4. Jurisdiction to divide districts. *State v Cons. Ind. Sch. Dist.*, 190-903; 181 NW 178.

4159. Appeal. Within ten days after the publication of such order, any petitioner, or any person who filed objections, or any person residing upon or owning land included in or excluded from the district by any change in the boundary lines from those proposed in the petition, may appeal from the

decision of the county superintendent to the county board of education by serving written notice on the county superintendent.

See 63(23), method of computing time.

1. Nondisqualification of county superintendent. A county superintendent is not disqualified, on appeal to the county board of education from his decision dismissing a petition for the dissolution of a consolidated school district, from voting as a member of said board, to sustain his own decision; it not appearing that he lived or owned land within the district. *Thie v Cordell*, 199-709; 202 NW 532.

4160. Filing papers—time of hearing—notice. Within five days after the time for appeal has expired, the county superintendent shall file with the county board of education all the original papers together with his decision and fix a time and place for hearing such appeal, and give notice to each appellant by registered letter. If more than one person has signed the same notice of appeal, notice to the first three persons whose names appear thereon shall be deemed notice to all. The time fixed for such hearing shall not be less than five nor more than ten days after the time for appeal expires.

1. Effect of appeal in re objection. The taking of an appeal from an order of the county superintendent overruling objections to a petition for a consolidated independent school district works a suspension, until the final decision by the county board of education, of all action by the county superintendent in the matter of calling an election. *State Cons. Ind. Sch. Dist.*, 190-1154; 181 NW 495.

4161. Appeal when territory in one county. If the territory described in the petition for the proposed corporation lies wholly in one county, the county board of education in the said county shall hear the said objections at the time and place fixed by the county superintendent, and within five days after submission thereof shall determine and fix such boundaries for the proposed school corporation as in its judgment will be for the best interests of all concerned, without regard to existing district lines. If such boundaries are neither those petitioned for nor those fixed by the county superintendent, the hearing shall be adjourned, and notice of such adjourned hearing shall be given as for the hearing before the county superintendent, and upon the final hearing the board of education shall fix the boundaries, or dismiss the petition, which shall be final.

1. Adding new territory. Formerly the county board of education, on appeal, had no jurisdiction to order the inclusion of territory not already embraced within the boundaries as set forth in the petition. *Brooker v Ludlow*, 189-760; 179 NW 145.

2. Illegal action—effect. A holding on certiorari that a county board of education has exceeded its jurisdiction in proceedings for the organization of a consolidated district, does not have the effect of nullifying the entire proceeding ab initio, but simply necessitates a remand to the board, where the illegality occurred, with direction to the board to proceed anew and within the limits of its jurisdiction. *Brooker v Ludlow*, 192-553; 185 NW 60.

4162. Appeal when territory in different counties. If the territory described in the petition for the proposed corporation lies in more than one county, the county superintendent with whom the petition is filed shall fix the time and place and call a joint meeting of the members of all the county boards of education of the counties in which any territory of the proposed school corporation lies, to act as a single board for the hearing of the said objections, and a majority of all the members of the county boards of education of the different counties in which any part of the proposed corporation lies, shall constitute a quorum and it shall determine and fix boundaries for the proposed corporation, as provided in section 4161, or dismiss the petition, which shall be final.

4163. Interested parties as judges. No member of a county board of education who lives or owns land within the proposed district or within any existing district affected by the proposed change in boundaries, or who has filed objection to the establishment of the new school corporation, shall take any part in determining any matter concerning the establishment or dissolution of such school corporation, which may come before the county board or a joint meeting for a hearing.

1. Nondisqualification of county superintendent. A county superintendent is not disqualified, on appeal to the county board of education from his decision dismissing a petition for the dissolution of a consolidated school district, from voting as a member of said board, to sustain his own decision, it not appearing that he lived or owned land within the district. *Thie v Cordell*, 199-709; 202 NW 532.

4164. Special election called—time. When the boundaries of the territory to be included in a proposed school corporation have been determined as herein provided, the county superintendent with whom such petition is filed shall call a special election in such proposed school corporation within thirty days from the date of the final determination of such boundaries, by giving notice by one publication in the same newspaper as previous notices concerning it have been published, which publication shall be not less than ten nor more than fifteen days prior to the election. No notice for an election shall be published until the time for appeal has expired; and in the event of an appeal, not until the same has been disposed of.

1. Special election contemplated. *Wallace v Ind. Sch. Dist.*, 150-711; 130 NW 804.

2. Void election. An election held without authority of law is void. *State v Crow*, 186-497; 172 NW 451.

3. Conditions precedent. Before calling an election, it must be determined that all matters and things, as conditions legally precedent to the ordering of such election, have been done; but no formal record of such findings need be made. The ordering of the election necessarily involves and embraces such findings. *Gallagher v Sch. Tp.*, 173-610; 154 NW 437.

4. Sufficiency of notice of election. *Schofield v Ferguson*, 169-634; 151 NW 497; *Cons. Dist. v Martin*, 170-262; 152 NW 623; *Townsend v Garrett*, 170-409; 152 NW 565.

5. Dissolution — sufficiency of notice. Typographical errors in the notice of election to vote on the proposed dissolution of a district become quite immaterial when it affirmatively appears that no elector was misled by such errors. *State v Peterson*, 199-52; 201 NW 71.

6. Unnecessary recitals in notices. A notice of an election need not contain a recital of the jurisdictional matters found to exist as a condition precedent to the calling of the election. *Heaton v Cons. Ind. Sch. Dist.*, 178-1230; 160 NW 906.

7. Omitting territory from notice. *State v Rowe*, 187-1116; 175 NW 32.

8. Time for opening polls. In ordering an election to vote on the question of consolidation, such order need not specify the hour when the polls will open. *Gallagher v Sch. Tp.*, 173-610; 154 NW 437.

9. Illegibility of notices. Legible notices of an election, posted in good faith and with due care, are not rendered nugatory because of the fact that, prior to the expiration of the period during which the law requires posting they became illegible. *Lacock v Miller*, 178-920; 160 NW 291.

10. Publication under former statute. *Regan v Hugus*, 191-661; 182 NW 870.

11. Illegal inclusion of territory. An election on the question of organizing a consolidated school district is invalidated by including in the proposition lands not called for by the petition and not ordered by the county board of education to be included, except by the consent of the individual members, separately and over the telephone, to such inclusion. *State v Orr*, 192-1021; 184 NW 326.

4165. Judges of election. The county superintendent shall appoint the judges of such election and such judges shall be qualified electors of the territory of the proposed school corporation as determined by the county superintendent or board of education, and they shall serve without pay. If any judge fails to appear at the proper time, his place shall be filled by the judge or judges present, or if no judge appears, any three qualified electors may organize the election board.

4166. Separate vote in urban territory. When it is proposed to include in such district a school corporation containing a city, town, or village with a population of two hundred or more inhabitants, the voters residing upon the territory outside the limits of such school corporation shall vote separately upon the proposition to create such new corporation.

1. Villages. Collection of houses on platted lands held to constitute a village. *Haines v Board*, 184-401; 164 NW 887; 167 NW 192.

2. Nonright to separate vote. On the proposition to merge several school corporations into one consolidated independent district, a school corporation is not entitled to a separate vote because a part of the corporate limits of a town lies within such school corporation with less than 200 population residing on such part. *State v McChesney*, 190-731; 180 NW 857.

3. Nonright to separate vote. On the proposition to merge several school corporations into a consolidated independent school district, no separate ballot is authorized in a school corporation which has a population in excess of 200 but no town of 200 population. *State v Cons. Ind. Sch. Dist.*, 190-903; 181 NW 178.

4. Population of city or town. Holding reaffirmed that the provision of this section providing that "When it is proposed to include in such district a school corporation containing a city, town, or village with a population of 200 or more

inhabitants", the clause relative to 200 population modifies "city, town, or village" and not "corporation".

State v Seaton, 191-81; 181 NW 796.

4167. Separate vote in large territory. When it is proposed to include in such district a school corporation which contains an area of more than sixteen sections and which maintains a central school, the voters residing in the territory within the limits of said school corporation shall vote separately upon the proposition to create such new corporation.

4168. Separate ballot boxes. The judges of election shall provide separate ballot boxes in which shall be deposited the votes cast by the qualified electors from their respective territories.

1. Failure to provide separate ballot boxes. Failure of election officials to provide separate ballot boxes for electors residing within and without villages, etc., does not invalidate an election in favor of consolidation when it is made to appear that a majority of the electors both outside and inside villages, etc., voted in favor of the consolidation. *State v Booth*, 169-143; 149 NW 244; 151 NW 56; *State v Lockwood*, 181-1233; 165 NW 330.

2. Failure to provide separate ballot boxes. Failure to provide separate ballot boxes for the voters (a) inside villages and (b) outside villages is fatal to the validity of consolidation proceedings, when it appears that, had such boxes been furnished, the consolidation would have been defeated. *Haines v Board*, 184-401; 164 NW 887; 167 NW 192.

4169. Canvass and return. The judges of election shall count the ballots, make return to and deposit the ballots with the county superintendent, who shall enter the return of record in his office. If the majority of the votes cast by the qualified electors are in favor of the proposition, a new school corporation shall be organized, except that in cases where separate ballot boxes are required by law, a majority of the votes cast by the qualified electors from their respective territories shall be required.

1. Irregularities in elections. See under § 719.

4170. Contest of election. An election to establish or dissolve a school corporation may be contested in the manner provided by law for contesting other elections, so far as practicable.

1. "Election" defined. Voting on a proposal to create a consolidated school district is an "election", within the meaning of the constitutional provision which prescribes the qualifications for electors. *Taylor v Ind. Sch. Dist.*, 181-544; 164 NW 878.

2. Defective ballots. The omission from the official ballots of the detailed proposition to be voted on does not necessarily invalidate an election. The important question is: Does the voter know, or can he readily learn, the full scope of the proposition by reference to other official public notices, papers, and proceedings? *Gallagher v Sch. Tp.*, 173-610; 154 NW 437.

3. Nonprejudicial irregularities. Nonfraudulent irregularities will not invalidate an election, when it affirmatively appears that the final result was in no manner affected

thereby. *State v Birdsall*, 186-129; 169 NW 453; *Whitmore v Gamble*, 192-356; 184 NW 636.

4. Keeping polls open. Keeping the polls open a short time after the legal closing time will not invalidate an election, especially when the ballots received during said time were inconsequential. *State v Cons. Ind. Sch. Dist.*, 193-856; 186 NW 426.

5. How elector voted. The voluntary oral testimony of electors as to how they voted at an election to form a consolidated school district is competent on the question whether a majority of the electors, both inside and outside a village, voted in favor of consolidation, and no other means exists to decide said question. *State v Lockwood*, 181-1233; 165 NW 330.

4171. Election of directors. If the proposition to establish a new corporation carries, a special election shall be called by the county superintendent, by giving notice by one publication in the same newspaper in which the former notices were published, and he shall appoint judges, who shall serve without pay. At such election, two directors shall be elected to serve until the next regular election, two until the second, and one until the third regular election thereafter, and until such time as their successors are elected and qualified. The judges of election shall make return to the county superintendent, who shall enter the return of record in his office and notify the persons who are elected directors and shall set the date for the organization of the school board.

1. Validity of election. An election of school directors is not rendered invalid by the naked fact that such election was conducted by two judges instead of three judges as commanded by statute. *McDunn v Roundy*, 191-976; 181 NW 453.

4172. Payment of expenses. If the district is established, it shall pay all expenses incurred by the superintendent and the board of education in connection with the proceedings, including the election of the first board of directors. If it is not established all expenses shall be apportioned among the several districts in proportion to the assessed valuation of the property therein.

If the proposed district embraces territory in more than one county such expenses shall be certified to and, if necessary, apportioned among the several districts by the joint board of education. If in only one county the certification shall be made by the county superintendent.

The respective boards to which such expenses are certified shall audit and order the same to be paid from the general fund.

4173. Minimum territory. A consolidated school corporation, maintaining an approved central school, shall not be reduced to less than sixteen government sections, unless dissolved as provided by law. No remaining portion of any school corporation from which territory is taken to form a new district shall contain an area of less than four government sections which shall be so situated as to form a suitable corporation.

1. Reducing consolidated district. See: *State v Board*, 148-487; 127 NW 982.

2. Mandatory nature of clause. *State v Hall*, 190-1283; 181 NW 633.

3. Federal acquisition of school land. The acquisition by the federal government of lands within a consolidated school district in nowise disturbs the legal incorporation of the district even though the lands taxable for school purposes are reduced below sixteen sections. *Hufford v Herrold*, 189-853; 179 NW 53.

4. Size of remaining corporation. The prohibition (under prior statute) that no school corporation should be left with less than four contiguous government sections, had no application to a subdistrict of a school district township. *Cons. Ind. Sch. Dist. v Martin*, 170-262; 152 NW 623; *Lacock v Miller*, 178-920; 160 NW 291; *Taylor v Ind. Sch. Dist.*, 181-544; 164 NW 878; *State v Phillips*, 186-1052; 173 NW 41; *State v Thompson*, 190-1160; 181 NW 434.

5. Size of remaining corporation. In determining the amount of land to be left in a school district, from which land has been taken, the unsurveyed portion of certain sections covered by a lake cannot be used in making up the necessary remaining "four sections", where the school district from which the land was taken did not extend beyond the shore line of the lake. *Rural Ind. Sch. Dist. v Ventura Cons. Ind. Sch. Dist.*, 185-968; 171 NW 576.

6. "Government section" defined. "Sixteen government sections" of contiguous territory do not mean "sixteen square sections" of land, but mean an area equal to sixteen government sections of land. *Chambers v Housel*, 211-314; 233 NW 502.

4174. Organization of remaining territory. Where, after the formation of a consolidated corporation, one or more parts of the territory of a school township is left outstanding, each piece shall constitute a rural independent school corporation and be organized as such unless two or more contiguous subdistricts are left, in which event each of such remaining portions of territory shall constitute a school township. It shall be the duty of the county superintendent of the county in which the territory is situated to call an election, by giving proper notice, in each of such remaining pieces of territory, for the purpose of electing school officers in the manner provided by law for electing officers in rural independent districts or school townships, as the case may be, and fix the date for the first meeting and organization of the new school board in each district.

1. Effect of severance on remaining portion of school township. *State v Wald*, 184-51; 166 NW 785; *State v Thompson*, 190-1160; 181 NW 434.

4175. Taxes. After the organization of the board in newly organized school districts, all taxes previously certified to but not levied by the board of supervisors, shall be void so far as the property within the limits of the new school corporation is concerned.

4176. Schools pending appeal. During the pendency of an appeal or litigation concerning the organization or dissolution of any consolidated district, the respective boards of the old districts shall maintain the schools in their respective dis-

tricts, if such appeal or litigation is commenced before the new board is elected and qualified.

4177. School buildings—tax levy—special fund. The board of each school corporation organized for the purpose of establishing a consolidated school shall provide a suitable building for such school in that district, and may at the regular or a special meeting call a special election to submit to the qualified electors of the district the question of voting a tax or authorizing the board to issue bonds, or both, for any or all of the following purposes:

1. To secure a site, build or equip a schoolhouse.
2. To build a superintendent's or teacher's house.
3. To repair or improve any school building or grounds, when the cost will exceed two thousand dollars.

All moneys received for such purposes shall be placed in the schoolhouse fund of said corporation and shall be used only for the purposes for which voted.

1. Illegal votes—effect. The reception of illegal votes at an election becomes unimportant when such votes are insufficient to change the result. *Strawn v Ind. Sch. Dist.*, 199-1078; 203 NW 12.

2. Power of directors over minor expenditures. The board of directors of a consolidated independent school district has full authority, and without the calling of an election to vote thereon, to expend a sum not exceeding $2,000 in the erection of a temporary building to supplement inadequate school quarters. *James v Cons. Ind. Dist.*, 194-1224; 191 NW 60.

4178. Location of school building. In locating a school site, the board shall take into consideration the geographical position, number, and conveniences of the pupils, and may submit the question of location to the voters of the district at any regular election, or at a special election called for that purpose.

See 4359, fixing school site.

1. Selection conclusive. The selection of a schoolhouse site, unquestioned by any appeal by aggrieved parties, is conclusive, and especially so after the schoolhouse has been erected. *Van Es v New Ind. Cons. Sch. Dist.*, 197-348; 197 NW 55.

4179. Transportation. The board of every consolidated school corporation shall provide suitable transportation to and from school for every child of school age living within said corporation and more than a mile from such school, but the board shall not be required to cause the vehicle of transportation to leave any public highway to receive or discharge pupils, or to provide transportation for any pupil residing within the limits of any city, town, or village within which said school is situated.

See 4233-e4, transportation in non-consolidated districts; 4863, chauffeur's license not required; 4991-f1 to 4991-f6, safety glass requirements; 5030, speed limit near schools; 5030-b2, speed signs near schools; 5079-c8,

traffic stop for school bus; 5079-c9, school bus signs; 5079-c10, front and rear door on school bus; 5079-c11, exceptions.

NOTE 1. Sections 4991-f1 to 4991-f6, relating to the use of safety glass in automobiles, appear to relate only to motor vehicles registered in Iowa which are manufactured or assembled after July 1, 1935, and not to cars manufactured or assembled prior to that date. Opinion attorney general.

1. Liability of district. A consolidated school district, the former territory of which furnished no high school instruction, is liable for the reasonable cost of transporting children to the grade schools of another district pending the time during which the pupils are deprived of a grade school owing to delay in constructing the new central consolidated school building, but is not liable for the cost of transporting pupils similarly situated, but transported to the high school of another district. (§2794-a, S. S. '15.) *Tow v Dunbar Cons. Sch. Dist.*, 200-1254; 206 NW 94.

2. Illegal use of busses. School busses of consolidated school districts may legally be employed, and funds for their operation may legally be expended, for the one purpose only of transporting to and from school, children of school age who live more than a mile from school. *Schmidt v Blair*, 203-1016; 213 NW 593.

3. Liabilities — liability in re performance of governmental acts. The principle that when the officers, servants or agents of a municipality are engaged in performing a governmental act for and on behalf of the municipality they are not liable in damages consequent on their negligence in doing the act, applies to a person who, with the knowledge and acquiescence of a school board, was operating for the school district a bus in the transportation of children to and from school, even though the person so operating the bus was acting at the time in lieu of the person with whom the district had actually contracted for the transportation. *Hibbs v Independent School District*, 218 Iowa 841.

4. Pupils—transportation—power of board. The school board of a nonconsolidated school district has ample power to provide for the transportation to and from school of pupils living an unreasonable distance from the school. (Holding under sections 4232, 4233, 4375, 4376, Code 1931, now repealed.) *Hibbs v Independent School District*, 218 Iowa 841.

4180. Transportation routes—suspension of service. The board shall designate the routes to be traveled by each conveyance in transporting children to and from school. The board shall have the right on account of inclemency of the weather to suspend the transportation on any route upon any day or days when in its judgment it would be a hardship on the children, or when the roads to be traveled are unfit or impassable.

4181. Transportation by parent — instruction in another school. The school board may require that children living an unreasonable distance from school shall be transported by the parent or guardian a distance of not more than two miles to connect with any vehicle of transportation to and from school or may contract with an adjoining school corporation for the instruction of any child living an unreasonable distance from school. It shall allow a reasonable compensation for the transportation of children to and from their homes to connect with such vehicle of transportation, or for transport-

ing them to an adjoining district. In determining what an unreasonable distance would be, consideration shall be given to the number and age of the children, the condition of the roads, and the number of miles to be traveled in going to and from school.

4182. Contracts for transportation — rules. The school board of any school corporation maintaining a consolidated school shall contract with as many suitable persons as it deems necessary for the transportation of children of school age to and from school. Such contract shall be in writing and shall state the route, the length of time contracted for, the compensation to be allowed per week of five school days, or per month of four school weeks, and may provide that two weeks' salary be retained by the board pending full compliance therewith by the party contracted with, and shall always provide that any party or parties to said contract, and every person in charge of a vehicle conveying children to and from school, shall be at all time subject to any rules said board shall adopt for the protection of the children, or to govern the conduct of the person in charge of said conveyance.

See 4863, chauffeur's license not required; 4991-f1 to 4991-f6, safety glass requirements; 5030, speed limits near schools; 5030-b2, speed signs near schools; 5079-c5, traffic stop for school bus; 5079-c6, school bus signs; 5079-c7, front and rear door on school bus; 5079-c8, exceptions.

NOTE 1. A suggested contract for a bus driver will be found in Form 16, APPENDIX.

1. Termination without cause. A contract for the transportation of pupils for an entire school year, but containing a reservation by the board of right to terminate the contract at any time, enables the board to terminate the contract peremptorily at its pleasure and without assigning any reason for such action. *Black v Cons. Ind. Sch. Dist.*, 206-1386; 222 NW 350.

4183. Violation of rules. Any person driving, managing, or in charge of any vehicle used in transporting children to and from school, who shall be found guilty of violating any of the rules adopted by the board of said school for the guidance of such person shall be guilty of a misdemeanor, and for the first offense shall be fined not less than five dollars nor more than ten dollars, and for a subsequent offense shall be fined not less than twenty-five dollars nor more than fifty dollars and shall be dismissed from the service.

4184. State aid. All consolidated schools in districts with an area of sixteen or more government sections maintained with suitable grounds and the necessary departments and equipment for teaching agriculture, home economics, and manual training, or other industrial and vocational subjects, and employing teachers holding certificates showing their qualifications to teach said subjects, and which said subjects are taught as a part of the regular course in such schools, subject to the approval of the superintendent of public instruc-

tion, shall be paid from the state treasury, from moneys not otherwise appropriated, as follows:

1. Two room schools, two hundred fifty dollars for equipment and two hundred dollars additional annually.

2. Three room schools, three hundred fifty dollars for equipment and five hundred dollars additional annually.

3. Schools having four or more rooms, five hundred dollars for equipment and seven hundred fifty dollars additional annually.

4185. Limitation. No consolidated school shall receive state aid under section 4184 and also additional aid for maintaining a normal training course in high schools as provided in chapter 194. But every consolidated school may maintain a normal training course, in which case it shall receive state aid therefor in the same amount and upon the same terms, conditions, and regulations as other schools which maintain such a course.

4186. Report—requisition—warrant. The secretary of each consolidated school corporation or the superintendent of such school, shall, at the close of each school year, report to the superintendent of public instruction as said officer may require, who, upon receipt of a satisfactory report, shall issue a requisition upon the state comptroller for the amount due such school corporation for said year. Thereupon the comptroller shall draw a warrant on the state treasury, payable to such school corporation, for the amount of said requisition and forward the same to the secretary of such school corporation.

4188. Dissolution of corporation. A school corporation organized for the purpose of maintaining a consolidated school may be dissolved in the following manner:

1. *Petition.* A petition describing the boundaries of the districts, of which none shall be less than four government sections of land, except where a district was composed of less than four government sections prior to its merger in the consolidated district the former boundaries of such district may be used, into which it is proposed to divide the school corporation, and signed by a majority of the qualified voters residing within the corporation, shall be filed with the county superintendent of the county in which the greater number of qualified electors reside.

2. *Petition and affidavit.* The petition and affidavit shall conform to the requirements of section 4156.

3. *Objections.* The proceedings required by section 4157 shall be followed, except that an objector shall be any person residing or owning land within the corporation proposed to be dissolved, who would be injured by such dissolution and the formation of new school corporations.

4. *Hearing—order—publication.* On the final day fixed for filing objections, the interested parties may present evidence and arguments to the county superintendent, and the county superintendent shall review the matter on its merits and within five days after the conclusion of any hearing, shall rule on any objections and enter an order of approval or dismiss said petition, and shall at once publish this order in some newspaper in which the original notice was published. Where such district for which petition for dissolution has been filed has not issued bonds, or built a school building, the county superintendent shall at once approve such petition.

5. *Appeal.* Any person living or owning land within the school corporation may appeal, and such appeal shall be dealt with as provided by sections 4159 and 4160, provided that where no central schoolhouse has been built and no bonds issued, no appeal shall be allowed except on the question of the sufficiency of the petition.

6. *Appeal—order.* The board or joint board of education shall proceed, so far as applicable, as provided in sections 4161 and 4162, and shall approve or enter an order dismissing the petition as in its judgment will be for the best interests of all concerned, which decision shall be final.

7. *Election.* If the petition for dissolution is approved, an election shall be called and held as provided in sections 4164 and 4165.

8. *Separate ballot boxes.* If such district includes a city, town, or village having a population of two hundred or more inhabitants, separate ballot boxes shall be provided for the voters therein and outside thereof, and a majority of the votes cast both within and without said city, town, or village shall be required to effect a dissolution of the district.

9. *Canvass and return of vote — expense.* The judges of election shall count the ballots, make return to and deposit the ballots with the county superintendent, who shall enter the return of record in his office. If the majority of the votes cast are in favor of the proposition, the school district shall be dissolved, and a new school corporation or corporations shall be organized in the same manner in which other new corporations are organized under section 4136, and expenses incurred by the county superintendent shall be paid as provided by section 4172.

1. Legality of petition. A petition for the dissolution of a consolidated school district is not fatally defective because, in describing the several districts into which it is proposed to divide the dissolved district, one of the boundary lines of a proposed district is omitted, the intent of the petition as a whole being manifest, and the said omission not having misled anyone. *State v Mohr*, 198-89; 199 NW 278.

2. Trial on appeal. Appeal from an order of court dissolving a school corporation is not triable de novo on appeal. *State v Cons. Ind. Sch. Dist.*, 188-959; 176 NW 976.

3. Outstanding bonds as basis for discretion. Refunding bonds issued by a consolidated school district for the purpose of paying off bonds originally issued by a district which was included in the consolidated district, are bonds within the meaning of that part of section 4188, C., '27, which provides, in effect, that the county superintendent has a discretion to disapprove an application to dissolve the district when bonds have been issued by the district. *Sarby v Morey*, 221 NW 492.

4. Duty of superintendent—discretion. When under due application for the dissolution of a consolidated school corporation (§ 4188, C., '27) it is made to appear that bonds have been issued by the district, the county superintendent is vested with a discretion to disapprove the application, and in such case mandamus will not lie to compel approval. *Sarby v Morey*, 221 NW 492.

5. Absent voters' act—implied power of superintendent. The county superintendent, under her statutory powers and duty to call elections in consolidated districts to vote on the question of dissolution of the district, has implied power to receive application for ballots by, and to deliver ballots to, electors who wish to cast their ballots under the absent voters' act. (Ch. 44, C., '27.) *Willis v Sch. Dist.*, 210-391; 227 NW 532.

CHAPTER 210

REGULATIONS APPLICABLE TO ALL DISTRICTS

4190. General applicability. The provisions of law relative to common schools shall apply alike to all districts, except when otherwise clearly stated, and the powers given to one form of corporation, or to a board in one kind of corporation, shall be exercised by the other in the same manner, as nearly as practicable. But school boards shall not incur original indebtedness by the issuance of bonds until authorized by the voters of the school corporation.

See 4177, 4353 et seq., 4406, 6238, Art. XI, Sec. 3, Constitution of Iowa, indebtedness.

4191. Additions and extensions—separate vote. Whenever it is proposed to extend the limits of, or add territory to, an existing independent city, town, or consolidated district, the voters residing within the proposed extension or addition and outside the existing independent district, shall vote separately upon the proposition. The proposition must be approved by a majority of the voters voting thereon in each of such territories.

1. Majority vote in additional territory. An existing independent school district composed of the territory within a city or town and certain rural territory may not be formed into a new independent district composed of the existing territory and additional rural territory unless a majority of the voters in such additional territory vote in favor of such new district. *State v Van Peursem*, 202-545; 210 NW 576.

2. Extension of consolidated district. Section 4141 is available to a consolidated school district which wishes to extend its boundaries by adding thereto part of the territory of an adjoining consolidated school district. In other words, section 4133 does not provide the exclusive procedure. *Chambers v Housel*, 211-314; 233 NW 502.

4192. Action to test legal incorporation—limitation. No action shall be brought questioning the legality of the organization of any school district in this state after the exercise of the franchises and privileges of a district for the term of six months.

1. Applicability. This section, limiting the time in which the legality of the organization of a school district may be questioned, does not apply to the question whether a duly organized district has been legally "dissolved". *State v Mohr,* 198-89; 199 NW 278.

2. Remedy for illegal consolidation. Quo warranto is the exclusive remedy to test the legality of the school organization. *Harvey v Kirton,* 182-973; 164 NW 888; *Crawford v Sch. Tp.,* 182-1324; 166 NW 702; *Hufford v Herrold,* 189-853; 179 NW 53; see *Lacock v Miller,* 178-920; 160 NW 291.

3. Quo warranto as remedy. Rulings of the county superintendent or of the superintendent of public instruction relative to the legality of the organization of consolidated schools are nullities. Quo warranto is the exclusive remedy. *Haines v Board,* 184-401; 164 NW 887; 167 NW 192.

4. Belated quo warranto. Quo warranto will not lie to review irregularities in the organization of a consolidated school district in favor of relators who deliberately delay their action until the district is organized, the officers elected, the taxes levied, the school organized, and the district is on the eve of determining a bond issue. *State v Kinkade,* 192-1362; 186 NW 662; *State v Cons. Ind. Sch. Dist.,* 193-856; 186 NW 426.

5. Nonpermissible remedy. The legal incorporation of a town, or school district, may not be adjudicated in an action by the school district to compel the county treasurer to pay over to it the taxes collected on property within its limits —nothing appearing on the face of the record of incorporation indicating illegality. *Dunn v Burbank,* 190-67; 179 NW 969; see *McEvoy v Christensen,* 178-1180; 159 NW 179.

6. Impairment of consolidation. The legal incorporation of a consolidated school district is in nowise impaired (1) by the illegal attempt of the directors to cede part of the district territory to another district, or (2) by delay on the part of the directors in disposing of bonds duly authorized for schoolhouse purposes. *Hufford v Herrold,* 189-853; 179 NW 53.

4193. When corporation deemed organized. Every school corporation shall, for the purpose of section 4192, be deemed duly organized and to have commenced the exercise of its franchises and privileges when the president of the board of directors has been elected; and the record book of such corporation duly certified by the acting secretary thereof, showing such election and the time thereof, shall be prima facie evidence of such facts.

CHAPTER 211-C1

SCHOOL ELECTIONS

4216-c1. Regular election. The regular election shall be held annually on the second Monday in March in each school corporation and in each subdistrict for the purpose of submitting to the voters thereof any matter authorized by law, except that in all independent school districts which embrace a

city and which have a population of one hundred twenty-five thousand or more such election shall be held biennially on the second Monday in March of odd-numbered years.

See Art. II, sec. 1, Constitution of Iowa, constitutional right to vote; 63(26), population, how determined; 676 and 4216-c17, where registration of voters is required; chapter 40, general election laws that are also applicable to regular or special school elections; chapter 41, how to canvass votes; 927 and 4216-c34, absent voters laws applicable to what school elections; 4216-c12, right to vote.

NOTE 1. The regular subdistrict elections and the regular school township election are two separate and distinct elections held on the same day—the second Monday in March—but not necessarily at the same hour. The two elections should not be confused. In the township election the entire township constitutes a single precinct with one central polling place to be determined by the township board, and all the voters of the township vote at that central place; but in the subdistrict elections each subdistrict constitutes a single precinct but the voters of the township vote in their respective subdistricts.

In the township election the polls must open at 1:00 p. m. and remain open at least two hours; but in subdistrict elections the polls may open not earlier than 9:00 a. m. nor later than 7:00 p. m. and must remain open at least two hours. The subdistrict election requires three notices to be posted within the subdistrict by the subdirector, one of which shall be on the front of the school building. But the township election requires five notices to be posted by the secretary within the township.

Since the director-at-large, where one is required, is voted for at the regular subdistrict elections, there would be no necessity for holding the regular school township election unless the township board has directed the township secretary to include in the notices of such township election the submission of some special proposition—such as, voting a schoolhouse tax, authorizing bonds, selling school property, voting on county uniformity, et cetera. A proposition authorized by law to be submitted to a township election cannot legally be submitted at the subdistrict elections.

1. "Meeting" synonymous with "election". *Hammond v King*, 137-548; 114 NW 1062.

2. Invalid meetings. *State v Woolem*, 37-131; *State v Woolem*, 39-380.

3. Failure to make record of election—effect. The statute does not make the record of an annual school meeting the only competent evidence of an election of directors, and if no record is kept, or it fails to show an election, parol evidence is admissible to show that an election was held and the result thereof. *State of Iowa ex rel Thomas Brick v William Cahill*, 131 Iowa 155.

4216-c2. Special election. The board of directors in any school corporation may call a special election at which election the voters shall have the powers exercised at the regular election with reference to the sale of school property and the application to be made of the proceeds, the authorization of a schoolhouse tax or indebtedness, as provided by law, for the purchase of a site and the construction of a necessary schoolhouse, and for obtaining roads thereto.

NOTE 1. A special subdistrict election should not be confused with a special school township election. See Note 1 under preceding section.

1. Discretion of board. The submission of a proposition to a special meeting, even though requested by the electors, is discretionary with the board and its action will not be interfered with by mandamus. *Kirchner v Board*, 141-43; 118 NW 51.

2. Express mention and implied exclusion. In statutes in which stated things are enumerated, things not named are excluded. *Vale v Messenger*, 184-553; 168 NW 281; *Pierce v Bekins V. & S. Co.*, 185-1346; 172 NW 191.

3. Special meeting on oral notice. A special meeting of the board of directors of a school corporation is legally called on oral notice to the directors by the secretary, at the direction of the president. *Mershon v Cons. Sch. Dist.*, 204-221.

4216-c3. Notice of election. There shall be a written notice of all regular or special elections, which notice shall be given not less than ten days next preceding the day of the election, except as otherwise provided in this section, and shall contain the date, the polling place, the hours during which the polls will be open, the number of directors or officers to be elected and the terms thereof, and such propositions as will be submitted to and be determined by the voters.

In those corporations where registration is not required and in which only one voting precinct has been established said notice shall be posted by the secretary of the board in five public places in the corporation.

In those corporations in which registration of voters is required or in which more than one voting precinct has been established the secretary shall post the notice in each precinct, and also publish it once each week for two consecutive weeks preceding the election in some newspaper published in the county and of general circulation in the corporation.

In subdistricts said notice shall be posted by the subdirector in three public places within the subdistrict, one of which shall be on the front of the school building. If the subdirector fails to post the required notice not less than ten days next preceding the day of the election, or if there be no subdirector, then any other voter in the subdistrict may secure from the county superintendent the proper form for the required number of notices filled out in the manner provided in this section and such notices, if signed by the county superintendent and said voter and posted as required in this section not less than five days next preceding the day of the election, shall constitute due and legal notice of said election.

See 5623, definition city, town, village; 63(23), method of computing time; 676, where registration is required.

NOTE 1. An election on Monday requires that the 10-day notice thereof be posted not later than the second Friday next preceding—that is, count election day but not the day the notice is posted.

NOTE 2. In posting notices of an election it is better to post them two or three days before the latest date fixed by law rather than to run the risk of an inadequate notice due to an incorrect count of the minimum number of days required.

NOTE 3. See Sec. 4354 et seq. for special election notice when bond issue increasing indebtedness to an excess of one and one-fourth per cent of the actual value of the taxable property of the district is to be submitted.

1. Notice jurisdictional. Notice of the proposition to be submitted at such meeting is essential to the validity of its adoption, the statutory provision as to notice being construed as mandatory. *Goerdt v Trumm*, 118-207; 91 NW 1067.

2. Notice — sufficiency. Where it was proposed to consolidate the territory or parts of territory of several subdistricts — some nine tracts in all—into an independent school district, held, that the posting of five notices within the territory of said nine tracts was sufficient. *Schofield v Ferguson*, 169-634; 151 NW 497; *Cons. Dist. v Martin*, 170-262; 152 NW 623; *Townsend v Garrett*, 170-409; 152 NW 565.

3. Excess notice. A fifteen days' notice is legal. *Crawford v Sch. Tp.*, 182-1324; 166 NW 702.

4. Order for submission essential. Unless there has been a valid order of the board of directors for the submission of a proposition, the adoption thereof by the electors is of no validity, even though notice of the submission of the proposition has been given. *McNees v Sch. Tp.*, 133-120; 110 NW 325.

5. Posting held sufficient—election—notice—computing time. The general rule for computing time is to exclude the first day and include the last. (Sec. 48, Par. 23, Code.) Therefore, notice of a school election under section 2746, Code, posted on March 18th for an election on March 28th, was sufficient, said statute requiring posting "for not less than ten days preceding the day of the meeting". *Webster and Jefferson Townships et al v Martin*, 170 Iowa 262; see *Chambers v Board*, 172-340; 154 NW 581.

6. Presumption. The law presumes that the officer charged with the posting of the notices has performed his duty. *Calahan v Handsaker*, 133-622; 111 NW 22.

7. Irregularities in election. An irregularity sufficient to render an election invalid must be such as to present an affirmative showing of prejudice. *Chambers v Board*, 172-340; 154 NW 581; see *Younker v Susong*, 173-663; 156 NW 24.

8. Additional annotations under § 4170, 4218.

9. Consolidation—election—separate vote in villages. A village ordinarily is a collection or group of houses. A 60 and an 80-acre platted tract on which were located three and five widely separated houses, respectively, and a small store and a blacksmith shop, located at the junction of a public highway with an interurban railway, do not constitute "villages" within the meaning of section 2794-a, Sup. Code 1913, requiring separate voting in "villages" on the question of establishing a consolidated school district, nor within the meaning of section 638 of the code, providing that "town sites platted and unincorporated shall be known as villages". *Webster and Jefferson Townships et al v Martin*, 170 Iowa 262.

4216-c4. Nominations required. Nomination papers for all candidates for election to office in each independent city, town, or consolidated district shall be filed with the secretary of the school board not earlier than thirty days nor later than noon of the tenth day prior to said election. Each candidate shall be nominated by a petition signed by not less than ten qualified electors of the district, except that in city independent districts where the regular election is held biennially such petition shall be signed by not less than fifty qualified electors of the district. To each such petition shall be attached the affidavit of a qualified elector of the district that all the signers thereof are electors of such district and that the signatures thereto are genuine.

See 5623, definition city, town, village; 63(23), method of computing time.

NOTE 1. The nomination papers of a candidate for the office of direc-

tor or treasurer may be substantially as indicated in Form 18, APPENDIX.

NOTE 2. Regular election held biennially only in districts containing a city of 125,000 or more. At the present time, Des Moines is the only district where the regular election is held biennially instead of annually.

4216-c5. Precincts for voting. School corporations other than city, town, or village independent districts shall constitute a voting precinct, but the voting precincts at all school elections in corporations in whole or in part in cities, towns, and villages shall be the same as for the last general state election except that the board may consolidate two or more such precincts into one unless there shall be filed with the secretary of the board at least twenty days before the election, a petition signed by twenty-five or more electors of any precinct requesting that such precinct shall not be consolidated with any other precinct. To such petition shall be attached the affidavit of a qualified elector of the precinct that all the signers thereof are electors of such precinct, and that the signatures thereon are genuine.

In subdistrict elections the subdistrict shall constitute a single voting precinct.

See 5623, definition city, town, village.

4216-c6. Territory outside city or town. If there is within a school corporation any territory not within the limits of a city or town the board may divide the territory which lies outside the city but within the school district into additional precincts, or may attach the various parts thereof to such contiguous city precincts as will best serve the convenience of the electors of said outside territory in voting on school matters, but the voters within such territory shall not be required to register.

See 5623, definition city, town.

4216-c7. Polling place. In all school corporations the board shall determine a suitable polling place in each precinct, which polling place shall be, when practicable, the same place used by the last city or state election.

In subdistricts a suitable polling place shall be selected by the person authorized by law to post the notices of such elections.

See 742, schoolhouses as polling places; 4371, use of schoolhouse for other purposes.

4216-c8. Printed ballots required. In school corporations where nomination of candidates for election to office is required the secretary shall cause to be printed and delivered at the several polling places a sufficient number of ballots printed on plain, substantial paper of uniform quality, with no party designation or mark thereon. Such ballots shall contain in alphabetical order the names of all candidates for each

office, filed as provided by law, and a blank line for each such officer to be elected. There shall be at the left of each name and each blank line a square, and there shall also be a direction to the voter as to the number of candidates to be voted for at said school election.

See 4216-c4, nominations required.

NOTE 1. It is permissible to use ballots printed in blank at the regular subdistrict election; in fact it is advisable to use such forms in those school townships where a director-at-large is required. Such forms may be secured from the county superintendent or purchased from a supply house.

4216-c9. Opening polls. In all school corporations in which registration of voters is required the polls shall open at seven o'clock a. m. and close at seven o'clock p. m.; in school corporations where registration of voters is not required composed in whole or in part of cities, towns, or in consolidated school districts, the polls shall open at twelve o'clock m. and close at seven o'clock p. m., except that in districts where the board has combined voting precincts the board may order the polls to open at seven o'clock a. m. and to close at seven o'clock p. m.; in all other independent school districts and school townships the polls shall open at one o'clock p. m. and remain open not less than two hours; in subdistricts the polls shall open not earlier than nine o'clock a. m. nor later than seven o'clock p. m. but shall remain open not less than two hours.

See 676, where registration is required.

1. Keeping polls open. Keeping the polls open a short time after the legal closing time will not invalidate an election. *State v Cons. Ind. Sch. Dist.*, 193-856; 186 NW 426.

2. Additional annotations. See under § 4170.

3. Void election. Where an election is not ordered and held during the hours specified, the action of the electors thereat is void. *Dist. Tp. v Ind. Dist.*, 34-306; *Hinkle v Saddler*, 97-526; 66 NW 765.

4. Nonmaterial irregularities. A deviation from the statutory provision as to the time for keeping the polls open will not invalidate the election where it appears that no one was thereby deprived of the opportunity to cast his ballot. *Dist. Tp. v Ind. Dist.*, 112-321; 83 NW 1068.

5. Statutory vacancy and qualification. The constitutional provision that "all persons appointed to fill vacancies in office shall hold until the next general election" is not inconsistent with the authority of the legislature (a) to define a "vacancy" or (b) to prescribe and regulate the manner of qualifying for office. *State v Carvey*, 175-344; 154 NW 931.

6. Resignation. A resignation in writing made to the proper officer creates a vacancy without any formal acceptance on the part of such officer. *Gates v Delaware Co.*, 12-405.

7. Acceptance of incompatible office. While occupying one office, the acceptance of another incompatible with the first ipso facto vacates the first. *State ex rel v Anderson*, 155-271; 136 NW 128; see *Bryan v Cattell*, 15-538.

8. Nonresidence. The office of justice of the peace becomes vacant if the incumbent becomes a resident of another state. *State v Hemsworth*, 112-1; 83 NW 728.

9. Permanent removal. The office of school treasurer is a "civil" office and becomes vacant whenever the incumbent permanently removes from the district for which he was elected or appointed, even though

he has not taken up a permanent abode elsewhere. *Ind. Sch. Dist. v Miller*, 189-123; 178 NW 323.

10. Nonexistent office. No vacancy can exist in the office of judge of the municipal court until the court is fully created (a) by the due adoption of the plan by the electors, and (b) by the election of a municipal judge. (Statute now changed.) *State v Birdsall*, 186-129; 169 NW 453.

11. Failure to elect. A vacancy in an office does not result from the mere failure to elect a successor at the time designated by law, and, moreover, no vacancy will occur if the incumbent legally exercises his right to requalify for the ensuing term. *Downing v Cree*, 195-57; 190 NW 36.

12. Vacancy by legislative act. A vacancy in office occurs instanter upon the passage and approval of a legislative act which authorizes the governor to appoint an additional district judge in a named district. *Schaffner v Shaw*, 191-1047; 180 NW 853.

13. Vacancy by redistricting. *Mauck v Lock*, 70-266; 30 NW 566.

14. Death of re-elected incumbent. The death of the re-elected incumbent of a public office before entering upon the new term creates a vacancy in the term which he was serving at the time of his death, but not in the new term for which he had been elected. *State v Carvey*, 175-344; 154 NW 931.

15. Negotiation for other office —effect. A mayor may not be deemed to have vacated his office on a simple showing that he had requested an appointment as justice of the peace and had executed a bond as such justice but was never appointed. *Meijerink's Est. v Lindsay*, 203-1031; 213 NW 934.

4216-c10. Judges of election. In corporations consisting of one voting precinct the president and the secretary of the board, with one of the directors shall act as judges of the election. If any such judge of election is absent or refuses to serve, the voters present at the polls shall appoint one of their number to act in his stead.

In corporations consisting of more than one precinct the board in such district shall appoint three voters of the precinct as judges of the election and one voter of the precinct as clerk thereof. Not more than one member of the board shall act as such judge at any one voting precinct. If any person so appointed is absent or fails to qualify the judge or judges attending shall fill the place by appointment of any voter present. Should all of the appointees fail to qualify their places shall be filled by the voters from those in attendance.

In subdistrict elections the judges shall consist of the subdirector and two qualified electors selected by the voters present at the polling place. If the subdirector is absent or refuses to serve as such judge, or if an elector selected as judge refuses to serve, the voters present shall select a judge to take his place.

1. Official irregularities. As to the effect of official irregularities on the validity of the election, see: *State v Young*, 4-561; *Dishon* v *Smith*, 10-212; *State ex rel v Smith*, 94-616; 63 NW 453; *Cook v Fisher*, 100-27; 69 NW 264; *State v Bernholtz*, 106-157; 76 NW 662; *Lehigh Sewer P. & T. Co. v Town*, 156-386; 136 NW 934; *Chambers v Board*, 172-340; 154 NW 581; *Younker v Susong*, 173-663; 156 NW 24; *Rafferty v Town*, 180-1391; 164 NW 199; *State v Lockwood*, 181-1233; 165 NW 330; *State v Birdsall*, 186-129; 169 NW 453;

McLaughlin v City, 189-556; 178 NW 540; *McDunn v Roundy*, 191-976; 181 NW 453; *Whitmore v Gamble*, 192-356; 184 NW 426; *State v Ind. Sch. Dist.*, 193-856; 186 NW 426; *State v Creston M. Tel. Co.*, 195-1368; 191 NW 988; *Strawn v Ind. Sch. Dist.*, 199-1078; 203 NW 12.

2. Irregularities — effect. A school election will not be held invalid (in the absence of any showing of prejudice) because all of the members of the board acted as judges of election, instead of only the president, secretary, and one director, as provided by statute. (See Book of Anno., Vol. I, § 719, Anno. 1.) *Mack v Sch. Dist.*, 200-1190; 206 NW 145.

4216-c11. Oath required of judges and clerks of election. All judges or clerks of election shall qualify before opening of polls by taking the oath as provided for in sections 792 and 793.

See Art. XI, Sec. 5, Constitution of Iowa, taking oath also a constitutional requirement; 792, form of oath; 793, by whom and how administered.

4216-c12. Right to vote. To have the right to vote at a school election a person shall have the same qualifications as for voting at a general election and must have been for ten days prior to such school election an actual resident of the corporation and precinct or subdistrict in which he offers to vote.

See chapter 211-C1, school election laws; Art. II, sec. 1, Constitution of Iowa, constitutional right to vote; 676 and 4216-c17, where registration of voters is required; chapter 40, general election laws that are also applicable to regular or special school elections; chapter 41, how to canvass votes; 927 and 4216-c34, absent voters laws applicable to what school elections.

NOTE 1. The right to vote is a question of age, citizenship, and residence, not a question of occupation, section 1, article II, Constitution of Iowa.

NOTE 2. To vote at the school election in a subdistrict, a school township, or a rural or village independent district, the voter must be present in person at the polls; the absent voter's law applies only to school elections in city, town, and consolidated districts, section 927.

1. Woman's right under former statute. *Kinney v Howard*, 133-94; 110 NW 282; *Chambers v Board*, 172-340; 154 NW 581; *Younker v Susong*, 173-663; 156 NW 24; *Hutchins v City*, 176-189; 157 NW 881; *McEvoy v Christensen*, 178-1180; 159 NW 179; *Sears v City*, 183-1104; 166 NW 700; *State v Snyder*, 184-42; 168 NW 243.

2. Residence — evidence — sufficiency. *Willis v Sch. Dist.*, 210-391; 227 NW 532.

3. Right of teachers to vote in school elections. Adult unmarried school teachers become "residents" of the county in which they teach, within the meaning of the constitutional provision governing suffrage, when the employment is entered upon with the good-faith intention of making the place of employment their permanent home or residence so long as the employment continues. *Dodd v Lorenz*, 210 Iowa 513.

4216-c13. Method of voting. Voting at all school elections shall be by ballot or by voting machines.

NOTE 1. It is permissible to use ballots printed in blank at the regular subdistrict election; in fact it is advisable to use such forms in those

school townships where a director-at-large is required. Such forms may be secured from the county superintendent or purchased from a supply house.

4216-c14. Ballot box—voting machines—poll books. The board shall provide the necessary ballot box or voting machine and poll books for each precinct.

NOTE 1. At the regular subdistrict election a ballot box shall be provided so that a voter may come to the polls, deposit his ballot, and leave if desired.

4216-c15. Voting machines. Voting machines may be used for all school elections in all precincts where the same are in use at general elections and the names of the candidates and the propositions to be voted upon shall be arranged thereon as by law provided. The state and county, or either, as the case may be, shall without charge permit the use for school elections of voting machines used at the general elections, and the same shall be used according to the general election law so far as applicable.

4216-c16. Precincts for registration. In corporations where registration is required, except in those corporations where permanent registration is otherwise provided for by statute, the board may consolidate precincts into registration districts as provided by law applicable to registration for general elections and shall designate suitable and convenient places for such registration.

See 676, where registration is required.

NOTE 1. Permanent registration is required in cities having a population of more than 125,000; the city council in cities where registration is required may require permanent registration. (Ch. 39-B1, Code 1935.)

4216-c17. Registrars appointed. The board of directors of school corporations where registration is required at general elections, except where permanent registration is required, shall, not less than ten days prior to the school election, appoint two registrars in each of the registration districts of such school corporation for the registration of voters therein who shall have the same qualifications as registrars appointed for general elections and shall qualify in the same manner and receive the same compensation to be paid by the school corporation. The person in custody of the registration books, records, and poll books for the general election shall furnish the same to the board of directors which shall distribute them to the proper registrars and judges and they shall be used for registration for school elections the same as the general elections, and shall, within ten days after the school election, be returned to the proper custodian.

See 63(23), method of computing time; 676, where registration of voters is required; chapter 40, general election laws that are also applicable to regular or special school elections; chapter 41, how to canvass votes; 927 and 4216-c34, absent voters laws applicable to what school

elections; 4216-c12, right to vote; chapter 211-C1, school election laws: Art. II, sec. 1, Constitution of Iowa, constitutional right to vote; chapter 31-B1, code 1935, permanent registration.

NOTE 1. Permanent registration is required in cities having a population of 125,000 or more (718-b1, code 1935). Permanent registration is permissive in all other cities including cities acting under special charter (718-b21).

4216-c18. Registration days. The registrars shall meet and remain in session on election day only and during the time the polls are open. In all respects except as in this chapter provided the general registration laws shall apply to registration for school elections wherein registration is required for general elections, except that administrative and clerical duties imposed thereby on the mayor and city clerk shall be performed by the president and secretary of the board respectively.

1. Registration books as evidence. *State v Grefe*, 139-18; 117 NW 13.

4216-c19. Canvassing the votes. In school corporations consisting of one precinct the judges of election shall canvass the vote and shall issue certificates to all officers elected and make a record of the propositions adopted.

In corporations consisting of more than one precinct the judges shall canvass the vote and make and certify a return to the secretary of the corporation of the votes cast for officers and upon each question submitted.

In a subdistrict the judges shall canvass the vote for subdirector and issue a certificate of election to the person receiving the highest number of votes, and shall immediately notify the secretary in writing of the subdirector elected and the votes for and against all propositions voted upon. They shall also canvass the vote for director-at-large in those subdistricts where a director-at-large is voted for and forthwith make certified returns thereof in a sealed enevelope to the secretary of the school township.

In all school corporations it shall be the duty of the secretary to cause a permanent record to be made of the vote on each officer and on each proposition submitted to the electors.

See 840, method of canvassing votes.

NOTE 1. On the outside of the sealed envelope containing the certified returns should be entered the votes for each candidate for dirctor-at-large in order that the secretary may know whom to notify of the time and place of the annual organization meeting held on the third Monday in March.

4216-c20. Canvassing returns. On the next Monday after the election in each corporation consisting of more than one precinct and in each school township having an even number of subdistricts the board shall canvass the returns made to the secretary, ascertain the result of the voting with regard

to every matter voted upon, declare the same, cause a record to be made thereof, and at once issue a certificate to each person elected.

4216-c21. Tie vote. If there is a tie vote for any elective school office in any school corporation or subdistrict the judges of election or the board canvassing the returns, as the case may be, shall decide the election by lot substantially as provided in section 883.

4216-c22. Contested elections. School elections may be contested as provided by law for the contesting of other elections.

See chapters 47 and 52, contest court and method of conducting election contest.

NOTE 1. A school board is without authority to pass on a question involving the legal qualifications of its membership.

1. Irregularities — effect. A school election will not be held invalid (in the absence of any showing of prejudice) because all the members of the board acted as judges of election, instead of only the president, secretary, and one director, as provided by statute. (See Book of Anno., Vol. 1, § 719, Anno. 1.) *Mack v Ind. Sch. Dist.*, 200-1190; 206 NW 145.

2. Contested election — appeal from consent judgment. An election contestant may not appeal from the judgment of the contest board holding the election in question illegal and providing for the calling of a new election by said board, when he consented to the entry of such judgment; nor may an estoppel to question such appeal be based upon the fact that the official board of which appellees were members refused to recognize the validity of the new election called by the contest board. *Leslie v Barnes*, 201-1159; 208 NW 725.

4216-c23. Directors—number. In any district including all or part of a city of the first class or a city under special charter the board shall consist of seven members; in all other independent city or town districts, in consolidated districts, and in rural and village independent districts having a population of over five hundred, the board shall consist of five members; in all other rural and village independent districts having a population of five hundred or less and in school townships not divided into subdistricts the board shall consist of three members; in school townships divided into subdistricts the board shall consist of one subdirector from each subdistrict with a director-at-large in those school townships that are divided into an even number of subdistricts.

See 5623, definition city of first class, town, village.

1. Independent districts—number of directors to be elected. Independent school districts having a population of five hundred or more are entitled to six (now five) directors—two to be elected each year; and those of a smaller population to three directors only—one to be elected each year. (Sections 1802 and 1808, Code 1873) (now section 4216-c23, Code 1935.) Held that, where such a district has had six directors, and the requisite population to justify that number, but the population has been reduced so as to fall below five hundred, it is

entitled to elect only one director each year. *State v Simpkins*, 77 Iowa 677.

2. Too many directors — quo warranto—parties. Where two directors are elected in one year in an independent district having a population of less than five hundred, while the law provides for the election of one only, it cannot be said that either is legally elected, and an action of quo warranto will lie against them both as individuals to test their right to the office, without making the district, or its inhabitants or directors, parties thereto. *State v Simpkins*, 77 Iowa 677.

3. Population—number of directors. Where an independent school district has had a population of five hundred, and so has been entitled to and has had six directors, two elected each year, but the population has fallen below that number, only one director should be elected each year. *State ex rel Wilcox v Vreeland*, 79 Iowa 466.

4216-c24. Term of office. Members of the board in all independent districts and undivided school townships shall be chosen at the regular election for a term of three years to succeed those whose terms expire at the organization of the board the third Monday in March immediately following and shall hold office for the term for which elected and until their successors are elected or appointed and qualified, except that in those independent districts which embrace a city and which have a population of one hundred and twenty-five thousand or more the term shall be six years. In school townships divided into subdistricts the subdirector and the director-at-large where one is required shall be elected at the regular election for a term of one year and until his successor is elected, or appointed, and qualified.

In all school corporations and subdistricts the term of office shall begin at the organization of the board on the third Monday of March.

4216-c25. Directors in new districts. At the first election in newly organized districts the directors shall be elected as follows:

1. In districts having three directors, one director shall be elected for one year, one for two years, and one for three years.
2. In districts having five directors, one shall be elected for one year, two for two years, and two for three years.
3. In districts having seven directors, three shall be elected for one year, two for two years, and two for three years.

4216-c26. Treasurer. In districts composed in whole or in part of cities or towns a treasurer shall be chosen at the regular election. He shall serve without pay and his term shall begin on the first secular day of July and continue for two years and until his successor is elected or appointed and qualified.

See 4222, appointment of treasurer in districts other than city or town; 4305, treasurer shall give bonds; 4306, treasurer shall take oath; Art. XI, Sec. 5, taking oath constitutional requirement; 1079, penalty for failure to give bonds; 13313, penalty for failure to take oath; 1145,

incumbent may hold over in case of failure to elect or appoint; 1051, holdover must qualify anew; 4222 and 4216-c28, form of oath; 5623, definition of city, town.

NOTE 1. In school townships, in rural and village independent districts, and in consolidated districts that are not located in a city or a town the treasurer is appointed by the board at its July meeting for a term of one year; in consolidated districts that are located in a city or a town the treasurer is elected by the voters at the regular election in March for a term of two years.

1. Service of process. The treasurer is an officer of the district, and service of notice upon him will be good. *Kennedy v Ind. Sch. Dist.*, 48-189.

4216-c27. Qualification. A school officer or member of the board shall, at the time of election or appointment, be a qualified voter of the corporation or subdistrict.

See 4216-c12, right to vote.

4216-c28. Oath required. Each director or subdirector elected at a regular district or subdistrict election, as the case may be, shall qualify by taking the oath of office on or before the time set for the organization meeting of the board the third Monday in March, and his election and qualification entered of record by the secretary. The oath may be administered by any qualified member of the board, the secretary of the board, or the county superintendent of schools, and may be taken in substantially the following form:

Do you solemnly swear that you will support the constitution of the United States and the constitution of the state of Iowa and that you will faithfully and impartially to the best of your ability discharge the duties of the office of ..... (naming the office) in..... (naming the district) as now or hereafter required by law?

If the oath of office is taken elsewhere than in the presence of the board in session it may be administered by any officer listed in sections 1215 and 1216 and shall be subscribed to by the person taking it in substantially the following form:

I, ..., do solemnly swear that I will support the constitution of the United States and the constitution of the state of Iowa and that I will faithfully and impartially to the best of my ability discharge the duties of the office of ..... (naming the office) in..... (naming the district) as now or hereafter required by law.

Such oath shall be properly verified by the administering officer and filed with the secretary of the board.

The treasurer elected at a regular election in city and town districts shall qualify by taking the oath of office in the manner herein required and filing a bond as required by section 4305 within ten days after the first secular day in July following his election.

1. Holding under prior statute. Prior provisions as to qualification of directors, held, applicable to independent districts. *State v Powell*, 101-382; 70 NW 592.

2. Subdirector—qualification of. A person elected to the office of subdirector may take the oath of office before any officer qualified to administer oaths, at any time before the third Monday in March succeeding his election, and when this is done his failure to attend the meeting of the board on that date will not authorize such board to declare a vacancy and appoint another in his place. *Bennett v District Township of Colfax*, 53 Iowa 687.

3. Qualification upheld. *State v Powell*, 101-382; 70 NW 592.

4. De facto officers. *Dist. Tp. v Myles*, 109-541; 80 NW 544.

5. Incumbents qualifying and holding over. State v Cahill, 131-155; 105 NW 691.

4216-c29. Vacancies. Failure to elect at the proper election or to appoint within the time fixed by law or the failure of the officer elected or appointed to qualify within the time prescribed by law; the incumbent ceasing to be a resident of the district or subdistrict; the resignation or death of incumbent or of the officer-elect; the removal of the incumbent from, or forfeiture of, his office, or the decision of a competent tribunal declaring his office vacant; the conviction of incumbent of an infamous crime or of any public offense involving the violation of his oath of office, shall constitute a vacancy.

See Art. XI, sec. 6, vacancies and the constitution; 4216-c30, term of one elected to fill vacancy; 4223-a2, appointment by board to fill vacancy; 4223-b1, special election to fill vacancy.

4216-c30. Vacancies filled by election. When vacancies are to be filled at a regular election, the election shall be for the number of years required to fill the vacancy and until a successor is elected, or appointed, and qualified.

See Art. XI, sec. 6, Constitution of Iowa, vacancies and the constitution; 4216-c29, what constitutes a vacancy; 4223-a2, appointment by board to fill vacancy; 4223-b1, special election to fill vacancy.

1. Resignation—when effective. Three members of a board of school directors of five members constitute a legal quorum to elect a successor to one of said three members who had theretofore resigned, with the intent (shared in by his fellow members) that the resignation would not take effect until his successor had been elected and had qualified. *Cowles v Sch. Dist.*, 204-689; 216 NW 83.

4216-c31. Surrendering office. Each school officer or member of the board upon the termination of his term of office shall immediately surrender to his successor all books, papers, and moneys pertaining or belonging to the office, taking a receipt therefor.

4216-c32. Penalties. Any school officer wilfully violating any law relative to common schools, or wilfully failing or refusing to perform any duty imposed by law, shall forfeit and pay into the treasury of the particular school corporation in which the violation occurs the sum of twenty-five dollars, action to recover which shall be brought in the name of the proper school corporation, and be applied to the use of the schools therein.

4216-c33. Application of general election laws. So far as applicable all laws relating to the conduct of general elections and voting thereat and the violation of such laws shall, except as otherwise in this chapter provided, apply to and govern all school elections.

See 676, 742-950, general election laws.

4216-c34. Absent voters' law. In the application of the absent voters' law as provided for in section 927 the secretary of the board shall perform the duties therein imposed upon the county auditor or clerk of the city or town. In independent districts in cities of the first class the board shall have power to appoint such deputies as are necessary to enable him properly to perform the duties imposed by this section.

See 927, absent voters laws applicable to what school elections; 4216-c12, right to vote; chapter 211-C1, school election laws; Art. II, sec. 1, Constitution of Iowa, constitutional right to vote; 676 and 4216-c17, where registration of voters is required; chapter 40, general election laws that are also applicable to regular or special school elections; chapter 41, how to canvass votes.

NOTE 1. The absent voters' law applies only to city, town, and consolidated districts; it does not apply to school townships and rural independent districts. See section 927.

CHAPTER 212

POWERS OF ELECTORS

4217. Enumeration. The voters at the regular election shall have power to:

1. Direct a change of textbooks regularly adopted.
2. Direct the sale, lease, or other disposition of any schoolhouse or site or other property belonging to the corporation, and the application to be made of the proceeds thereof.
3. Determine upon additional branches that shall be taught.
4. Instruct the board that school buildings may or may not be used for meetings of public interest.
5. Direct the transfer of any surplus in the schoolhouse fund to the general fund.
6. Authorize the board to obtain, at the expense of the corporation, roads for proper access to its schoolhouses.
7. Vote a schoolhouse tax, not exceeding two and one-half mills on the dollar in any one year, for the purchase of grounds, construction of schoolhouses, the payment of debts contracted for the erection of schoolhouses, not including interest on bonds, procuring libraries for and opening roads to schoolhouses.
8. Authorize the establishment and maintenance in each district of one or more schools of a higher order than an approved four-year high school course.

See 387 and 388, state comptroller's permission to transfer funds; 4241, transferred to schoolhouse fund by vote; 4371, 4372, 4373, use of school buildings for other purposes; 742, schoolhouses as polling places; 4267-b1, junior college.

1. Additional annotations. See under § 4195.

2. Irregular record. Irregularity in recording the acts of the electors will not prevent such action being recognized and taken into account in a court of equity. *Locker v Keiler,* 110-707; 80 NW 433.

3. Collateral attack on record of meeting. *Everts v Dist. Tp.,* 77-37; 41 NW 478.

4. Ratification of invalid contract. *Everts v Dist. Tp.,* 77-37; 41 NW 478.

5. Nonpower to discharge debtor. The electors of a district township have no power under this section, or otherwise, to authorize the discharge of a debtor of the district without consideration. *Wash. Dist. Tp. v Thomas,* 59-50; 12 NW 767.

6. Music. The electors may provide that music shall be taught in the schools of the district. *Bellmeyer v Ind. Dist.,* 44-564.

7. Additional schoolhouses. It is not necessarily improper for the electors to vote a tax for the erection of a schoolhouse where one schoolhouse already exists in the district. *Casey v Ind. Dist.,* 64-659; 21 NW 122; see *Kinney v Howard,* 133-94; 110 NW 282.

8. Disposition of schoolhouse. While the power to fix and relocate schoolhouse sites is vested in the board, the district meeting may make disposition of an old schoolhouse other than by its removal to a new site. *Peters v Warner,* 81-335; 46 NW 1001.

9. Enjoining sale of schoolhouse —vested interest. *Barclay v Sch. Tp.,* 157-181; 138 NW 395.

10. Right to change site. This provision does not take away the power previously existing in the board of directors to change the schoolhouse site without such vote. *James v Gettinger,* 123-199; 98 NW 723.

11. Right to convey school site. A city independent school corporation, holding title to a schoolhouse site by full warranty deed, may abandon such site for school purposes and, by pursuing the course provided by statute, convey full title to its grantee. (See § 4385.) *Ind. Sch. Dist. v Smith,* 190-929; 181 NW 1.

12. Right to purchase site. The voters' power to order the sale of an abandoned schoolhouse site may not be so exercised as to defeat the prior right of the proper landowner to purchase the site. *Waddell v Board,* 190-400; 175 NW 65.

13. Mandamus to compel erection of schoolhouse. *Benjamin v Dist. Tp.,* 50-648.

14. Use of schoolhouses for religious purposes. *Townsend v Hagan,* 35-194; *Davis v Boget,* 50-11.

15. Valid tax. *Seaman v Baughman,* 82-216; 47 NW 1091.

16. Invalid tax. *C. R. & M. R. R. Co. v Carroll Co.,* 41-153.

17. Excess tax—validity. *McPherson v Foster,* 43-48; *Kirchner v Board,* 141-43; 118 NW 51.

18. Estoppel to question validity of tax. *Loesche v Goerdt,* 123-55; 98 NW 571.

19. Property on which tax is enforceable. *Grout v Illingworth,* 131-281; 108 NW 528.

20. Limitation on schoolhouse fund. *Sterling Sch. F. Co. v Harvey,* 45-466.

21. Limitation on schoolhouse tax—non-applicability. *Richards v Board,* 69-612; 29 NW 630.

22. Rescinding tax—vested interest. *Benjamin v Dist. Tp.,* 50-648; *Hibbs v Board,* 110-306; 81 NW 584.

23. Applicability of clause relative to highways. *Ind. Dist. v Kelley,* 55-568; 8 NW 426; *McShane v Ind. Dist.,* 76-333; 41 NW 33.

24. Highways paid for out of former "contingent" fund. The payment of money out of the contingent fund to secure a highway to a schoolhouse is not unlawful. *Ind. Dist. v Kelley,* 55-568; 8 NW 426; *McShane v Ind. Dist.,* 76-333; 41 NW 33; *Bogaard v Ind. Dist.,* 93-269; 61 NW 859.

25. Discretion as to procuring highway. *Boggard v Ind. Dist.,* 93-269; 61 NW 859.

26. Course of study—discretion. The directors of a school district have a fair discretion as to the method to be employed in teaching a subject which the electors have directed to be taught—a discretion not controllable by mandamus. (See Book of Anno., Vol. 1, § 12441,

Anno. 1 et seq.) *Neilan v Board*, 200-860; 205 NW 506.

27. Express mention and implied exclusion. In statutes in which stated things are enumerated, things not named are excluded. *Vale v Messenger*, 184-553; 168 NW 281; *Pierce v Bekins V. & S. Co.*, 185-1346; 172 NW 191.

28. District debt—general obligations—trust fund. School warrants which are in form the general obligations of the district, and issued under a purported contract of the district providing for such unconditional issuance, are void if in excess of the constitutional limit of indebtedness, notwithstanding the fact that the said contract carries the inference that the warrants will be paid from a special fund arising from the sale of bonds. *Carstens Bros. v Cons. Indep. School District of Bayard*, 218 Iowa 812.

4218. Submission of proposition. The board may, and upon the written request of five voters of any school township or rural independent or consolidated district, or of twenty-five voters of any city or town independent district having a population of five thousand or less, or of fifty voters of any other city independent district or of any district in which registration of any of the voters is required, shall provide in the notice for the regular election for submitting any proposition authorized by law to the voters. All propositions shall be voted upon by ballot, or by voting machine where required, in substantially the form indicated in sections 763 and 765; and the voter shall indicate his vote in the manner designated in section 764, or indicate it on the voting machine, as the case may be.

See 5623, definition city; 676, where registration is required.

1. Order for submission essential. Unless there has been a valid order of the board of directors for the submission of a proposition, the adoption thereof by the electors is of no validity, even though notice of the submission of the proposition has been given. *McNees v Sch. Tp.*, 133-120; 110 NW 325.

2. Submission discretionary. In the absence of a written request for the submission at the annual meeting of any proposition authorized by law, it is discretionary with the board to provide in the notice of the meeting for such proposition to be submitted. *Kirchner v Board*, 141-43; 118 NW 51.

3. Holding under prior statute relative to ballot. *Seaman v Baughman*, 82-216; 47 NW 1091.

4. Ballots—paucity of recitals. It is not necessary that the ballot contain a recital of every preliminary step necessary to render the election valid. *Calahan v Handsaker*, 133-622; 111 NW 22.

5. Defective ballots. Where the ballot prepared and used by the electors was in the form of the Australian ballot with reference to the submission of propositions, and not in strict conformity with the statutory provision as to submission of propositions at school elections, held, that the irregularity would not defeat the result of the election. *Kinney v Howard*, 133-94; 110 NW 282.

6. Irregularities in elections. See under § 4216-c10.

4219. Special subdistrict schoolhouse tax. At the regular subdistrict election or at a special subdistrict election called for that purpose, the voters may vote to raise a greater amount of schoolhouse tax than that voted by the voters of the school township, ten days' previous notice having been given, but the amount so voted, including the amount voted

by the school township, shall not exceed in the aggregate the sum of three and three-fourths mills on the dollar. The sum thus voted shall be certified forthwith by the secretary of said subdistrict election to the secretary of the school township, and shall be levied by the board of supervisors only on the property within the subdistrict.

See 63(23) method of computing time; 4216-c3, notice of special subdistrict election.

1. Power of subdistrict to vote schoolhouse tax, code, section 1778. Under section 1778 of the code, a subdistrict in a district township has the power, at its annual meeting of electors, to vote a tax to be raised in the subdistrict for schoolhouse purposes, in addition to the tax voted under section 1717, par. 3 of the code, by the electors of the whole district township at their annual meeting; and when such tax has been voted in a subdistrict, it is the duty of the directors of the district township to certify it to the board of supervisors, to the end that they may levy the same; and mandamus will lie to compel the directors to perform such duty. *Wood v Farmer et al,* 69 Iowa 533.

CHAPTER 213

DIRECTORS—POWERS AND DUTIES

4220. Organization. The board of directors of each school corporation shall meet and organize at two o'clock p. m., or at seven-thirty o'clock p. m., if so ordered by the president of the board, on the third Monday in March each year at some suitable place to be designated by the secretary. Notice of the place and hour of such meeting shall be given by the secretary to each member and each member-elect of the board.

Such organization shall be effected by the election of a president from the members of the board, who shall be entitled to vote as a member.

1. Failure to notify director. The action of a school board at an annual meeting will not be invalidated because a member was not notified of the meeting because he was absent from the state and his whereabouts were not definitely known. *Cons. Sch. Dist. v Griffin,* 201-63; 206 NW 86.

4221. Special meetings. Such special meetings may be held as may be determined by the board, or called by the president, or by the secretary upon the written request of a majority of the members of the board, upon notice specifying the time and place, delivered to each member in person, or by registered letter, but attendance shall be a waiver of notice.

1. Notice jurisdictional. On failure to give proper notice to a member, a special meeting of the board is not lawfully called and it cannot lawfully act. *Barclay v Sch. Tp.,* 157-181; 138 NW 395.

2. Oral notice. The fact that the statute requires the notice to be "delivered" to each member does not imply that the notice shall be a written notice. *Gallagher v Sch. Tp.,* 173-610; 154 NW 437.

3. Notice by telephone. A notice of the time and place of a special meeting of a school board, communicated by the president by

telephone, to the wife of a member, and by her communicated to her husband, is sufficient, especially when the member was, at the time, sick and wholly unable to attend any meeting. *Ind. Sch. Dist. v Gwinn*, 178-145; 159 NW 687.

4. **Special meeting on oral notice.** A special meeting of the board of directors of a school corporation is legally called on oral notice to the directors by the secretary, at the direction of the president. *Mershon v Cons. Sch. Dist.*, 204-221.

4222. Appointment of secretary and treasurer. At the meeting of the board the first secular day in July the board shall appoint a secretary who shall not be a teacher or other employee of the board. It shall also, except in districts composed in whole or in part of a city or town, appoint a treasurer. Such officers shall be appointed from outside the membership of the board for terms of one year beginning with the first secular day in July which appointment and qualification shall be entered of record in the minutes of the secretary. They shall qualify within ten days following their appointment by taking the oath of office in the manner required by section 4216-c28 and filing a bond as required by section 4305 and shall hold office until their successors are appointed and qualified.

See 4216-c26, election of treasurer in city and town school district.

NOTE 1. In all city or town independent districts the treasurer is elected by the voters at the regular election the second Monday in March for a term of two years; this includes consolidated districts that are located in a city or a town but it does not include consolidated districts that are not located in a city or a town. In school townships, in rural and village independent districts, and in consolidated districts that are not in a city or a town the treasurer is appointed by the board at its July meeting for a term of one year.

1. **Treasurer — election — prior statutes.** *Carter v McFarland*, 75-196; 39 NW 268.

2. **Adjournment—effect on election.** Where the members of the board separated without completing the business of election of secretary and subsequently on the same day reassembled and made such election, held, that the election was valid, the separation of the board being deemed merely a recess. *State v Powell*, 101-382; 70 NW 592.

4223. Quorum. A majority of the board of directors of any school corporation shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time.

NOTE 1. If at least a quorum is present at a legal meeting of the board, the vote of a majority of those present and actually voting is required to carry a proposition or motion.

"The law having fixed the number constituting a quorum, this number has the same authority to act as the full board, and the actions of this number constitute the action of the board, so that therefore, if a quorum is present at the meeting, all that would be required to carry a proposition would be a majority of those present and actually voting, so that if four constituted a quorum and five were present and all voted, it would take the affirmative vote of three to carry the proposition, but if only three out of the five voted, it would only take the affirmative vote of two of the three to carry the proposition or motion." Opinion Attorney General.

1. Meetings outside district—legality. A school board may validly transact its ordinary business at any point in any civil township in which any of the territory of the district is situated. *Crawford v Sch. Tp.*, 182-1324; 166 NW 702.

2. Transacting business after formal adjournment. An "adjournment" of a school board is not effected by the passing of a formal motion that the board adjourn. There must be a separation and departure of the members. *Gallagher v Sch. Tp.*, 173-610; 154 NW 437.

3. Resignation — when effective. Three members of a board of school directors of five members constitute a legal quorum to elect a successor to one of said three members who had heretofore resigned, with the intent (shared in by his fellow members) that the resignation would not take effect until his successor had been elected and had qualified. *Cowles v Ind. Sch. Dist.*, 204-689.

4. Majority of quorum. Vacancies on an official board (which is empowered to fill vacancies) may be filled by a majority of a quorum, in the absence of a statute which requires a majority of the entire membership of the board. *Cowles v Sch. Dist.*, 204-689; 216 NW 83.

4223-a1. Temporary officers. The board shall appoint a temporary president or secretary, in the absence of the regular officers.

4223-a2. Vacancies filled by board—qualification—tenure. Vacancies occurring among the officers or members of a school board shall be filled by the board by appointment. A person so appointed to fill a vacancy in an elective office shall hold until the organization of the board the third Monday in March immediately following the next regular election and until his successor is elected and qualified. A person appointed to fill a vacancy in an appointive office shall hold such office for the residue of the unexpired term and until his successor is appointed and qualified. Any person so appointed shall qualify within ten days thereafter in the manner required by section 4216-c28.

See Art. XI, sec. 6, Constitution of Iowa, vacancies and the constitution; 4216-c29, what constitutes a vacancy; 4216-c30, term of one elected to fill vacancy; 4223-b1, special election to fill vacancy.

NOTE 1. Removal. Boards have no authority to remove any member or officer of the board. Such removal may be made only by the courts. Code, sections 1091, 1117.

1. De facto officers—collateral attack. Members of a school board who are, in supposed compliance with the law, and in good faith, elected to fill vacancies caused by resignations, and who in good faith act as such members, are at least directors de facto, and their official actions may not be collaterally assailed. *Cowles v Ind. Sch. Dist.*, 204-689.

4223-b1. Vacancies filled by special election—qualification—tenure. In any case where a vacancy or vacancies occur among the elective officers or members of a school board and the remaining members of such board have not filled such vacancy within ten days after the occurrence thereof, or when the board is reduced below a quorum for any cause, the secretary of the board, or if there be no secretary, the county superintendent of schools shall call a special election in the district,

subdistrict, or subdistricts, as the case may be, to fill such vacancy or vacancies, giving the notices required by law for such special elections, which election shall be held not sooner than ten days nor later than fourteen days thereafter. In any case where the secretary fails for more than three days to call such election, the county superintendent shall call it by giving the notices required by law for special elections.

Any appointment by the board to fill any vacancy in an elective office on or after the day notice has been given for a special election to fill such vacancy as provided herein shall be null and void.

In any case of a special election as provided herein to fill a vacancy occurring among the elective officers or members of a school board before the expiration of a full term, the person so elected shall qualify within ten days thereafter in the manner required by section 4216-c28 and shall hold office for the residue of the unexpired term and until his successor is elected, or appointed, and qualified.

See Art. XI, sec. 6, Constitution of Iowa, vacancies and the constitution; 4216-c29, what constitutes a vacancy; 4216-c30, term of one elected to fill vacancy; 4223-a2, appointment by board to fill vacancy.

1. Power to fill — majority of quorum. Vacancies on an official board (which is empowered to fill vacancies) may be filled by a majority of a quorum, in the absence of a statute which requires a majority of the entire membership of the board. *Cowles v Ind. Sch. Dist.*, 204-689.

4224. General rules. The board shall make rules for its own government and that of the directors, officers, teachers, and pupils, and for the care of the schoolhouse, grounds, and property of the school corporation, and aid in the enforcement of the same, and require the performance of duties by said persons imposed by law and the rules.

See 3845, 3846, power of board in connection with vocational education; 2362, 2363, power to appoint nurse.

1. Constitutionality of rules and prior constitutional provision. *Burdick v Babcock*, 31-562.

2. Reasonable rules. Rules of a board of directors providing for the suspension of a pupil for a certain number of absences or cases of tardiness, unexcused, are reasonable and may be enforced, even if the absence or tardiness is by the consent or direction of the parent. *Burdick v Babcock*, 31-562.

3. Unreasonable rule. A rule providing for expulsion of a pupil for failure to pay for damages done by him to school property, when his default is no breach of good order or good morals, is beyond the authority of school officers to promulgate or enforce. *Perkins v Board*, 56-476; 9 NW 356.

4. Management. The management of school affairs is left to the discretion of the board of directors, and such discretion will not be interfered with by the courts so far as it is exercised within the scope of the powers conferred upon the board. *Kinzer v Ind. Sch. Dist.*, 129-441; 105 NW 686.

5. Acts outside school. Acts out of school hours which are detrimental to the best interests of the school may be forbidden. *Burdick v Babcock*, 31-562.

6. Unvaccinated school children. The appellate court will be slow to interfere with an order by the trial

court refusing a temporary injunction against the enforcement by a school board of its order which temporarily excluded unvaccinated pupils from the public school; and especially will the appellate court decline to disturb such refusal when it affirmatively appears that the order of the board has expired ex vi termini. *Baehne v Ind. Sch. Dist.*, 201-625; 207 NW 755.

7. **Control.** The board of directors being given exclusive control over the affairs of the school corporation subject to appeal to the county superintendent, an action of mandamus will lie to compel the board to comply with the orders of the superintendent in a matter to which the board has exclusive jurisdiction. *State v Thomas*, 152-500; 132 NW 842.

4225. Use of tobacco. Such rules shall prohibit the use of tobacco and other narcotics in any form by any student of such schools and the board may suspend or expel any student for any violation of such rule.

See 1555, minors required to give information; 1585, advertisement of tobacco near public schools prohibited; 4259, instruction concerning stimulants, etc.

4226. School year. The school year shall begin on the first of July and each school regularly established shall continue for at least thirty-two weeks of five school days each and may be maintained during the entire calendar year.

1. **Right to shorten school terms.** *Herrington v Dist. Tp.*, 47-11.

4227. Number of schools—wards — attendance — terms. The board of directors shall determine the number of schools to be taught, divide the corporation into such wards or other divisions for school purposes as may be proper, determine the particular school which each child shall attend, and designate the period each school shall be held beyond the time required by law.

1. **Discrimination against colored children.** The board cannot discriminate between white and colored children and require the latter to attend a separate school. *Clark v Board*, 24-266; *Smith v Board*, 40-518; *Dove v Ind. Sch. Dist.*, 41-689.

2. **Directors — nonrevocation of official action.** The official determination of school directors may not be deemed revoked because of the fact that the individual directors knew of a violation of such determination by one member of the board, and did not individually object to such violation. *Mulhall v Pfannkuch*, 206-1139; 221 NW 833.

4228. Contracts—election of teachers. The board shall carry into effect any instruction from the regular election upon matters within the control of the voters, and shall elect all teachers and make all contracts necessary or proper for exercising the powers granted and performing the duties required by law, but the board may authorize any subdirector to employ teachers for the school in his subdistrict; but no such employment by a subdirector shall authorize a contract, the entire period of which is wholly beyond his term of office.

See 4341 et seq., minimum salary law.

NOTE 1. A subdirector has no authority to select a teacher for his subdistrict unless he has been so authorized by the township school board.

NOTE 2. A contract with a teacher selected by the subdirector is not binding until signed by both the teacher and the president of the township school board. See section 4229.

NOTE 3. A contract signed by a teacher without a legal Iowa certificate in force and properly registered in the county where she is to teach is invalid. The president before signing a contract with a teacher should require the teacher to produce her certificate.

NOTE 4. It is the duty of the county superintendent to order a school to be closed if the teacher therein is not legally certificated. See section 4106(7).

NOTE 5. No compensation shall be recovered by a teacher for services rendered while without a legal certificate. See section 4336.

1. Contracts—power of director. A subdirector does not have authority to select a teacher unless that authority has been delegated to him by the township board. In delegating such authority to a subdirector the township board can place upon the subdirector any reasonable limitation it sees fit. The president has no authority to sign a contract with a teacher whose selection by the subdirector does not conform to the limitation fixed by the board. *Hoffa v Saupe*, 199 Iowa 515.

2. Duty to execute instructions. Under this section the board of directors is authorized to carry into effect instructions from the annual meeting upon matters which are within the control of the voters and have properly been submitted to them for action. The recording of the action of the electors is immaterial. *Kinney v Howard*, 133-94; 110 NW 282.

3. Official action required. The assent of a majority of the members of the board of directors of the district township individually to a proposition will not bind the district. An action to be binding must be that of the board as a body. *Herrington v Dist. Tp.*, 47-11; *Mills v Collins*, 67-164; 25 NW 109; *Forcum v Ind. Dist.*, 99-435; 68 NW 802.

4. Nonofficial action. Contracts which the directors of an independent district are authorized to make will be binding upon the district, although executed by them individually and not while acting as a board. Their powers are the same as those of a subdirector. *Athearn v Ind. Dist.*, 33-105.

5. Oral evidence of official action. It is the vote of the directors which is binding on the district, and not the record thereof. And where no record of the action of the directors was made it may be proven by oral testimony. *German Ins. Co. v Ind. Sch. Dist.*, 80 Fed 366.

6. Contract with board member. A board of directors cannot make a contract of employment with one of its number. *Moore v Ind. Dist.*, 55-654; 8 NW 631; *Weitz v Ind. Dist.*, 78-37; 42 NW 577; *Weitz v Ind. Dist.*, 87-81; 54 NW 70.

7. Contract as to attorney fees. The board has no authority to agree to pay attorney's fees in case of action brought on the contract. *Weir Furnace Co. v Ind. Sch. Dist.*, 99-115; 68 NW 584.

8. Contract as to place of payment. A school board has no authority to make a contract fixing the place of payment at another place than its treasury. *Weir Furnace Co. v Ind. Sch. Dist.*, 99-115; 68 NW 584.

9. Acceptance of benefits of contract—effect. A school district having through the board of directors accepted and received the benefit of apparatus contracted for is bound by the contract. *Johnson v Sch. Corp.*, 117-319; 90 NW 713.

10. Acceptance of benefits of invalid executed contract. Where contracts made by a board of directors with persons occupying a fiduciary or official relation to the school corporation have been carried out, a taxpayer will not be allowed to maintain a suit in the name of the corporation against the contractor to recover the money paid to him under such contract, the benefits of which are retained by the school corporation. *Kagy v Ind. Dist.*, 117-694; 89 NW 972.

11. Payments under executed invalid contract. A court of equity

will not, at the suit of a resident taxpayer of a school district brought against its officers, enforce repayment of money expended under an executed contract of which the school district retains the benefit, although the contract is invalid, there being no claim that the officers acted corruptly or fraudulently or paid an unreasonable amount. *Kagy v Ind. Dist.*, 117-694; 89 NW 972.

12. Ratification of unauthorized acts. Public policy does not prevent a school board from ratifying that which it might have originally authorized. *Woods v Ind. Sch. Dist.*, 184-902; 169 NW 108.

13. Ratification of unauthorized contract. The board of directors of a school district having the power to make contracts for the erection of schoolhouses in subdistricts may, by its acts in respect thereto, ratify a contract made by a subdirector for a like purpose. *Stevenson v Dist. Tp.*, 35-462.

14. Ratification of invalid contract. A contract or order given by members of the board of directors acting individually is not binding on the district, but such a contract may be ratified by the acceptance, retention, and use by the school district of the property thus contracted or paid for. *Richards v Sch. Tp.*, 132-612; 109 NW 1093.

15. Ratification of void contract. The directors cannot, by any acts, render the district liable upon an implied contract, or make valid by ratification a contract which they have no authority to make directly. *Taylor v Dist. Tp.*, 25-447; *Manning v Dist. Tp.*, 28-332.

16. Ratification by acquiescence. Where the evidence shows that the directors and other officers knew of the services rendered and the materials furnished in constructing buildings under a parol contract not binding on the district, held, that acquiescence therein by such officers, and appropriation thereof to the use of the township, constituted a ratification binding upon such township. *Bellows v Dist. Tp.*, 70-320; 30 NW 582.

17. Nonratifiable contract. A contract for the purchase of charts purporting to bind the directors and not the district, held, not capable of ratification. *Western Pub. House v Dist. Tp.*, 84-101; 50 NW 551.

18. Contract of de facto officers. A school district may, through officers having authority to contract for it, adopt any contract of officers acting de facto; and thus officers, after legal incorporation, may ratify an act done before such incorporation. *Dubuque Female Col. v Dist. Tp.*, 13-555.

19. Estoppel. Silence of members of the board with the knowledge on the part of some of them that work under contract is not being done in accordance with the contract, will not estop the district from claiming damages on account thereof. *Forcum v Ind. Dist.*, 99-435; 68 NW 802.

20. Change of contract. The board of directors acting for a school district has power to change a contract already made, even though such change operates to release sureties on the contract. *Ind. Dist. v Reichard*, 50-98.

21. Verbal contracts. A contract which the board of directors is authorized to make will not be void because no record thereof is made. Within the scope of their powers they may be bound by verbal contracts. *Athearn v Ind. Dist.*, 33-105; *Bellmeyer v Ind. Dist.*, 44-564.

22. Release of debtor. The board of directors has no authority to release a lawful claim of the district against an officer for money coming into his hands. *Dist. Tp. v Morton*, 37-550.

23. Individual liability of board members. *Baker v Chambles*, 4 Gr 428; *Lyon v Adamson*, 7-509; *Ind. Dist. v Reichard*, 50-98; *Chamberlain v Clayton*, 56-331; 9 NW 237; *Hanna v Wright*, 116-275; 89 NW 1108; *Johnson v Sch. Corp.*, 117-319; 90 NW 713.

24. Nondisqualifying interest. The adoption by a school board of a resolution is not rendered nugatory because of the affirmative vote of a particular member, by the fact that subsequent to the adoption, the private corporation of which the particular member of the board was an officer entered into a contract with a third party for the carrying out of the purposes and

objects of said resolution. (See Book of Anno., Vol. 1, § 5673.) *Security Nat. Bank v Bagley*, 202-701; 210 NW 947.

25. Illegal action — nonduty to appeal. The oral employment by a subdirector, under authority from the school board, of a teacher, and the formal, written, statutory contract evidencing such employment signed by the president of the board and by the teacher, is not subject to review by the school board, and the assumption of such power by the board may be ignored by the teacher without appeal to the county superintendent. *Shill v School Tp.*, 209-1020; 227 NW 412.

26. Teachers — ratification of contract. A contract of employment of a teacher in a public school, signed by the teacher but not signed by the president of the board is ratified for the full term of the contract by the action of the board in accepting the services of the teacher, and paying her therefor, with knowledge of said contract. *Smith v School Dist. Tp. of Grove*, 216 Iowa 1047.

4229. Contracts with teachers. Contracts with teachers must be in writing, and shall state the length of time the school is to be taught, the compensation per week of five days, or month of four weeks, and that the same shall be invalid if the teacher is under contract with another board of directors in the state of Iowa to teach covering the same period of time, until such contract shall have been released, and such other matters as may be agreed upon, which may include employment for a term not exceeding the ensuing school year, except as otherwise authorized, and payment by the calendar or school month, signed by the president and teacher, and shall be filed with the secretary before the teacher enters upon performance of the contract, but no such contract shall be entered into with any teacher for the ensuing year or any part thereof until after the organization of the board.

NOTE 1. A contract with a teacher can be authorized only by the board in session; it is not valid until signed by both the teacher and the president of the board.

NOTE 2. Before entering into a contract with a teacher the board should make sure that she meets the requirements as to training and experience and also that she holds a legal certificate of the kind required in the position to which she is to be elected.

NOTE 3. It is the duty of the county superintendent to order a school to be closed if the teacher therein is not legally certificated. See section 4106(7).

NOTE 4. No compensation shall be recovered by a teacher for services rendered while without a legal certificate. See section 4336.

NOTE 5. If a teacher's contract extends over a period that includes a so-called national or legal holiday—like Christmas, New Years, Thanksgiving, or Washington's or Lincoln's birthday—and her contract is silent as to whether she shall be required to teach if such holiday occurs on a secular day of the week—except Saturday—it is for the board to determine whether she may dismiss school on that day or whether she may "make up the day" if she should dismiss school on her own motion.

1. Essential parts of contract. The rules and regulations of the district fixing the time for opening the schools are part of the contract. *Burkhead v Ind. Sch. Dist.*, 107-29; 77 NW 491.

2. Number of teachers. The number of teachers a given school shall employ is within the discretion of the school directors and cannot be controlled by mandamus or injunction. *Clay v Sch. Dist.*, 187-89; 174 NW 47.

3. Rule of board as to certifi-

cate qualifications. *Hull v Ind. Dist.*, 82-686; 46 NW 1053; 48 NW 82.

4. Limitations on contract of employment. The board of directors of a rural independent school district has no power to employ a teacher under a contract which calls for performance wholly within the term of office of the board thereafter to be organized. *Ind. Sch. Dist. v Pennington*, 181-933; 165 NW 209; see *Burkhead v Ind. Dist.*, 107-29; 77 NW 491.

5. Double employment of teacher. A teacher may be employed by a public school district and the state teachers' college at the same time and divide her time and labor between the two schools, if both employers consent and payment is equitably proportioned to each. *Clay v Sch. Dist.*, 187-89; 174 NW 47.

6. Void contract. A contract of a teacher with a person assuming to be a subdirector, but not so either de facto or de jure, as the teacher knew or had reason to believe, held, not to be binding upon the district. *Bennett v Dist. Tp.*, 53-687; 6 NW 36.

7. Ratification of invalid contract. A contract of directors with a teacher, even though originally not binding, because not properly executed, will be ratified and become binding by partial payment to the teacher who has properly performed his contract, such payment being in accordance with the terms of the contract for services rendered under it with knowledge of the facts and without dissent. *Athearn v Ind. Dist.*, 33-105.

8. Ratification of verbal contract. Where a verbal contract of employment of a teacher was partly performed on each side, held, that there was such ratification by the district as to be binding upon it. *Cook v Ind. Sch. Dist.*, 40-444: *Place v Dist. Tp.*, 56-573; 9 NW 917.

9. Ratification by acquiescence. In a particular case, held, that authority having been given the president to employ teachers with the consent of the board, it appeared that the consent involved was the individual consent of the members, and that the teacher having entered upon the discharge of her duties, under a contract with the president, and with the knowledge of the members of the board, implied from their want of objection, the contract was binding. *Hull v Ind. Dist.*, 82-686; 46 NW 1053; 48 NW 82.

10. Nonratification. Where the services were rendered after notification by the president that he would not approve the contract, and there was no proof that the services were accepted or the contract ratified, held, that the mere rendering of the services would not entitle plaintiff to recover. *Place v Dist. Tp.*, 56-573; 9 NW 917.

11. Damages for breach. When a contract with a teacher is disregarded by the school board and the teacher is denied the right to perform, the teacher is not required by way of diminution of damages to seek employment in a different grade of the service or in a different locality. *Byrne v Ind. Sch. Dist.*, 139-618; 117 NW 983.

12. Employment. Principle reaffirmed that valid employment of a teacher must be made through the medium of a written contract duly signed by the teacher and the president. *Shackelford v Dist. Tp.*, 203-243; 212 NW 467.

13. Employment—legality. The official action of a board of school directors in authorizing each subdirector to employ in his subdistrict the teacher of his choice, necessarily constitutes no authority to subdirector to hire a teacher in a district, the school of which the board orders closed. *Mulhall v Pfannkuch*, 206-1139; 221 NW 833.

14. Duty of president to sign contract. When a subdirector of a school township orally and under due authority from the school board employs a teacher, the president of the board has no discretion to refuse to sign the formal written contract required by statute. *Shill v School Tp.*, 209-1020; 227 NW 412.

15. Teachers — ratification of contract. A contract of employment of a teacher in a public school, signed by the teacher but not signed by the president of the board is ratified for the full term of the contract by the action of the

board in accepting the services of the teacher, and paying her therefor, with knowledge of said contract. *Smith v School Dist. Tp. of Grove,* 216 Iowa 1047.

16. Teacher, although entitled to certain minimum wage under statute, could not insert such wage in contract and thereby bind school district if subdirector who signed contract forbade teacher to insert amount of compensation (Code 1931, 4341). *Krutsinger v School Tp. of Liberty,* 257 NW 797.

17. Mutual assent is essential to contract, and parties' minds must meet on all essential elements. *Krutsinger v School Tp. of Liberty,* 257 NW 797.

18. Whether school district's subdirector assented to teacher's inserting compensation in contract held for jury on conflicting evidence. *Krutsinger v School Tp. of Liberty,* 257 NW 797.

19. Oral extension of teacher's written contract held invalid under statute requiring teachers' contracts to be written and to state term to be taught (Code 1931, 4229). *Krutsinger v School Tp. of Liberty,* 257 NW 797.

4230. Superintendent—term. The board of directors of any independent school district or school township where there is a township high school shall have power to employ a superintendent of schools for one year. After serving at least seven months, he may be employed for a term of not to exceed three years, but such reelection or reemployment shall not be prior to the organization of the board of the year during which an existing contract expires. He shall be the executive officer of the board and have such powers and duties as may be prescribed by rules adopted by the board or by law. Boards of directors may jointly exercise the powers conferred by this section.

1. Power to employ. A "consolidated" school district is an 'independent school district" within the meaning of this section. *Cons. Sch. Dist. v Griffin,* 201-63; 206 NW 86.

4231. Nonemployment of teacher—when. 1. No contract shall be entered into with any teacher to teach an elementary school when the average daily attendance of elementary pupils in such school the last preceding term therein was less than five such pupils of school age, resident of the district or subdistrict, as the case may be, nor shall any contract be entered into with any teacher to teach an elementary school for the next ensuing term when it is apparent that the average daily attendance of elementary pupils in such school will be less than five or the enrollment less than six such pupils of school age, resident of the district or subdistrict, as the case may be, regardless of the average daily attendance in such school during the last preceding term, unless the parents or guardians of seven or more such elementary children subscribe to a written statement sworn to before the county superintendent or a notary public certifying that such children will enroll in and will attend such elementary school if opened and secure from the county superintendent written permission authorizing the board to contract with a teacher for such school for a stated period of time not to exceed three months.

When natural obstacles to transportation of pupils to another school in the same or in another corporation or other conditions make it clearly inadvisable that such elementary school be closed, the county superintendent may authorize the board in writing to contract with a teacher for such school for a stated period of time not to exceed three months.

2. Any contract with any teacher which is made in violation of the provisions of this section shall be null and void from its inception and no compensation shall be due or paid to any teacher who enters into a contract in violation of the provisions of this section.

See sections 4233-e1 and 4233-e2, school facilities when school is closed for lack of pupils.

NOTE 1. This section sets out two conditions under either of which the board has no authority to contract with a teacher to teach an elementary school during the next ensuing term. These two conditions are as follows:

1. The board cannot contract with a teacher to teach a particular elementary school if the average daily attendance in such school the last preceding term therein was less than five elementary pupils of school age who are residents of the district or subdistrict, as the case may be, unless the board first secures the written consent of the county superintendent, which consent cannot cover a period of more than three months.

2. The board cannot contract with a teacher to teach a particular elementary school if it is apparent that the average daily attendance in such school if opened will be less than five or the enrollment less than six elementary pupils of school age who are residents of the district or subdistrict, as the case may be, unless the board first secures the written consent of the county superintendent, which consent cannot cover a period of more than three months.

The county superintendent has power to consent to the continuance of a particular school even though it cannot be shown that the average daily attendance will not be less than five nor the enrollment less than six if, in the judgment of the county superintendent, it would be clearly inadvisable to close such school. But his consent to its continuance must be in writing and may cover a period of not more than three months. The consent of the county superintendent to the continuance of a school does not make it mandatory upon the board to continue it; it merely gives to the board an authority it would not have without such consent.

1. Validity of contract with teacher. *Potter v Dist. Tp.*, 40-369.

2. Employment — legality. The official action of a board of school directors in authorizing each subdirector to employ in his subdistrict the teacher of his choice, necessarily constitutes no authority to a subdirector to hire a teacher in a district, the school of which the board orders closed. *Mulhall v Pfannkuch*, 206-1139; 221 NW 833.

3. Employment — mandamus. Principle reaffirmed that in an action of mandamus against the president and secretary of a school board to compel the execution of a teacher's contract, the validity of the action of the directors in closing the school in question may not be inquired into. *Mulhall v Pfannkuch*, 206-1139; 221 NW 833.

4233-e1. School privileges when school is closed. If a school is closed for lack of pupils, the board of such corporation shall provide for the instruction of the pupils of the corporation by sending them to other schools of the corporation or by

contracting for such facilities in another school corporation if a school in such other corporation is nearer to them than any public school of the corporation of their residence and such pupils are over two miles from any public school in their resident corporation. Immediately upon the closing of any school, the board shall notify the patrons of the school where their children are to attend; provided that when the school in a subdistrict of a school township has been closed, the residents of such subdistrict may, if they prefer, send their children to the public school of their choice outside the school township, provided the cost to the school township for each of such children will not exceed the pro-rata cost in the entire school township during the school year immediately preceding.

NOTE 1. Where pupils attend school outside the home district under such circumstances as will obligate their home school to pay their tuition, the home district in each such case becomes liable for the number of months school is maintained in the district where such pupils attend, regardless of the fact that a shorter period may be maintained in their home districts.

4233-e2. Arrangements by the county superintendent when board fails. Where a school has been closed and the board has failed to arrange for school facilities, as provided in section 4233-e1, at least twenty days before the time the school would otherwise begin, it shall be the duty of the county superintendent to notify the president of the board of such corporation of such failure, and if the board does not arrange for school facilities within ten days thereafter, it shall then become the duty of the county superintendent to make such arrangements.

4233-e3. Tuition. The tuition cost to be mutually agreed upon by the respective boards shall be paid by the home district except that the rate shall not be in excess of $6.00 per month.

4233-e4. Transportation. When children enrolled in an elementary school other than in a consolidated district live two and one-half miles or more from the school in their district or subdistrict or when the school in their district or subdistrict has been closed and they are thereby placed more than two miles from the school designated for their attendance, the board shall arrange with any person outside the board for the transportation of such children to and from school and the cost of such transportation shall be paid from the general fund, but the board may provide transportation for a less distance.

See 4179, transportation in consolidated districts; 4863, chauffeur's license not required; 4991-f1 to 4991-f6, safety glass requirements; 5030, speed limit near schools; 5030-b2, speed signs near schools; 5079-c8, traffic stop for school bus; 5079-c9, school bus signs; 5079-c10, front and rear door on school bus; 5079-c11, exceptions.

NOTE 1. Sections 4991-f1 to 4991-f6, relating to the use of safety

glass in automobiles, appear to relate only to motor vehicles registered in Iowa which are manufactured or assembled after July 1, 1935, and not to cars manufactured or assembled prior to that date. Opinion attorney general.

1. Liabilities — liability in re performance of governmental acts. The principle that when the officers, servants or agents of a municipality are engaged in performing a governmental act for and on behalf of the municipality they are not liable in damages consequent on their negligence in doing the act, applies to a person who, with the knowledge and acquiescence of a school board, was operating for the school district a bus in the transportation of children to and from school, even though the person so operating the bus was acting at the time in lieu of the person with whom the district had actually contracted for the transportation. *Hibbs v Ind. Sch. Dist.*, 218 Iowa 841.

2. Pupils—transportation—power of board. The school board of a nonconsolidated school district has ample power to provide for the transportation to and from school of pupils living an unreasonable distance from the school. (Holding under sections 4232, 4233, 4375, 4376, Code 1931, now repealed). *Hibbs v Ind. Sch. Dist.*, 218 Iowa 841.

3. Duty of school boards to provide transportation for children of school age to and from school is purely statutory, and is limited by terms of statute (Code 1931, 4233). *Riecks v Ind. Sch. Dist. of Danbury*, 257 NW 546.

4. Independent school district had no duty to provide transportation to school for pupils whose local school was closed, unless local school was closed for lack of pupils (Code 1931, 4181, 4231-4233, 4375, 4376). *Riecks v Ind. Sch. Dist. of Danbury*, 257 NW 546.

5. Where local school has been closed for lack of pupils, independent district containing closed school has mandatory duty to provide transportation to school for pupils of closed school residing more than two miles from nearest school (Code 1931, 4231-4233). *Riecks v Ind. Sch. Dist. of Danbury*, 257 NW 546.

6. School board may perform statutory duty by providing facilities of its own transportation to school of pupils of school closed for lack of sufficient pupils, or may allow reasonable compensation to parent or guardian for transportation of children, but must do one of the two, where such pupils reside more than two miles from nearest school (Code 1931, 4231-4233). *Riecks v Ind. Sch. Dist. of Danbury*, 257 NW 546.

7. In action by father to recover reasonable value of services in transporting his children to school, father had burden of making out case under terms of statutes imposing duty upon school district to provide transportation (Code 1931, 4231-4233). *Riecks v Ind. Sch. Dist. of Danbury*, 257 NW 546.

8. Appeal to county superintendent of schools was not proper remedy for refusal of school board to provide transportation to school for children coming within terms of statutes, since duty to provide transportation was mandatory (Code 1931, 4231-4233). *Riecks v Ind. Sch. Dist. of Danbury*, 257 NW 546.

9. Appeal to county superintendent from decision of school board is necessary only where decision involves matter of discretion, and not where it involves duty imposed by law. *Riecks v Ind. Sch. Dist. of Danbury*, 257 NW 546.

4233-e5. Distance—how measured. Distance to school shall in all cases be measured on the public highway only and by the most practicable route, starting on the roadway opposite the private entrance to the residence of the pupil and ending on the roadway opposite the entrance to the school grounds.

4234. Delegating authority to subdirector. The board of

directors of a school township may authorize the director of each subdistrict, subject to its regulations, to make contracts for the purchase of fuel, the repairing or furnishing of schoolhouses, and all other matters necessary for the convenience and prosperity of the schools in his subdistrict. Such contracts shall be binding upon the school township only when approved by the president of the board, and must be reported to the board. The powers specified in this section can not be exercised by individual directors of independent districts.

1. Holding under prior statute as to teacher's contract. *Athearn v Ind. Dist.*, 33-105; *Thompson v Linn*, 35-361; *Porter v Dist. Tp.*, 40-369.

2. Directors subordinate to board. A director has no authority to refuse to allow apparatus to be used in the schools of his subdistrict on the ground that the board had not power to purchase it or that it is worthless. *Dist. Tp. v Meyers*, 83-688; 49 NW 1042.

4235. School census. Each subdirector shall, between the first and fifteenth days of June in each even-numbered year, prepare a list of the heads of families in his subdistrict, the number and sex of all children of school age, and by the twentieth day of said month report this list to the secretary of the school township, who shall make full record thereof.

See 4312 et seq., school census.

4236. Visiting schools. The board shall provide for visiting the schools of the district by one or more of its members and aid the teachers in the government thereof, and in enforcing the rules and regulations of the board.

4237. Discharge of teacher. The board may, by a majority vote, discharge any teacher for incompetency, inattention to duty, partiality, or any good cause, after a full and fair investigation made at a meeting of the board held for that purpose, at which the teacher shall be permitted to be present and make defense, allowing him a reasonable time therefor.

See 3892 and 3893, revocation of certificate.

1. Appeal as remedy. See under § 4298.

2. Nature of action. The action of a board of directors in discharging a teacher is judicial, and not ministerial. *Smith v Dist. Tp.*, 42-522.

3. Right to dismiss. *Eastman v Dist. Tp.*, 21-590.

4. Wrongful discharge. Where a teacher tendered his resignation, which was not accepted by the board until after it was withdrawn, held that the discharge of the teacher, which was not in accordance with the provisions of this section, was not authorized. *Curtright v Ind. Sch. Dist.*, 111-20; 82 NW 444.

5. Right to hearing. Where the teacher has a valid contract for a definite period he cannot be discharged without an oportunity for a hearing. *Benson v Dist. Tp.*, 100-328; 69 NW 419.

6. Denial of hearing. The provision for discharging a teacher only after a hearing does not apply where the board seeks to exclude the teacher from carrying out a contract which it is claimed has never been lawfully made. *Hull v Ind. Dist.*, 82-686; 46 NW 1053; 48 NW 82.

7. Hearing delayed by injunction—effect. The hearing having by reason of a temporary injunction been postponed until a time when the teacher's contract had expired, held that on dissolution of the temporary injunction the hearing to be had would relate back to the time when the further action of the board had been prevented by such temporary injunction. *White v Wohlenberg,* 113-236; 84 NW 1026.

8. Abandonment of contract. The fact that the teacher after an unauthorized discharge drew the balance of pay due him and delivered the key of the schoolhouse on demand of the board did not show an abandonment of the contract. *Curttright v Ind. Sch. Dist.,* 111-20; 82 NW 444.

9. Tender of performance. *Park v Ind. Sch. Dist.,* 65-209; 21 NW 567.

10. Retrial after appeal. Where the action of the board in discharging a teacher was reversed on appeal to the county superintendent on the ground that the teacher had been given no hearing, held, that the teacher might be tried on new charges, without reinstating such teacher in charge of the school, and that such action of the directors would not be enjoined. *White v Wohlenberg,* 113-236; 84 NW 1026.

10-a1. Appeal — unlawful discharge of teacher. A teacher is under no obligation to appeal to the county superintendent from an order discharging the teacher on grounds other than unfitness as a teacher, entered without notice to the teacher and without opportunity for a hearing. *Schultz v Cons. Ind. Sch. Dist.,* 204 NW 281.

11. Action for wrongful discharge. Where an appeal has been taken and decided in the teacher's favor, the action for the wrongful discharge may be maintained, although the decision of the county superintendent was not on the merits. *Jackson v Ind. Sch. Dist.,* 110-313; 81 NW 596.

12. Jurisdiction of courts. A teacher who has been discharged by the board on charges of incompetency, after due notice to the teacher and hearing, may not maintain an action in the courts for damages consequent on such discharge. *Courtright v Cons. Ind. Sch. Dist.,* 203-26; 212 NW 368.

13. Informal procedure—effect. A school board which has acquired jurisdiction in a proceeding for the discharge of a teacher, and over the teacher affected, does not lose such jurisdiction by conducting the hearing informally in the matter of evidence and procedure. *Chehock v Sch. Dist.,* 210-258; 228 NW 585.

14. Appeal — dismissal — effect. Where a teacher appeals to the superintendent of public instruction from an order of the board of directors discharging the teacher, the dismissal of the appeal by said superintendent on the ground of want of jurisdiction cannot be given the legal effect of reversing the said order of discharge. *Streyffeler v Sch. Dist.,* 210-780; 231 NW 325.

15. Illegal action — nonduty to appeal. The oral employment by a subdirector, under authority from the school board, of a teacher, and the formal, written, statutory contract evidencing such employment, signed by the president of the board and by the teacher, is not subject to review by the school board; and the assumption of such power by the board may be ignored by the teacher without appeal to the county superintendent. *Shill v Sch. Tp.,* 209-1020; 227 NW 412.

16. Contract — action on — demurrer. A petition which seeks recovery of the compensation arising under a contract for teaching, but which pleads a statutory discharge of plaintiff by the board of directors, is demurrable, even though plaintiff also pleads that his appeal from the discharge to the superintendent of public instruction was dismissed for want of jurisdiction. *Streyffeler v Sch. Dist.,* 210-780; 231 NW 325.

17. Wrongful discharge — duty to seek employment. A teacher wrongfully discharged is under obligation to exercise reasonable diligence to secure like employment in the same locality,—not like employment at distant places, or similar employment of a lower or different grade. *Shill v Sch. Tp.,*

209-1020; 227 NW 412; see *James v Sch. Tp.*, 210-1059; 229 NW 750.

18. Due process of law. A written contract between a teacher and a school board is necessarily accompanied by all statutory provisions which govern the original and appellate procedure for the discharge of such teacher. Having by the very act of contracting, legally consented to such procedure, the teacher may not assert that it does not afford him due process in a constitutional sense. *Chehock v Sch. Dist.*, 210-258; 228 NW 585.

19. Discharge on notice—validity. A provision in a public school contract authorizing either party to the contract to terminate it by giving written notice of such termination for a named number of days, is not violative of, or inconsistent with either section 4229 or this section. (Holding by minority of court.) *Miner v Sch. Dist.*, 212-973; 234 NW 817.

4238. Insurance — general supplies — free textbooks. It may provide and pay out of the general fund to insure school property such sum as may be necessary, and may purchase dictionaries, library books, including books for the purpose of teaching vocal music, maps, charts, and apparatus for the use of the schools thereof to an amount not exceeding two hundred dollars in any one year for each school building under its charge; and may furnish schoolbooks to indigent children when they are likely to be deprived of the proper benefits of the school unless so aided; and shall, when directed by a vote of the district, purchase and loan books to scholars, and shall provide therefor by levy of general fund.

See 4464, free textbooks.

1. Holding under prior statute as to insurance. *American Ins. Co. v Dist. Tp.*, 55-606; 8 NW 472.

2. Holding under prior statutes as to apparatus, etc. *Taylor v Dist. Tp. of Wayne*, 25-447; *Taylor v Dist. Tp. of Otter Creek*, 26-281; *Manning v Dist. Tp.*, 28-332; *Bellmeyer v Ind. Dist.*, 44-564.

3. Holdings relative to former "contingent" fund. *Yaggy v Dist. Tp.*, 80-121; 45 NW 553; *Dist. Tp. v Bickelhaupt*, 99-659; 68 NW 914; *Hanna v Wright*, 116-275; 89 NW 1108; *Johnson v Sch. Corp.*, 117-319; 90 NW 713; *Farmers' & Mer. State Bank v Sch. Tp.*, 118-540; 92 NW 676.

4. Lightning rods. *Monticello Bank v Dist. Tp.*, 51-350; 1 NW 592; *Wolf v Ind. Sch. Dist.*, 51-432; 1 NW 695.

5. Musical instruments. An independent district has power to determine that music shall be taught in the school as a branch of education, and if it does so determine, the board may properly contract for the purpose of a musical instrument out of any unappropriated funds in their hands. *Bellmeyer v Ind. Dist.*, 44-564.

6. Consent of individual members. The consent of the board to any particular measure, obtained of individual members when not in session, is not the act of the board, and is not binding upon the district. 67-164.

4239. Claims. The board shall audit and allow all just claims against the corporation, and no order shall be drawn upon the treasury until the claim therefor has been audited and allowed.

1. Breach of duty. It is not a breach of duty on the part of the board to draw orders for a claim which has been audited and allowed, although the services for the claim as presented may not have been rendered. *State v Stiles*, 40-148.

2. Presentation of claim. The presentation of the claim to the

board is a condition precedent to the right of action thereon. *Dist. Tp. v Dist. Tp.*, 56-85; 8 NW 784; *Pierson v Ind. Dist.*, 106-695; 77 NW 494.

3. Waiver of presentation. The objection that a claim has not been presented to the directors must be taken advantage of in the proper way or it will be deemed waived. *Weir Furnace Co. v Ind. Sch. Dist.*, 99-115; 68 NW 584.

4. Void order. An order issued on a claim which has not been audited and allowed is void. *Nat. State Bank v Ind. Dist.*, 39-490.

5. Determination of salary final. *Wilson v Ind. Dist.*, 39-471.

6. Unallowable offset or counterclaim. Where no compensation has been allowed to an officer of a school district the sureties on his bond cannot, in an action against them for default of their principal, offset any claim for compensation on his part. *Ind. Sch. Dist. v McDonald*, 39-564.

4239-g1. Exceptions. Each warrant shall be made payable to the person entitled to receive such money. The board of directors of any school district may, however, by resolution of record authorize the secretary to issue warrants when said board of directors is not in session in payment of freight, drayage, express, postage, printing, water, light, and telephone rents, but only upon duly verified bills for same filed with the secretary, and for the payment of salaries pursuant to the terms of a written contract and said secretary shall either deliver in person or mail said warrants to the payee. Each such warrant shall be made payable only to the person performing the service or furnishing the supplies for which said warrant makes payment, and shall state the purpose for which said warrant is issued. All bills and salaries for which warrants are issued prior to audit and allowance by the board as provided herein shall be passed upon by the board of directors at the first meeting thereafter and shall be entered of record in the regular minutes of the secretary.

4239-a1. Settlement with treasurer. The board shall from time to time examine the accounts of the treasurer and make settlements with him.

See 124, examination of finances by state auditor.

4239-a3. Compensation of officers. The board shall fix the compensation to be paid the secretary. No member of the board or treasurer shall receive compensation for official services.

4240. Annual settlements. On the first secular day in July, the board of each school township and with it the members of the board who retired in the preceding March, and the board of each independent school corporation, shall meet, examine the books of and settle with the secretary and treasurer for the year ending on the thirtieth day of June preceding, and transact such other business as may properly come before it. The treasurer at the time of such settlement shall furnish the board with a sworn statement from each depository showing the balance then on deposit in such depository. Should the

secretary or treasurer fail to make proper reports for such settlement, the board shall take action to secure the same.

1. **Additional annotations.** See under § 4319.

2. **Settlements prima facie correct.** Where the settlement is made according to law it will be deemed prima facie to have been sufficient and the burden of showing that improper credits were allowed to the officer is upon the district township. *Dist. Tp. v Bickelhaupt*, 99-659; 68 NW 914.

3. **Disputing correctness of settlement.** The sureties for the second term are not precluded by a settlement made with the treasurer by the directors at the beginning of such second term based upon a false showing as to the amount on hand. *Dist. Tp. v Morris*, 91-198; 59 NW 274.

4. **Production of moneys—representation by president.** The president has no authority to represent that at the time of settlement with the treasurer the funds called for by his accounts were produced, counted, and found to be correct. *Ind. Sch. Dist. v Hubbard*, 110-58; 81 NW 241.

5. **Production and nonproduction of funds—effect.** *Ind. Dist. v Herkenrath*, 155-275; 135 NW 1086.

4241. Transfer of funds. If after the annual settlement it shall appear that there is a surplus in the general fund, the board may, in its discretion, transfer any or all of such surplus to the schoolhouse fund.

See 4217(5), method of transferring schoolhouse fund to general fund; 387, transfer of funds.

4242. Financial statement—publication. In each consolidated district and in each independent city or town school district, the board shall, during the first week of July of each year, publish by one insertion in at least one newspaper, if there is a newspaper published in said district, a summarized statement verified by affidavit of the secretary of the board showing the receipts and disbursements of all funds for the preceding school year, the statement of disbursements to show the names of the persons, firms, or corporations, and the total amount paid to each during the school year.

See 5623, definition city, town.

NOTE 1. Where more than one warrant has been issued to a particular person, firm, or corporation, the total of all such warrants may be given instead of giving each warrant separately, but warrants to different persons, firms, or corporations shall not be combined.

NOTE 2. The publication of this statement is mandatory; the time is directory. If it is not published within that time, mandamus will lie to compel it.

NOTE 3. The post office where a newspaper is entered as second-class mail matter determines its place of publication, even though actually printed elsewhere. Therefore, to determine where a newspaper is published, refer to the statement of publication usually found either on the front page or the editorial page.

4242-b1. Other districts—filing statement. In every other school district, and in every school district wherein no newspaper is published, the president and secretary of the board of directors thereof shall file the above statement with the county superintendent of schools during the first week of

July of each year and shall post copies thereof in three conspicuous places in the district.

See 5623, definition city, town.

NOTE 1. Where more than one warrant has been issued to a particular person, firm, or corporation, the total of all such warrants may be given instead of giving each warrant separately, but warrants to different persons, firms, or corporations shall not be combined.

NOTE 2. The posting and filing of this statement is mandatory; the time is directory. If it is not posted and filed within that time, mandamus will lie to compel it.

NOTE 3. The post office where a newspaper is entered as second-class mail matter determines its place of publication, even though actually printed elsewhere. Therefore, to determine where a newspaper is published, refer to the statement of publication usually found either on the front page or the editorial page.

4245. Employment of counsel. In all cases where actions may be instituted by or against any school officer to enforce any provision of law, the board may employ counsel, for which the school corporation shall be liable.

See section 149, duty of attorney general; 5180, duties of county attorney.

1. Nonapplicability of section. While in the proper performance of their duties school directors should be provided with counsel in case of suits brought against them, they are not entitled to the benefit of these statutory provisions when a suit is brought against them by reason of their own corrupt and illegal acts, and an order for attorneys' fees and stenographers' fees in such a suit cannot be enforced. *Scott v Ind. Dist.*, 91-156; 59 NW 15.

2. Powers of board. The board of directors of a school corporation has implied power in good faith to employ attorneys to defend against a proceeding for the dissolution of the district and to contract for a reasonable compensation for such services. *Rural Ind. Sch. Dist. v Daly*, 201-286; 207 NW 124.

3. Employment of county attorney. School boards are under no mandatory duty to secure the services of the county attorney in litigation affecting the corporate affairs of the school districts, even though the statute (§ 5180, C., '24) does require such officers to give legal advice to such boards. *Rural Ind. Sch. Dist. v Daly*, 201-286; 207 NW 124.

4. Counsel—power of directors to employ. A school board has legal authority to employ an attorney, at the expense of the district, to defend the action of the board in contracting with one teacher and in refusing to contract with another, even though the actions in which the issue directly or indirectly arises are actions in form personally against the teacher and individual members of the board. *Cowles v Ind. Sch. Dist.*, 204-689.

5. Informal employment of attorney—ratification. An informal employment of attorneys by the directors of a school district, in a matter as to which the district had a right to employ attorneys, is fully ratified by the good faith formal action of the board, with full knowledge of the facts, in allowing the claim of the attorneys. *Beers v Lasher*, 209-1158; 229 NW 821.

4246. Industrial exposition. The board of any school corporation, or the director of any subdistrict deeming it expedient, may, under the direction of the county superintendent, hold and maintain an industrial exposition in connection with the schools of such district, such exposition to consist in the exhibit of useful articles invented, made, or raised by the

pupils, by sample or otherwise, in any of the departments of mechanics, manufacture, art, science, agriculture, and the kitchen, such exposition to be held in the schoolroom, on a school day, as often as once during a term, and not oftener than once a month, at which the pupils participating therein shall be required to explain, demonstrate, or present the kind and plan of the article exhibited, or give its method of culture; and work in these several departments shall be encouraged, and patrons of the school invited to be present at each exhibition.

4247. Water-closets. It shall give special attention to the matter of convenient water-closets or privies, and provide on every schoolhouse site, not within an independent city or town district, two separate buildings located at the farthest point from the main entrance to the schoolhouse, and as far from each other as may be, and keep them in wholesome condition and good repair. In independent city or town districts, where it is inconvenient or undesirable to erect two separate outhouses, several closets may be included under one roof, and if outside the schoolhouse each shall be separated from the other by a brick wall, double partition, or other solid or continuous barrier, extending from the roof to the bottom of the vault below, and the approaches to the outside doors for the two sexes shall be separated by a substantial close fence not less than seven feet high and thirty feet in length.

4248. Shade trees. The board of each school corporation shall cause to be set out and properly protected twelve or more shade trees on each schoolhouse site where such trees are not growing. The county superintendent, in visiting the several schools of his county, shall call the attention of any board neglecting to comply with the requirements of this section to any failure to carry out its provisions.

4249. Bird day. The twenty-first day of March of each year is hereby set apart and designated as bird day. It shall be the duty of all public schools to observe said day by devoting a part thereof to a special study of birds, their habits, usefulness, and the best means of protection. Should such date fall on other than a school day, such day shall be observed on the next regular school day.

CHAPTER 214

COURSES OF STUDY

4250. Right to prescribe. The board shall prescribe courses of study for the schools of the corporation.

See 4217(3), additional branches added by electors at annual election; 4252, 4255, 4256, 4257, 4259, 4262, 4263, mandatory subjects.

1. Right to diploma. An estoppel cannot establish a right in a pupil in a public school to a diploma or certificate of graduation. The pupil's right to a diploma rests on a higher foundation than the conduct of a school board. *Sweitzer v Fisher*, 172-266; 154 NW 465.

2. Diploma — duty to issue. Even without a statute requiring the issuance of a diploma, there is imposed a legal duty on the officers of a public high school to issue written evidence of a pupil's graduation, in the form of a certificate, a diploma, or the like, to those who have satisfactorily completed the prescribed course of study, unless for sufficient reasons they are justified in not doing so. *Valentine v Ind. Sch. Dist.*, 187-555; 174 NW 334.

3. Course of study—discretion. The directors have a fair discretion as to the method to be employed in teaching a subject which the electors have directed to be taught—a discretion not controllable by mandamus. (See Book of Anno., Vol. 1, § 12441, Anno. 1 et seq.) *Neilan v Board*, 200-860; 205 NW 506.

4. Courses of study—discretion. The power of directors to prescribe courses of study embraces the discretion merely to authorize, without expense to the district or the pupils, the installation in the schools of a noncompulsory, copyrighted system of thrift instruction which necessarily contemplates the deposit of the child's savings in some bank or banks selected without dictation by the board. *Security Nat. Bank v Bagley*, 202-701; 210 NW 947.

4251. Definitions. The expression "public school" means any school maintained in whole or in part by taxation; the expression "private school" means any other school.

4252. Common school studies. Reading, writing, spelling, arithmetic, grammar, geography, physiology, United States history, history of Iowa, and the principles of American government shall be taught in all such schools.

4253. Display of United States flag. The board of directors of each public school corporation and the authorities in charge of each private school shall provide and maintain a suitable flagstaff on each school site under its control, and a suitable United States flag therefor, which shall be raised on all school days when weather conditions are suitable.

See 470, 471, and 471-g1, display of flag.

4254. Medium of instruction. The medium of instruction in all secular subjects taught in all of the schools, public and private, shall be the English language, and the use of any language other than English in secular subjects in said schools is hereby prohibited; but nothing herein shall prohibit the teaching and studying of foreign languages, as such, as a part of the regular school course in any such school. Any person violating any of the provisions of this section shall be fined not less than twenty-five dollars nor more than one hundred dollars.

1. Instructions in German. The teaching of "reading" in a parochial school to pupils under the eighth grade by means of books on secular subjects in the German language, is violative of this section, even though the purpose of such teaching is to qualify such children, in accordance with the beliefs of the church, (1) to read

and understand the German catechism and Bible in order to become communicants of the church, and (2) to participate intelligently in the home with their parents in religious worship and instruction in the German language, and even though all common school branches, including reading, are also taught in English in said school. *State v Bartels*, 191-1060; 181 NW 508.

2. Foreign language instruction. The right of a person to teach a foreign language in a private or parochial school, and the right of a parent to have his child so instructed in such schools, are constitutional rights guaranteed by the fourteenth amendment to the Federal constitution. (191 Iowa 1060 reversed.) *Bartels v State of Iowa*, 262 US 404.

4255. American citizenship. Each public and private school located within the state shall be required to teach the subject of American citizenship in all grades.

4256. Constitution of United States and state. In all public and private schools located within the state there shall be given regular courses of instruction in the constitution of the United States and in the constitution of the state of Iowa. Such instruction shall begin not later than the opening of the eighth grade, and shall continue in the high school course to an extent to be determined by the superintendent of public instruction.

4257. American history and civics. Public and private high schools, academies, and other institutions ranking as secondary schools which maintain three-year or longer courses of instruction shall offer, and all students shall be required to take, a minimum of instruction in American history and civics of the state and nation to the extent of two semesters, and schools of this class which have four-year or longer courses shall offer in addition one semester in social problems and economics.

4258. Bible. The bible shall not be excluded from any public school or institution in the state, nor shall any child be required to read it contrary to the wishes of his parent or guardian.

See Art. 1, sec. 3, Constitution of Iowa, constitutional prohibition against the establishment of religion; 13252-f2, questioning teacher as to religious affiliations prohibited; 5256, use of public money for sectarian purposes prohibited.

1. Constitutionality. *Moore v Monroe*, 64-367; 20 NW 475.

4259. Stimulants, narcotics, and poisons. The board shall require all teachers to give and all scholars to receive instruction in physiology and hygiene, which study in every division of the subject shall include the effects upon the human system of alcoholic stimulants, narcotics, and poisonous substances. The instruction in this branch shall of its kind be as direct and specific as that given in other essential branches, and each scholar shall be required to complete the part of such study in his class or grade before being advanced to the next higher,

and before being credited with having completed the study of the subject.

See 1555, 1556, minors required to give information, penalty; 1585, 1586, advertisements of tobacco near schools prohibited, penalty; 4225, use of tobacco prohibited.

4260. Dental clinics. Boards of school directors in all school districts containing one thousand or more inhabitants are hereby authorized to establish and maintain in connection with the schools of such districts, a dental clinic for children attending such schools, and to offer courses of instruction on mouth hygiene. Such boards are hereby empowered to employ such legally qualified dentists and dental hygienists as may be necessary to accomplish the purpose of this section, and pay the expense of the same out of the general fund.

4262. Music. The elements of vocal music, including, when practical, the singing of simple music by note, shall be taught in all of the public schools, and all teachers teaching in schools where such instruction is not given by special teachers shall be required to satisfy the county superintendent of their ability to teach the elements of vocal music in a proper manner; provided, however, that no teacher shall be refused a certificate or have the grade of his or her certificate lowered on account of lack of ability to sing.

4263. Physical education. The teaching of physical education, exclusive of interscholastic athletics, including effective health supervision and health instruction, of both sexes, shall be required in every public elementary and secondary school of the state. Modified courses of instruction shall be provided for those pupils physically or mentally unable to take the courses provided for normal children. Said subject shall be taught in the manner prescribed by the state superintendent of public instruction.

4264. Length of course. The course of physical education shall occupy periods each week totaling not less than fifty minutes, exclusive of recesses, throughout each school term. The conduct and attainment of the pupils in such course shall be marked as in other subjects and it shall form part of the requirements for promotion or graduation of every pupil in attendance, but no pupil shall be required to take such instruction whose parents or guardian shall file written statement with the school principal or teacher that such course conflicts with his religious belief.

4265. In teacher-training courses. Every high school, state college, university, or normal school giving teacher-training courses shall provide a course or courses in physical education.

4266. Kindergarten department. The board of any independent school district upon the petition of the parents or guardians of twenty-five or more children of kindergarten age, may establish and maintain such a kindergarten in said district. No petition shall be effective unless the school in connection with which such kindergarten is desired is named in the petition and all persons who shall be qualified to sign such petitions shall be residents of the section or neighborhood served by that school. The board of education shall be the judge of the sufficiency of the petition. Any kindergarten teacher shall hold a certificate certifying that the holder thereof has been examined upon kindergarten principles and methods, and is qualified to teach in kindergartens.

NOTE 1. Kindergarten age includes children who have reached the fifth birthday but have not reached the seventh birthday, providing they have not been previously enrolled in school.—*Attorney General.*

NOTE 2. The petition for the establishment and maintenance of a kindergarten may be substantially as indicated in form 17, APPENDIX.

4267. Higher and graded schools. The board may establish graded and high schools and determine what branches shall be taught therein, but the course of study shall be subject to the approval of the superintendent of public instruction. Whenever the board in a school township establishes a high school, such high school can be discontinued only by an affirmative vote of a majority of the votes cast for and against such proposition at an election which may be called by the county superintendent of schools upon a petition for such election being presented signed by twenty-five per cent of the electors in such township.

1. Nature of county high school. High schools are deemed a part of the common school system of the state, though they are not to derive any support or assistance from the school fund. *High School v Clayton Co.*, 9-175.

4267-b1. Junior colleges. The board, upon approval of the state superintendent of public instruction, and when duly authorized by the voters, shall have power to establish and maintain in each district one or more schools of higher order than an approved four-year high school course. Said schools of higher order shall be known as public junior colleges and may include courses of study covering one or two years of work in advance of that offered by an accredited four-year high school. The state superintendent of public instruction shall prepare and publish from time to time standards for junior colleges, provide adequate inspection for junior colleges, and recommend for accrediting such courses of study offered by junior colleges as may meet the standards determined.

No public junior college shall be established in any school district having a population of less than twenty thousand. Nothing in this section shall prohibit any school district that

now has a junior college from temporarily discontinuing the same and starting it again at some future time.

See 4217(8), junior college established by vote of people.

CHAPTER 215

SCHOOL ATTENDANCE AND TUITION

4268. School age—nonresidents. Persons between five and twenty-one years of age shall be of school age. A board may establish and maintain evening schools for all residents of the corporation regardless of age and for which no tuition need be charged. Nonresident children and those sojourning temporarily in any school corporation may attend school therein upon such terms as the board may determine.

NOTE 1. A board may adopt any reasonable rule or regulation to govern the admission of beginners who reach their fifth birthday after the opening of the school year. It may require that all beginners eligible to enter shall enroll at the outset of school and may exclude beginners who attempt to enroll after the school year has started.

4269. Offsetting tax. The parent or guardian whose child or ward attends school in any independent district of which he is not a resident shall be allowed to deduct the amount of school tax paid by him in said district from the amount of the tuition required to be paid.

NOTE 1. Section 4269 does not apply where the home district is obligated to pay the tuition; but if the tuition charged is more than nine dollars per month and if only the excess above nine dollars is to be paid by the parent or guardian personally, the deduction provided in this section applies to the excess only.

A tenant is not entitled to deduct school tax paid by his landlord from tuition the tenant is obligated to pay personally, nor may school taxes paid by a parent or guardian be deducted from postgraduate tuition.

4270. Right to exclude pupil. The board may exclude from school children under the age of six years when in its judgment such children are not sufficiently mature to be benefited by attendance, or any incorrigible child or any child who in its judgment is so abnormal that his attendance at school will be of no substantial benefit to him, or any child whose presence in school may be injurious to the health or morals of other pupils or to the welfare of such school.

See 4286, suspension or dismissal for membership in a secret society.

NOTE 1. The power of a school board to exclude children under six years of age applies only to individual children who, although chronologically are over five and under six, mentally are under five; it does not apply to children under six as a class.

1. Unvaccinated school children. The appellate court will be slow to interfere with an order by the trial court refusing a temporary injunction against the enforcement by a school board of its order which temporarily excluded unvaccinated pupils from the public school; and especially will the appellate court decline to disturb such refusal when it affirmatively appears that the order of the board has expired ex vi termini. *Baehne v Ind. Sch. Dist.*, 201-625; 207 NW 755.

4271. Majority vote—suspension. The board may, by a majority vote, expel any scholar from school for immorality, or for a violation of the regulations or rules established by the board, or when the presence of the scholar is detrimental to the best interests of the school; and it may confer upon any teacher, principal, or superintendent the power temporarily to dismiss a scholar, notice of such dismissal being at once given in writing to the president of the board.

1. Rules and violations thereof. See under § 4224.

2. Violation of rules. *Kinzer v Ind. Sch. Dist.*, 129-441; 105 NW 686.

3. Unauthorized suspension. A board of directors has no authority to punish a scholar by suspension for acts which are not contrary to any rules of the school, and are not in themselves immoral. Therefore, held, that the acts of the pupil in making a publication out of school tending to bring ridicule upon the board of directors was not such as to warrant the suspension of the pupil. *Murphy v Board*, 30-429.

4. Power of teacher to inflict corporal punishment. The general doctrine is that the teacher may, for the maintenance of his authority and the enforcement of discipline, legally inflict chastisement upon a pupil. *State v Mizner*, 45-248.

5. Unauthorized punishment. Where the parent and the pupil united in the request that the pupil be excused from attendance during a certain part of the day, and from a certain study, held, that the teacher was not authorized to punish the pupil for failure to attend such part of the day, or to pursue such study, the only remedy being the expulsion of the pupil. *State v Mizner*, 50-145.

6. Adult pupils. Though a person over twenty-one years of age is not entitled to attend school, yet if such person does attend he assumes all the duties of a scholar, and is as fully subject to discipline as one under that age. *State v Mizner*, 45-248.

4272. Readmission of pupil. When a scholar is dismissed by the teacher, principal, or superintendent, as above provided, he may be readmitted by such teacher, principal, or superintendent, but when expelled by the board he may be readmitted only by the board or in the manner prescribed by it.

4273. Tuition. Every school shall be free of tuition to all actual residents between the ages of five and twenty-one years, and to resident honorably discharged soldiers, sailors, and marines, as many months after becoming twenty-one years of age as they have spent in the military or naval service of the United States before they became twenty-one. Every person, however, who shall attend any school after graduation from a four-year course in an approved high school or its equivalent shall be charged a sufficient tuition fee to cover the cost of the instruction received by such person.

1. School "residence". Minors who have been sent by their father to make their home with relatives, in order that they might have a woman's care and home comforts, and who have brought property with them, which is taxable in the county of their new residence; who have a legally appointed guardian in said new residence; and who express their intention of remaining there until their majority, are "residents" of the school district to which they have removed, and

entitled to claim its school privileges. *Mt. Hope Sch. Dist. v Hendrickson*, 197-191; 197 NW 47.

2. Finding as to "residence"—proper review. The fact question as to the residence of the pupil who is required to pay tuition on that account is for the determination of the board, and its finding and judgment on that question cannot be reviewed in an action of mandamus. The remedy is by appeal to the county superintendent. *Preston v Board*, 124-355; 100 NW 54.

4274. Attending in another corporation—payment. A child residing in one corporation may attend school in another in the same or adjoining county if the two boards so agree. In case no such agreement is made, the county superintendent of the county in which the child resides and the board of such adjoining corporation may consent to such attendance, if the child resides nearer a schoolhouse in the adjoining corporation or nearer to a regularly established transportation route to a consolidated school and two miles or more from any public school in the corporation of his residence. Before granting such consent the county superintendent shall give notice to the board where the child resides and hear objections, if any. In case such consent is given, the board of the district of the child's residence shall be notified thereof in writing, and shall pay to the other district the average tuition per week for the school or room thereof in which such child attends. If payment is refused or neglected, the board of the creditor corporation shall file an account thereof certified by its president with the auditor of the county of the child's residence, who shall transmit to the county treasurer an order directing him to transfer the amount of such account from the funds of the debtor corporation to the creditor corporation, who shall pay the same accordingly.

NOTE 1. In a public school corporation maintaining within its boundaries one or more schools in which grade or approved high school work is offered if a resident child has not completed the work so offered, it is for the board in that corporation to determine the particular school in the corporation that such child shall attend for the work it is qualified to enter upon.

The parent in such a corporation has the legal right, however, to send his child to a public school in any outside corporation that will receive it; he may send it to a parochial or a private school if he prefers; but if he should send it to a public school outside his home district without first obtaining the consent of his home district board, or the approval of his county superintendent as provided in section 4274, he would become personally responsible for any tuition or transportation costs.

If he should send his child to a parochial or a private school, under no circumstances would it be legal for the home district to pay the tuition or transportation costs.

NOTE 2. In giving or withholding his consent, the county superintendent should consider all the facts and circumstances, for when he has concurred or refused to concur the matter is concluded for that time, as no appeal to the superintendent of public instruction will lie.

NOTE 3. Where pupils attend school outside the home district under such circumstances as will obligate their home school to pay their tuition, the home district in each such case becomes liable for the number of

months school is maintained in the district where such pupils attend, regardless of the fact that a shorter period may be maintained in their home districts.

1. Nonapplicability to county high schools. *Boggs v Sch. Tp.*, 128-15: 102 NW 796.

2. Failure to provide school—liability of district. *Dist. Tp. v District Tp.*, 49-231.

3. Implied contract—settlement. One district may become liable to another for children of the former attending school in the latter under implied contract. Therefore a settlement between the districts for tuition in such cases may be made after the attendance on which it is based has ceased. *Weldon Ind. Sch. Dist. v Shelby Ind. Sch. Dist.*, 113-549; 85 NW 794.

4. Appeal from original order of county superintendent. No appeal lies to the superintendent of public instruction from an original order or action of a county superintendent. In other words, the right of appeal to the state superintendent is strictly confined to those decisions or orders that originate with a board of directors of a school corporation. *Field v Samuelson*, 212 Iowa 786.

4274-c1. Attending school outside state. Any person under twenty-one years of age residing in any school district or portion thereof in this state which district or portion thereof does not maintain a high school and is severed from the balance of the state or the school district by a navigable stream, who has successfully completed the eighth grade, may with the consent of a majority of the school board of his residence district, expressed at a meeting thereof, attend any high school in any adjoining state willing to admit him, which high school is nearer to his place of residence than any duly established high school in Iowa, the distances being measured by the usual traveled routes.

4274-c2. Tuition. Any tuition charged by the district so attended shall be paid by the school district in which such person resides; but such tuition shall not be more than such district charges nonresident pupils residing in such state if any such tuition is charged, and if no tuition is charged for nonresident pupils of said state, then such tuition shall not exceed the sum of ten dollars per month. The person so attending high school in another state shall continue to be treated as a pupil of the district of his residence in apportionment of the current school fund and the payment of state aid.

4274-e1. Contract for school privileges. For the purposes of furnishing elementary school facilities to the children of school age within the district, the board of one or more such districts may enter into a contract for such facilities, jointly or individually, with the board of one or more school districts where such facilities up to and including the eighth grade are approved by the superintendent of public instruction; provided that such schools are the most conveniently located with respect to the children to be accommodated.

4274-e2. Terms of contract. Such contract may cover a

period not exceeding three years; it shall be in writing and shall state the monthly tuition rate, the period during which the contract is to run, and such other matters not in conflict with law as may be mutually agreed upon.

4274-e3. Transportation for grade pupils. When a board contracts for such facilities, it shall also contract for suitable transportation to such school for all children of school age from kindergarten to eighth grade inclusive living two miles or more from such school. When a board contracts to furnish its school facilities to the children of another district, as provided herein, it may also contract to furnish transportation to such children, provided it is reimbursed to the extent of the pro-rata cost of such transportation and has adequate and suitable transportation facilities.

4274-e4. Transportation for high school pupils. The board may permit pupils enrolled in the secondary grades or any other pupils that are not entitled to free transportation to avail themselves of the transportation facilities provided their parents pay the pro-rata cost of such transportation.

4274-e5. Vehicle for transportation. The board of two or more districts contracting with the same school for elementary school facilities, as provided herein, may purchase, jointly or individually, a suitable transportation bus or busses to be used in transporting children to such school and contract for a suitable bus driver or drivers, the cost of the bus and the bus driver to be distributed among the districts authorizing the same on such equitable terms as may be mutually agreed upon, which agreement shall be in the form of a written contract.

4274-e6. Distance — how measured. Distance to school shall, in all cases, be measured on the public highway only and by the most practicable route, starting on the roadway opposite the private entrance to the residence of the pupil and ending on the roadway opposite the entrance to the school grounds.

4274-e7. Indentity of districts and power of boards unimpaired. A contract entered into as provided in sections 4274-e1 to 4274-e6, inclusive, shall not be construed as in any way impairing the corporate identity of the contracting districts nor as affecting the legal powers of the respective boards except as specifically set out in this section, nor as entitling any person to a right of reversion in any schoolhouse site.

4275. High school outside home district. Any person of school age who is a resident of a school corporation which does not offer a four-year high school course, and who has completed the course as approved by the department of public instruction for such corporation, shall be permitted to attend

any public high school in the state approved in like manner that will receive him, or may attend any public high school of equivalent standing in an adjoining state, if said school in the adjoining state be nearer to the pupil's residence than any approved public high school in the state of Iowa.

NOTE 1. In a school corporation offering a high school course any portion of which is not approved by the department of public instruction, a resident student, on completing the portion approved, may attend any approved public high school in the state that will receive him where he may enroll in the grade for which he is qualified at the tuition expense of his home district, provided his having completed the eighth grade is evidenced by a certificate signed by the county superintendent, showing the required proficiency in the common branches, except that no such certificate shall be required where a student continues into high school in the same school system where he completed the eighth grade.

1. School attendance—residence for high school purposes. Children of school age who are so apprenticed to a charitable institution that such institution is their only home until they reach the age of twenty-one years, become residents of the school district in which such charitable institution is located, and if such district does not maintain a high school such children may attend high school in some other district which does maintain such a school, and the tuition for such schooling shall be paid by the district of which the child is a resident as aforesaid. *Salem Ind. Sch. Dist. v Kiel*, 206-967; 221 NW 519.

4276. Requirements for admission. Any person applying for admission to any high school under the provisions of section 4275 shall present to the officials thereof the affidavit of his parent or guardian, or if he have neither, his next friend, that such applicant is entitled to attend the public schools, and a resident of a school district of this state, specifying the district. He shall also present a certificate signed by the county superintendent showing proficiency in the common school branches, reading, orthography, arithmetic, physiology, grammar, civics of Iowa, geography, United States history, penmanship, and music.

No such certificate or affidavit shall be required for admission to the high school in any school corporation when he has finished the common school branches in the same corporation.

NOTE 1. If a student enters high school in the same school corporation in which he completed the common branches, successfully completes one semester or one period of work in such high school, the certificate of proficiency signed by the county superintendent is not required to obligate his home district to pay his high school tuition should he afterwards become a nonresident high school student in another school corporation. Opinion attorney general.

4277. Tuition fees—payment. The school corporation in which such student resides shall pay from the general fund to the secretary of the corporation in which he shall be permitted to enter a tuition fee of not to exceed nine dollars per month during the time he so attends, not exceeding a total period of four school years.

The tuition rate chargeable to the home district of such nonresident high school pupil shall not exceed the prorata cost and shall be computed solely upon the basis of the average daily attendance of all resident and nonresident pupils enrolled in such high school, but it shall not include the cost of transportation to high school or any part thereof, unless the actual prorata cost of such tuition is less than the maximum rate authorized by law, in which case the board of the district that is responsible for the payment of such tuition may, by resolution, authorize the payment of such portion of transportation costs as does not exceed the difference between the actual prorata cost of high school tuition and the maximum rate authorized by law, provided the creditor district collects any balance of such transportation cost from the parents whose children are transported. Transportation costs shall, in all cases, be based upon the prorata cost of all pupils transported to school in such district.

It shall be unlawful for any school district maintaining a high school course of instruction to provide nonresident high school pupils with transportation to high school or normal college unless the district is fully reimbursed therefor, as provided in this section, or to rebate to such pupils or their parents, directly or indirectly, any portion of the high school tuition collected or to be collected from the home district of such pupils, or to authorize or permit such pupils to receive at the expense of the district, directly or indirectly, any special compensation, benefit, privilege, or other thing of value that is not and cannot legally be made available to all other pupils enrolled in such high school. Any superintendent or board members responsible for such unlawful act shall each be personally liable to a fine of not to exceed one hundred dollars. Action to recover such penalty or action to enjoin such unlawful act may be instituted by the board of any school district or by a taxpayer in any school district.

On or before February 15 and June 15 of each year the secretary of the creditor district shall deliver to the secretary of the debtor district an itemized statement of such tuition fees.

NOTE 1. "School year", as used in section 4277, means the full school year in the district where the child attends, even though it is a longer period than the school year of such child's home district.

NOTE 2. This section, so far as it relates to transportation to high school, means that if the board provides nonresident high school pupils with transportation to high school, even if such transportation causes no extra expense to the district, the board must collect the pro rata cost of such facilities.

1. Tuition of nonresident pupils. A school corporation which furnishes an approved four-year high school course of study may legally demand from nonresident pupils a tuition in excess of that which the corporation may legally charge against the school corporation of which the nonresident pupil is a resident. *Chambers v Everett*, 191-49; 181 NW 867.

4278. Collection of tuition fees. If payment is not made, the board of the creditor corporation shall file with the auditor of the county of the pupil's residence a statement certified by its president specifying the amount due for tuition, and the time for which the same is claimed. The auditor shall transmit to the county treasurer an order directing him to transfer the amount of such account from the funds of the debtor corporation to the creditor corporation, and he shall pay the same accordingly.

4283. Tuition in charitable institutions. When any child is cared for in any charitable institution in this state which does not maintain a school providing secular instruction, and which institution is organized and operating under the laws of Iowa, and the domicile of the child is in another school district than that wherein the institution is situated, then such child shall be entitled to attend school in the district where such institution is located. In such case, the district which provides schooling for such child shall be entitled to receive tuition not exceeding the average cost thereof in the department of the school in which schooling is given, and not exceeding eight dollars per month for tuition in schools below the high school grade, and not exceeding twelve dollars per month for tuition in high school grades. Such tuition shall be paid by the county of the domicile of such child. Any county so paying tuition shall be entitled to recover the amount paid therefor from the parent of such child. This section shall not apply to charitable institutions which are maintained at state expense.

1. School attendance—residence for high school purposes. Children of school age who are so apprenticed to a charitable institution that such institution is their only home until they reach the age of 21 years, become residents of the school district in which such charitable institution is located, and if such district does not maintain a high school such children may attend high school in some other district which does maintain such school, (§ 4275, C., '27) and the tuition for such schooling shall be paid by the district of which the child is a resident as aforesaid. *Salem Ind. Sch. Dist. v Kiel*, 206-967; 221 NW 519.

CHAPTER 215-E1

REIMBURSEMENT OF SCHOOL DISTRICTS FOR LOSS OF TAXES

4283-e1. Reimbursement—by whom computed. When unplatted lands within the boundaries of a school district are owned by the government of the United States, by the state, by a county, or by a municipal corporation located wholly outside said school district, and such lands have been removed from taxation for school purposes, said school district shall be reimbursed, as hereinafter provided, in an amount which

shall be computed by the county board of supervisors in the county in which such lands are located.

4283-e2. Basis of reimbursement—limitation. The computation provided for in section 4283-e1 shall be made on the basis of the proportion that the assessable value of the total number of acres owned by the government of the United States, by the state, by the county, or by the municipal corporation, as the case may be, in such school district bears to the assessable value of the total number of acres in said school district. The average assessable value per acre of the lands so owned within the school district shall, for the purposes of the computation provided for in this chapter, not exceed the average assessable value per acre of the taxable lands in said district.

4283-e3. Certification of amount. When the county board of supervisors shall have computed the amount due a school district, as provided in sections 4283-e1 and 4283-e2, it shall forthwith certify the same to the county auditor of the proper county or to the secretary of the executive council, if the lands upon which computed belong to the government of the United States or to the state, or to the council of the proper municipal corporation, if they belong to a municipal corporation.

4283-e4. Payment to district. Upon receipt of the certificate provided for in section 4283-e3, it shall become the duty of the council of such municipal corporation or the county auditor of such county, as the case may be, to cause a warrant in said amount to be drawn on the general fund of such county or such municipal corporation and delivered to the secretary of said school district.

When the computed amount is based upon lands belonging to the state or to the government of the United States, as provided herein, it shall then become the duty of the secretary of the executive council of the state to certify the amount to the state comptroller, who shall draw his warrant to the secretary of said school district and the treasurer of state shall pay the same from any funds of the state not otherwise appropriated.

If the computed reimbursement to a school district on state or government-owned land within the district is not sufficient to cover the tuition such district is required to pay because of children of employees of the state or federal government who reside on such land and attend a public school outside the district in which such land is located, then the county board of supervisors shall add to the computed reimbursement to such district the difference between the computed reimbursement and the tuition such district is required by law to pay because of the children of such employees, and certify the total

to the secretary of the executive council for payment by the state as provided by law.

4283-e5. Secretary to file statement. It shall be the duty of the secretary of said school district when certifying the taxes to file a certified statement with the county auditor of the proper county showing the amount of such tax-free land, its description, and the branch of government by which owned. It shall also be the duty of the secretary of such school district at the time of certifying the taxes to file with the county auditor a certified statement showing the names of employees of the state or federal government who live on state or government owned land within the district whose children attend a public school outside the home district as provided by law, by whom employed, the capacity of their employment, the names of their children for whom tuition is to be paid, the name of the outside school district in which their children attend, the total period of attendance, and the amount of tuition the district is required to pay for each of such children.

4283-e6. Auditor to deduct reimbursement. When levying the school tax certified by the secretary of the school board against the taxable property of such school district, the county auditor shall deduct therefrom the amount computed by the county board of supervisors and levy the remainer against the taxable property of said district.

4283-e7. Blank forms. The forms necessary for carrying out the purposes of this chapter shall be prepared by the state board of assessment and review.

CHAPTER 216

SOCIETIES AND FRATERNITIES

4284. Secret societies and fraternities. 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 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.

1. Expulsion of pupils. Expulsion, under due compliance with this chapter, is valid. *Lee v Hoffman*, 182-1216; 166 NW 565.

4285. Enforcement. The directors of all schools shall enforce the provisions of section 4284, 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 4284.

4286. 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 4284, or are guilty of violating any rule, rules, or regulations adopted by such directors for the purpose of governing such schools or enforcing said section.

See 4270, 4271, expulsion or suspension from school.

4287. "Rushing" prohibited. No person shall go upon school grounds or enter any school building for the purpose of "rushing" or soliciting, while there, any pupil of such school to join any fraternity, society, or organization outside of said school. Persons violating the provisions of this section shall be fined not less than two dollars nor more than ten dollars, and on failure to pay such fine shall be imprisoned in the county jail for not more than ten days. Fines collected shall be paid to the county treasurer, and be by him added to the school fund of the district in which the offense was committed.

CHAPTER 217

EVENING SCHOOLS

4288. Evening schools authorized. The board of any school corporation may establish and maintain public evening schools as a branch of the public schools when deemed advisable for the public convenience and welfare.

4289. When establishment mandatory. When ten or more persons over sixteen years of age residing in any school corporation shall, in writing, express a desire for instruction in the common branches at an evening school, the school board shall establish and maintain an evening school for such instruction for not less than two hours each evening for at least two evenings each week during the period of not less than three months of each school year.

4290. Supervision—who admitted. If such evening school is a branch of a city or town school, the same shall be under the supervision of the superintendent of such city or town school; if not, the same shall be under the supervision of the

county superintendent. Such evening school shall be available to all persons over sixteen years of age who for any cause are unable to attend the public day schools of such school corporation.

CHAPTER 218

PART-TIME SCHOOLS

4291. Authorization. The board of directors in any independent school district situated in whole or in part in any city having a population of twelve thousand or over, in which there shall reside or be employed, or both, fifteen or more children over fourteen years of age and under sixteen years of age, who are not in regular attendance in a full-time day school and who have not graduated from a four-year approved high school, shall establish and maintain part-time schools, departments, or classes for such children. In districts situated in whole or in part in cities having less than twelve thousand population, the board may establish and maintain such schools. When such part-time schools have been established, all persons having custody of such children shall cause them to attend the same.

4292. Support. The board of directors may raise and expend money for the support of such part-time schools, departments, or classes in the same manner in which it is authorized to raise and expend funds for other school purposes.

4293. Standards — time of instruction. Such part-time schools, departments, or classes, for the attendance of children over fourteen and under sixteen years of age, shall be organized in accordance with standards established by the state board for vocational education, and shall provide for not less than eight hours of instruction per week during the length of term for which public schools are established in the district. Such part-time schools, departments, or classes shall be held between the hours of eight o'clock a. m. and six o'clock p. m.

4294. District reimbursed. Whenever any such part-time school or class shall have been approved by the state board for vocational education, the board of directors shall be entitled to reimbursement on account of expenditure made for the salaries of teachers in such part-time schools, departments, or classes from any federal and state funds appropriated in aid of vocational education, as provided in the statutes governing such appropriations.

4295. Powers state vocational board. The state board for vocational aducation is hereby authorized to fix standards for the establishment of part-time schools, departments, or

classes; to fix the requirements of teachers, and to approve courses of study for such part-time schools, departments, or classes.

4296. Violations. When such part-time school shall have been established, any parent or person in charge of such minor as defined in this chapter who shall violate the provisions of this chapter, shall be punished by a fine of not less than ten dollars nor more than fifty dollars, or any person unlawfully employing any such minor shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars, or be imprisoned in the county jail not to exceed thirty days.

4297. Enforcement. The enforcement of this chapter shall rest with the school board in the district in which such part-time school, department, or class shall have been established, and the state department of public instruction through its inspectors and the state board of vocational education through its supervisors of vocational education, in conjunction with the county superintendent of schools, are empowered to require enforcement of the same on the part of school boards.

CHAPTER 219

APPEAL FROM DECISIONS OF BOARDS OF DIRECTORS

4298. Appeal to county superintendent. Any person aggrieved by any decision or order of the board of directors of any school corporation in a matter of law or fact may, within thirty days after the rendition of such decision or the making of such order, appeal therefrom to the county superintendent of the proper county; the basis of the proceedings shall be an affidavit filed with the county superintendent by the party aggrieved within the time for taking the appeal, which affidavit shall set forth any error complained of in a plain and concise manner.

NOTE 1. An appeal to the county superintendent is authorized only from an actual decision or order of the board of directors; it cannot be taken where a board merely refuses or neglects to act where it should act. See *Case v Blood*, 71 Iowa 632.

NOTE 2. An appeal to the county superintendent cannot be taken from a decision or order of a school board unless an affidavit of appeal is filed with the county superintendent within thirty days after the rendition of the decision or order of the board. The thirty days specified as the time during which an appeal may be taken is jurisdictional. If the appeal is filed after that time, a county superintendent would not have jurisdiction to try the case; his only alternative would be to dismiss it for want of jurisdiction.

NOTE 3. The affidavit of appeal to the county superintendent may be substantially as indicated in Form 1, APPENDIX.

STEPS IN APPEAL PROCEDURE

1. Decision or order of board in session. Section 4298.
2. Plaintiff file affidavit of appeal with the county superintendent with-

in thirty days after the board's decision. Section 4298. Form 1, APPENDIX.

3. County superintendent send notice to the secretary within five days after the affidavit of appeal has been filed with the county superintendent. Section 4299. Form 2, APPENDIX.
4. Secretary's certified record sent to the county superintendent within ten days. Section 4299. Form 3, APPENDIX.
5. County superintendent send notice to parties of time and place set for the hearing. Section 4299. Form 4, APPENDIX.
6. Hearing before the county superintendent. Sections 4300, 4301.
7. County superintendent's decision in writing. Sections 4300, 4301.
8. Appellant's affidavit of appeal filed with the superintendent of public instruction within thirty days after the date of the county superintendent's written decision. Section 4302. Form 5, APPENDIX.
9. Appellant's notice to the adverse parties that affidavit of appeal has been filed with the superintendent of public instruction. Section 4302. Form 5-a, APPENDIX.
10. Superintendent of public instruction send to the county superintendent notice of appeal within five days directing the county superintendent to send up certified record. Section 4302.
11. County superintendent send to superintendent of public instruction the certified record within ten days. Section 4302.
12. Superintendent of public instruction set time and place for hearing, which time cannot be earlier than thirty days after the date notice of appeal has been served by the appellant upon the adverse party and the county superintendent, section 4302.
13. Brief and argument of the appellant and the appellee.
14. Hearing before the superintendent of public instruction. Section 4302.
15. Superintendent of public instruction's decision in writing. Section 4302.
16. County superintendent file transcript of costs with the clerk of the district court for judgment. Section 4301. Form 5-b, APPENDIX.

Suggestive Outline of Brief and Argument of the Appellant and the Appellee

(a) Nature of case—for example, payment of tuition or transportation; location of schoolhouse site; expulsion of pupil; discharge of teacher; etc.
(b) Nature of defense
(c) Issues involved
(d) How the case was decided by the county superintendent
(e) Statement of facts
(f) Assignment of errors or statement of propositions
(g) Brief points and authorities
(h) Argument

ANALYSIS

I Appeal in General

1. Nature of appellate power. This section does not clothe the superintendent with judicial powers. *Sch. Dist. Tp. v Pratt*, 17-16.

2. Omission to act. An appeal is authorized from the decision or order of the directors. It cannot be taken where they simply refuse

or neglect to act where they should do so. *Case v Blood*, 71-632; 33 NW 144.

3. Refusal to attach territory. An appeal will lie from an action of the board in refusing in a proper case to attach a portion of a district township to an independent district for school purposes. *Hightower v Overhaulser*, 65-347; 21 NW 671.

4. Apportionment of assets and liabilities. Appeal from action of directors in apportioning the assets and liabilities of new districts may be taken as here provided, and the final judgment of the county superintendent enforced by action. *Ind. Sch. Dist. v Ind. Sch. Dist.*, 45-391.

5. Right of superintendent to recall his decision. *Desmond v Ind. Dist.*, 71-23; 32 NW 6.

6. Fixing limits of district. The propriety of the limits of a proposed consolidated school district, duly approved by the county superintendents of two adjoining counties, from which approval no appeal has ever been taken to the superintendent of public instruction, cannot be raised for the first time in a collateral proceeding in the supreme court. *Lacock v Miller*, 178-920; 160 NW 291.

7. Trial on appeal. In determining an appeal the superintendent is not confined to the exact record made, but may look into the situation as it is at the time of the hearing, and upon new evidence or such information as he sees fit to consider, may make such determination as will do justice at the time. *Atkinson v Hutchinson*, 68-161; 26 NW 54.

II Appeal to Superintendent as Sole Remedy

8. In general. Mandamus to compel action by a district board will not lie where the aggrieved party has a right of appeal to the county superintendent. *Marshall v Sloan*, 35-445.

9. Refusal to rent schoolroom. The power of a board to rent a room and employ a teacher is discretionary, and its action in refusing to exercise such power cannot be questioned, except by appeal to the county superintendent. *Aananson v Anderson*, 70-102; 30 NW 38.

10. Refusal to transport children. An arrangement for transportation of children is to be made only when it will result in a saving of expense and increased advantage to the children. These needs involve an investigation and determination by the board of directors and the remedy upon its refusal to make such arrangement is by appeal and not by mandamus. *Queeny v Higgins*, 136-573; 114 NW 51.

11. Discharge of teacher. Where a teacher is discharged by the board without a hearing, the remedy of the teacher is by appeal to the county superintendent, and if he does not pursue such appeal he cannot recover in an action for damages for such improper discharge. *Kirkpatrick v Ind. Dist.*, 53-585; 5 NW 750; *Park v Ind. Dist.*, 65-209; 21 NW 567; *Jackson v Ind. Dist.*, 110-313; 81 NW 596.

12. Finding of nonresidence. The action of a school board in determining that a pupil is a nonresident and therefore must pay tuition, cannot be reviewed by mandamus, but only by appeal to the county superintendent. *Preston v Board*, 124-355; 100 NW 54.

13. Expenditure of money for highway purposes. The action of the board of directors in determining to expend money in procuring a highway under authority given them by vote of the electors is in the exercise of a discretion and may be reviewed on appeal to the county superintendent, and cannot be called in question by an injunction. *Bogaard v Ind. Dist.*, 93-269; 61 NW 859.

14. Questions of discretion. The action of a school board with reference to a matter vested in their discretion with the right of appeal to the county superintendent cannot be controlled by injunction. *Kinney v Howard*, 133-94; 110 NW 282; *Clay v Sch. Dist.*, 187-89; 174 NW 47; *Valentine v Ind. Dist.*, 191-1100; 183 NW 434.

15. Providing school (?) or utilizing foreign school(?). In determining whether a school shall be maintained in a district or the at-

tendance of the pupils provided for in another district, the board is given a discretion which can only be reviewed by appeal to the county superintendent and from him to the state superintendent. *Templer v Sch. Tp.*, 160-398; 141 NW 1054.

16. Expediency of action. The expediency of the formation of a consolidated district out of portions of the territory of other districts with reference to the effect on such other districts is to be determined by the county superintendent on appeal. *Sch. Dist. Tp. v Ind. Sch. Dist.*, 149-480; 128 NW 848.

17. Sufficiency of petition for consolidation. *Smith v Blairsburg Ind. Dist.*, 179-500; 159 NW 1027.

18. Formation of independent districts. An appeal lies to the county superintendent from the decision of the board on a petition for the formation of an independent district under § 4141. *Cons. Dist. v Shutt*, 199-111; 201 NW 335.

19. Acts within jurisdiction of board. Review of orders of the board in matters over which the board has jurisdiction must be had by appeal to the county superintendent. *Sch. Corp. v Ind. Sch. Dist.*, 162-257; 144 NW 20.

20. Unlawful demand for tuition—remedy. Relief from an unlawful demand for tuition based on an erroneous finding by the school board that the pupil is a nonresident, must be reached by an appeal to the county superintendent, etc. If said demand is accompanied by an order for the expulsion of the pupil if the tuition be not paid, injunction will lie. *Hume v Ind. Sch. Dist.*, 180-1233: 164 NW 188.

21. Improper location of sites—remedy. The exclusive remedy to test the fitness and propriety of a schoolhouse site (no fraud being properly pleaded) is by appeal from the decision of the board of directors to the county superintendent, and from the latter's decision to the state superintendent of public instruction. *Vance v Dist. Tp.*, 23-408; *Atkinson v Hutchinson*, 68-161; 26 NW 54; *Kinney v Howard*, 133-94; 110 NW 282; *Crawford v Sch. Tp.*, 182-1324; 166 NW 702; *Munn v Ind. Dist.*, 188-757; 176 NW 811; *Hufford v Herrold*, 189-853; 179 NW 53; see *Doubet v Board*, 135-95; 111 NW 326.

22. Appeal to county superintendent from decision of school board is necessary only where decision involves matter of discretion, and not where it involves duty imposed by law. *Riecks v Ind. Sch. Dist. of Danbury*, 257 NW 546.

III Permissible Court Action

22-a. Questions of jurisdiction. Cases wherein the jurisdiction and power of directors are brought in question, and wherein questions arise involving the construction of statutes conferring power upon school officers, may properly be brought in the courts, as by mandamus, for instance, without prosecuting the appeal here provided. So held as to power of directors to make certain rules, under which plaintiff was excluded from school. *Perkins v Board*, 56-476; 9 NW 356; see *Sch. Tp. v Ind. Dist.*, 110-30; 81 NW 184.

23. Questions of jurisdiction. The right of appeal to the county superintendent does not exclude the courts from considering on an application for mandamus whether in the matter complained of the board acted within the scope of its powers as defined by statute. *Kinzer v Ind. Sch. Dist.*, 129-441; 105 NW 686.

24. Void acts. Relief from void acts may be had by direct appeal to the courts. *Knowlton v Baumhover*, 182-691; 166 NW 202; *Peterson v Pratt*, 183-462; 167 NW 101.

25. Invalidity of contract. Where the validity of a teacher's contract is in question he is not limited to an appeal, but may sue in the courts. *Burkhead v Ind. Sch. Dist.*, 107-29; 77 NW 491.

26. Illegal discharge of teacher. Where a teacher sued for a breach of contract, claiming that an attempted discharge was invalid, held, that he was not to be denied relief because he had not appealed

from the illegal action of the board in attempting to discharge him. *Curttright v Ind. Sch. Dist.*, 111-20; 82 NW 444; *Schultz v Cons. Ind. Sch. Dist.*, 204 NW 281.

27. Invalid election. An appeal to the superintendent is not the only remedy where the board conducting a school election has not complied with the statute as to the length of time for keeping open the polls. *Hinkle v Saddler*, 97-526; 66 NW 765.

28. Legality of incorporation. The legality of the incorporation of an independent school district may be questioned in an action of quo warranto. Appeal to the county superintendent is not the exclusive remedy. *State v Alexander*, 129-538; 105 NW 1021.

29. Illegal consolidation. Rulings of the county superintendent or of the superintendent of public instruction relative to the legality of the organization of consolidated schools are nullities. Quo warranto is the exclusive remedy. *Haines v Board*, 184-401; 164 NW 887; 167 NW 192.

30. Unreasonable rules. One complaining of a rule of public school authorities is not limited to an appeal to the county superintendent of schools, if the rule is unreasonable, and not within the scope of the power conferred upon the school authorities. *Valentine v Ind. Sch. Dist.*, 187-555; 174 NW 334; 191-1100; 183 NW 434.

31. Certificate of grades. Records of the grades of a pupil in the public schools are the property of the school district and a pupil after graduation can compel the school authorities by mandamus to issue a copy of such record. *Valentine v Ind. Sch. Dist.*, 187-555; 174 NW 334; 191-1100; 183 NW 434.

32. Issuance of diploma. There is an implied legal duty on the part of officers of a public high school to issue written evidence of a pupil's actual graduation, and performance of such duty may be enforced by mandamus without appeal to county superintendent when a diploma is arbitrarily withheld. *Valentine v Ind. Sch. Dist.*, 187-555; 174 NW 334; *Valentine v Ind. Sch. Dist.*, 191-1100; 183 NW 434; *Contra Sweitzer v Fisher*, 172-266; 154 NW 465.

33. Injunction to restrain application of money. These provisions for appeal are not necessarily applicable to all school questions, and where the action of the school board in locating the schoolhouse site was claimed to be erroneous it was held that a suit in equity to enjoin the use of the proceeds of bonds for the erection of a school building on another site was proper. *Rodgers v Ind. Sch. Dist.*, 100-317; 69 NW 544.

34. Nondiscretionary duty. Where a positive, official duty is enjoined upon a board of directors, which is not discretionary, an appeal from the board is not such a plain, speedy, and adequate remedy that such duty may not be enforced by mandamus. *Benjamin v Dist. Tp.*, 50-648.

35. Proper review of board action. When school directors are invested by statute with control over a named subject-matter, their action with reference to such subject-matter must be reviewed through an appeal to the county superintendent, and not through a resort to the courts; and this is true howsoever inexpedient, improper, and ill-advised the action may appear to be. *Security Nat. Bank v Bagley*, 202-701; 210 NW 947.

36. Jurisdiction of courts. A teacher who has been discharged by the board of directors on charges of incompetency, after due notice to the teacher and hearing, may not maintain an action in the courts for damages consequent on such discharge. *Courtright v Cons. Ind. Sch. Dist.*, 203-26; 212 NW 368.

37. Illegal action—nonduty to appeal. The oral employment by a subdirector, under authority from the school board, of a teacher, and the formal, written, statutory contract evidencing such employment, signed by the president of the board and by the teacher, is not subject to review by the school board; and the assumption of such power by the board may be ignored by the teacher without appeal to the county superintendent. *Shill v School Tp.*, 209-1020; 227 NW 412.

38. Appeal — affidavit — sufficiency. The "affidavit" as the

basis of an appeal to the county superintendent is sufficient even though made by one who is a non-appellant, and a nonresident of the subdistrict where the controversy exists, when he is a resident of the school district and a taxpayer in the subdistrict, and a patron of the school therein, and when the affidavit is filed with the county superintendent by the actual appellants. *Sanderson v Board*, 211-768; 234 NW 216.

4299. Notice—transcript—hearing. The county superintendent shall, within five days after the filing of such affidavit in his office, notify the secretary of the proper school corporation in writing of the taking of such appeal, who shall, within ten days after being thus notified, file in the office of the county superintendent a complete certified transcript of the record and proceedings relating to the decision appealed from. Thereupon, the county superintendent shall notify in writing all persons adversely interested of the time when and place where the matter of appeal will be heard by him.

NOTE 1. The five days within which the county superintendent must notify the secretary of the filing of an appeal is merely directory; if the notice by the county superintendent has not been filed with the secretary within the time prescribed by law, a mandamus will lie to compel the performance of the act. The county superintendent's notice to the secretary may be substantially as indicated in Form 2, APPENDIX.

NOTE 2. The ten days within which the secretary shall file his required certified transcript is merely directory; if the certificate of the secretary has not been filed within the time prescribed by law, a mandamus will lie to compel the performance of the act. The secretary may certify the transcript substantially as indicated in Form 3, APPENDIX.

NOTE 3. The county superintendent's written notice to the persons adversely interested of the time when and the place where the matter of appeal will be heard may be substantially as indicated in Form 4, APPENDIX.

1. Appeal—appearance in lieu of notice. Failure of the county superintendent to fully comply with the statute relative to notifying adversely interested parties of an appeal is cured by the voluntry appearance of said parties. *Sanderson v Board of School Directors*, 211-768.

4300. Hearing—shorthand reporter—decision. At the time fixed for the hearing, he shall hear testimony for either party, and may cause the same to be taken down and transcribed by a shorthand reporter, whose fees shall be fixed by the county superintendent and be taxed as a part of the costs in the case, and he shall make such decision as may be just and equitable, which shall be final unless appealed from as hereinafter provided.

NOTE 1. In the action before the county superintendent the party filing the affidavit of appeal shall be designated as the Plaintiff; the board from whose action the appeal was taken shall be designated as the Defendant.

NOTE 2. At the hearing before the county superintendent there should be a competent shorthand reporter so that a full and complete transcript of evidence may be had. The affidavit of appeal, the county superintendent's notice to the secretary, the secretary's certified record of the

proceedings of the board at the meeting when the action complained of was taken, and the county superintendent's notice to the parties adversely interested should be identified and given a definite exhibit number and introduced as evidence into the record of the hearing.

NOTE 3. Witnesses should be introduced and sworn and any testimony taken that will have an essential bearing on the merits of the case. At the close of the hearing the county superintendent should take the case under advisement in order that he may have sufficient opportunity carefully to examine all the evidence and the law bearing on the case and to prepare a formal opinion in writing justifying his decision.

NOTE 4. In his decision the county superintendent may sustain or reverse the action of the board; if the appeal was not taken within the time prescribed by law, or if the case is one over which the county superintendent has no jurisdiction, he may dismiss it; he may remand the case to the board for a new hearing; or he may modify the decision of the board. A copy of the decision should be sent to each party to the appeal.

NOTE 5. The written decision of the county superintendent should show the date on which the decision was rendered; otherwise, in the event of an appeal to the superintendent of public instruction, it would be impossible to determine whether such appeal was filed within thirty days after the decision was rendered.

4301. Witnesses — fees — collection. The county superintendent in all matters triable before him shall have power to issue subpoenas for witnesses, which may be served by any peace officer, compel the attendance of those thus served, and the giving of evidence by them, in the same manner and to the same extent as the district court may do, and such witnesses and officers may be allowed the same compensation as is paid for like attendance or service in such court, which shall be paid out of the general fund of the proper school corporation, upon the certificate of the superintendent to and warrant of the secretary upon the treasurer; but if the superintendent is of the opinion that the proceedings were instituted without reasonable cause therefor, or if, in case of an appeal, it shall not be sustained, he shall enter such findings in the record, and tax all costs to the party responsible therefor. A transcript thereof shall be filed in the office of the clerk of the district court and a judgment entered thereon by him, which shall be collected as other judgments.

NOTE 1. If appeal is taken to the superintendent of public instruction this transcript of costs should not be filed with the clerk of the district court until after the decision of the superintendent of public instruction. The transcript of costs may be substantially as indicated in Form 5-b, APPENDIX.

4302. Appeal to state superintendent. An appeal may be taken from the decision of the county superintendent to the superintendent of public instruction in the same manner as provided in this chapter for taking appeals from the board of a school corporation to the county superintendent, as nearly as applicable, except that thirty days' notice of the appeal shall be given by the appellant to the county superintendent,

and also to the adverse party. The decision when made shall be final.

See Steps in Appeal Procedure, APPENDIX.

NOTE 1. Either party aggrieved at the county superintendent's decision has the right to appeal to the superintendent of public instruction, providing an affidavit of appeal is filed with the superintendent of public instruction within thirty days after the rendition of the decision. The affidavit of appeal to the superintendent of public instruction may be substantially as indicated in Form 5, APPENDIX.

NOTE 2. If the board is the aggrieved party, an affidavit of appeal to the superintendent of public instruction can be authorized only by the resolution of the board adopted while legally in session; it cannot be authorized merely by the consent of individual members of the board not in session as a board.

NOTE 3. The thirty days specified as the time during which an appeal to the superintendent of public instruction may be taken is jurisdictional. If the appeal is filed with the superintendent of public instruction after that time that officer would not have jurisdiction to try the case; the only alternative would be to dismiss the appeal for want of jurisdiction.

NOTE 4. The appellant's notice to the adverse parties of the taking of an appeal to the superintendent of public instruction may be substantially as indicated in Form 5-a, APPENDIX.

NOTE 5. Within five days after an affidavit of appeal has been filed with the superintendent of public instruction he shall notify the county superintendent that such appeal has been taken and direct him to file a complete certified transcript of the record and proceedings relating to the decision appealed from with a copy of the decision and all papers and exhibits relating to the case.

NOTE 6. Within ten days after having been notified by the superintendent of public instruction that an appeal has been taken from his decision the county superintendent of schools shall forward to the superintendent of public instruction the complete record as directed.

NOTE 7. On receipt of the certified transcript of the record and the proceedings the superintendent of public instruction shall fix a date for hearing thereon and notify the parties to the appeal of the time and place of such hearing, which time shall not be earlier than thirty days after the appellant's notice to the adverse parties of the taking of the appeal.

NOTE 8. The five days during which the superintendent of public instruction shall notify the county superintendent to file a certified transcript of the record and proceedings and the ten days during which the county superintendent shall file such record are directory; if not filed within the time prescribed, a mandamus will lie to compel their filing.

NOTE 9. A copy of the appellant's notice to the adverse party should be attached to the affidavit of appeal to the superintendent of public instruction and filed with that officer.

1. Jurisdiction. Where a county superintendent acts without jurisdiction, an appeal to the state superintendent cannot confer such jurisdiction, and the correctness of an order made can be contested in the courts. *Sch. Tp. v Ind. Dist.*, 110-30; 81 NW 184.

2. Finality of decision. The decision of the superintendent of public instruction in questions properly before him on appeal is final and cannot be reviewed by the courts. *Wood v Farmer*, 69-533; 29 NW 440.

3. Avoidance under changed conditions. The decision of the state superintendent affirming the action of the board in changing the schoolhouse site is final and the board has no authority in the absence of a change of conditions to

rescind its action and retain the former site. *Carpenter v Ind. Dist.*, 95-300; 63 NW 708; see *Doubet v Board*, 135-95; 111 NW 326.

4. Mandamus to enforce. The decision of the state superintendent on an appeal involving the action of a board of directors on a matter as to which such board has exclusive jurisdiction, may be enforced as against the board by mandamus. *Newby v Free*, 72-379; 34 NW 168; *State v Thomas*, 152-500; 132 NW 842.

5. Nonprejudicial order of court. An order of court commanding the school board forthwith to erect a schoolhouse on a specified site is unobjectionable when such site had been already legally selected by the board. *Sanderson v Board*, 211-768; 234 NW 216.

6. Order—sufficiency. An order fixing a schoolhouse site of at least one-half acre in the southeast corner of a named quarter section is not fatally indefinite on the theory that such order would require the location to be made in part in the contiguous public highway. *Sanderson v Board*, 211-768; 234 NW 216.

7. Appeal from original order. No appeal lies to the superintendent of public instruction from an original order or action of a county superintendent. In other words, the right of appeal to the state superintendent is strictly confined to those decisions or orders that originate with a board of directors of a school corporation. *Field v Samuelson*, 212-786; 233 NW 687.

8. Appeal — dismissal — effect. Where a teacher appeals to the superintendent of public instruction from an order of the board of directors discharging the teacher, the dismissal of the appeal by said superintendent on the ground of want of jurisdiction cannot be given the legal right of reversing the said order of discharge. *Streyffeler v Sch. Dist.*, 210-780; 231 NW 325.

9. Sites—appeal—jurisdiction of state superintendent. The superintendent of public instruction on an appeal involving an order of a school board locating a schoolhouse site, has no jurisdiction, after affirming the order of the board, to enter an order directing the school board to provide transportation for certain pupils, the matter of transportation not being mentioned in the order locating the site. Reason: The jurisdiction of said officers, on appeal, is strictly appellate. *Albrecht v Sch. Dist.*, 216-968; 250 NW 129.

4303. Money judgment. Nothing in this chapter shall be so construed as to authorize either the county or state superintendent to render judgment for money; neither shall they be allowed any other compensation than is now allowed by law. All necessary postage must first be paid by the party aggrieved.

NOTE 1. This section does not mean that the county and state superintendents cannot render a decision or make a finding in a case that involves money. Most appeal cases do involve money in one way or another. It means that in a case involving money that is brought before the county or state superintendent on appeal, the finding or decision that is made by that officer cannot be construed as a judgment in the sense that levies may be made against property.

The only way to enforce the decision of the county superintendent or state superintendent in an appeal case involving money, as well as in any other type of appeal case, if the party against whom the decision is rendered will not voluntarily comply, is to institute the necessary court action to enforce the decision.

See below decision of the Iowa supreme court in the case of *Independent School District v Independent School District*, 45 Iowa 391.

1. Enforcement of appellate decision. Although a county superintendent cannot, on appeal, render a judgment, his action in a proper

case is conclusive upon the parties. The remedy for the collection of the amount awarded where money is claimed would be by action. *Ind. Sch. Dist. v Ind. Sch. Dist.*, 45-391.

CHAPTER 220

PRESIDENT, SECRETARY, AND TREASURER

4304. President—duties. The president of the board of directors shall preside at all of its meetings, sign all warrants and drafts, respectively, drawn upon the county treasurer for money apportioned and taxes collected and belonging to his school corporation, and all orders on the treasurer drawn as provided by law, sign all contracts made by the board, and appear in behalf of his corporation in all actions brought by or against it, unless individually a party, in which case this duty shall be performed by the secretary.

1. Authority generally. Where the board of directors makes a contract, the only authority of the president and secretary is to see that it is properly reduced to writing and to sign the same when drawn up in accordance with the resolution of the board. They cannot bind the district by stipulations in the contract not assented to by the board. *Weir Furnace Co. v Ind. Sch. Dist.*, 99-115; 68 NW 584.

2. Authority to institute action. The president does not have authority to bring suits in the name of the corporation on his own motion. *Ind. Dist. v Wirtner*, 85-387; 52 NW 243.

3. Authority to employ counsel. The president is not authorized to employ counsel to represent the board in case of appeal from an order of the board. (But see § 4245.) *Templin v Dist. Tp.*, 36-411.

4. Approval of contract. The approval of the president is essential, and a resolution of the board for the employment of a teacher will not be binding, nor amount to a valid ratification of a previous contract. *Gambrell v Dist. Tp.*, 54-417; 6 NW 693.

5. Approval presumed. Where the director making the contract is also president of the board and the contract is left with him, his approval of the contract will be presumed. *Benson v Dist. Tp.*, 100-328; 69 NW 419.

6. Approval presumed. Where the contract was signed the day school commenced and left with the subdirector, held, that it was his duty to file it with the president and secure his approval, and the teacher being permitted to enter upon the performance of her duties might presume that it was approved; and that the absence of such approval would not deprive her of the right to recover compensation thereunder. *Conner v Dist. Tp.*, 35-375.

7. Mandamus to compel approval. *Ind. Dist. v Rhodes*, 88-570; 55 NW 524.

8. Employment of counsel. The board of directors has implied power in good faith to employ attorneys to defend against a proceeding for the dissolution of the district and to contract for a reasonable compensation for such services. *Rural Ind. Sch. Dist. v Daly*, 201-286; 207 NW 124.

9. Delegation of authority. A school board may very properly delegate to its president the authority to receive a deed to property purchased by the board and to deliver the warrant in payment for such property. *Looney v Cons. Ind. Sch. Dist.*, 201-436; 205 NW 328.

4305. Bonds of secretary and treasurer. The secretary and treasurer shall each give bond to the school corporation in

such penalty as the board may require, and with sureties to be approved by it, which bond shall be filed with the president, conditioned for the faithful performance of his official duties, but in no case less than five hundred dollars.

See 1057, approval of bonds of reelected officer; 1059, conditions of surety bond; 4222, qualifying for office.

4305-a1. Cost of bond. If the bond of an association or corporation as surety is furnished, the reasonable cost of such bond may be paid by the school corporation.

4306. Oath. Each shall take the oath required of civil officers, which shall be indorsed upon the bond, and shall complete his qualification within ten days.

See 1079 and 13313, penalty for failure to take oath; 4216-c28, who may administer oath.

4307. Action on bond. In case of a breach of the bond, the president shall bring action thereon in the name of the school corporation.

4308. Duties of secretary. The secretary shall:

1. *Preservation of records.* File and preserve copies of all reports made to the county superintendent, and all papers transmitted to him pertaining to the business of the corporation.

2. *Minutes.* Keep a complete record of all the proceedings of the meetings of the board and of all regular or special elections in the corporation in separate books.

3. *Account with treasurer.* Keep an accurate, separate account of each fund with the treasurer, charge him with all warrants and drafts drawn in his favor, and credit him with all orders drawn on each fund.

4. *Claims.* Keep an accurate account of all expenses incurred by the corporation, and present the same to the board for audit and payment.

5. *Poll book.* Record at all school elections, in a book provided for that purpose, the names of all persons voting thereat, the number of votes cast for each candidate, and for and against each proposition submitted.

1. Informal records. Informality in the records kept by the secretary of the action of the board will not defeat subsequent proceedings based on such action if in fact taken. *Higgins v Reed,* 8-298; *Kinney v Howard,* 133-94; 110 NW 282.

4309. Monthly receipts, disbursements, and balances. The secretary of each independent town or city district shall file monthly, on or before the tenth day of each month, with the board of directors, a complete statement of all receipts and disbursements from the various funds during the preceding month, and also the balance remaining on hand in the various

funds at the close of the period covered by said statement, which monthly statements shall be open to public inspection.

4310. Warrants. He shall countersign all warrants and drafts upon the county treasurer drawn or signed by the president; draw each order on the treasurer, specify the fund on which it is drawn and the use for which the money is appropriated; countersign and keep a register of the same, showing the number, date, to whom drawn, the fund upon which it is drawn, the purpose and the amount; and at each regular annual meeting furnish the board with a copy of the same.

1. Negotiability. A school order is not a negotiable instrument. *Sch. Dist. v Lombard,* 2 Dillon 493; *Shepherd v Dist. Tp.,* 22-595.

2. Defenses. A defense that warrants sued upon were issued to an amount in excess of the indebtedness for which they were issued may be urged against a bona fide assignee for value. *Eastman v Dist. Tp.,* 40-438.

3. Defenses. An assignee of an order is bound, at his peril, to ascertain whether or not officers issuing the same had authority to do so. *Boardman v Hayne,* 29-339.

4. Consideration. Where a warrant was given by one district township to another in settlement of a claim for taxes, held, that there was sufficient consideration therefor, and the receipt by plaintiff of a portion of the taxes, in lieu of which the warrant was given, would not estop plaintiff from suing on the warrant. *Wesley Dist. Tp. v Dist. Tp.,* 52-153; 2 NW 1048.

5. Difficulty to determine fund. That the board cannot accurately specify the amount which should be paid from each fund is no excuse for not issuing orders in payment of a judgment. *Dist. Tp. v Board,* 52-287; 3 NW 109.

6. Personal liability on unauthorized warrant. The president and secretary are not personally liable at the suit of an assignee of an order drawn by them on the treasurer, without authority, when they are induced to issue the same through fraud of the payee. *Boardman v Hayne,* 29-339.

4312. School census. He shall, between the first day of June and the first day of July of each even-numbered year, enter in a book made for that purpose, the name, sex, and age of every person between five and twenty-one residing in the corporation, together with the name of the parent or guardian.

See 4235, census taken by subdirector.

4313. Reports by secretary. He shall notify the county superintendent when each school is to begin and its length of term, and, ten days after the regular July meeting in each year, file with the county superintendent a report which shall give:

1. The number, as shown by the last preceding school census, of persons of school age in the corporation, distinguishing the sexes.
2. The number of schools and branches taught.
3. The number of scholars enrolled and the average attendance in each school.
4. The number of teachers employed and the average compensation paid per month, distinguishing the sexes.

5. The length of school in days.
6. The average cost of tuition per month for each scholar.
7. The textbooks used.
8. The number of volumes in library.
9. The value of apparatus belonging to the corporation.
10. The number of schoolhouses and their estimated value.
11. The name, age, and post office address of each person resident of the corporation, without regard to age, so blind as to be unable to acquire an education in the common schools, and of each person between the ages of five and thirty-five whose faculties with respect to speech and hearing are so deficient as to prevent him from obtaining an education in the common schools, and of each feeble-minded person of school age.

4314. Officers reported. He shall report to the county superintendent, auditor, and treasurer the name and postoffice address of the president, treasurer, and secretary of the board as soon as practicable after the qualification of each.

4316. Duties of treasurer — payment of warrants. The treasurer shall receive all moneys belonging to the corporation, pay the same out only upon the order of the president countersigned by the secretary, keeping an accurate account of all receipts and expenditures in a book provided for that purpose. He shall register all orders drawn and reported to him by the secretary, showing the number, date, to whom drawn, the fund upon which drawn, the purpose and amount.

See section 4239-g1, warrants may be drawn by the secretary in advance of approval by the board.

1. Service of process. The treasurer of a school district is an officer thereof in such sense that service of notice upon him is binding on the district. *Kennedy v Ind. Sch. Dist.*, 48-189.

2. Authority. The treasurer of a district township has no authority to bind the township by his contract or admissions. *Carpenter v Dist. Tp.*, 58-335; 12 NW 280.

3. Records as evidence. Officers are presumed, in the absence of any showing to the contrary, to have properly discharged their duties, and the treasurer's book of account is rightly received in evidence in an action against the sureties on his bond to show the true statement of his accounts at the time such report was rendered. *Ind. Sch. Dist. v Hubbard*, 110-58; 81 NW 241; see *Ind. Sch. Dist. v Herkenrath*, 155-275; 135 NW 1086.

4317. General and schoolhouse funds. The money collected by a tax authorized by the electors or the proceeds of the sale of bonds authorized by law or the proceeds of a tax estimated and certified by the board for the purpose of paying interest and principal on lawful bonded indebtedness or for the purchase of sites as authorized by law, shall be called the schoolhouse fund and, except when authorized by the electors, may be used only for the purpose for which originally authorized or certified. All other moneys received for any other purpose shall be called the general fund. The treasurer shall keep a

separate account with each fund, paying no order that fails to state the fund upon which it is drawn and the specific use to which it is to be applied.

1. Unavailable defense. In an action on a school warrant duly drawn on the schoolhouse fund, it is no defense that the warrant is, in effect, payable out of such fund as may be on deposit in a named bank. *Looney v Cons. Ind. Sch. Dist.*, 201-436; 205 NW 328.

4320. Financial statement. He shall render a statement of the finances of the corporation whenever required by the board, and his books shall always be open for inspection.

4321. Annual report. He shall make an annual report to the board at its regular July meeting, which shall show the amount of the general fund and the schoolhouse fund held over, received, paid out, and on hand, the several funds to be separately stated, and he shall immediately file a copy of this report with the county superintendent.

CHAPTER 221

COMMON SCHOOL LIBRARIES

4322. Library fund. The auditor of each county in this state shall withhold annually from the money received from the apportionment for the several school districts, fifteen cents for each person of school age residing in each school corporation, as shown by the annual report of the secretary, for the purchase of books, as hereinafter provided.

NOTE 1. If a school district has territory in more than one county, the county auditor of each county in which it has territory shall withhold fifteen cents for each child of school age living in that portion of the district that lies in his county. The amount withheld by each county auditor for such a district shall be held by him subject to the requisition of the county board of education of the county to which the district belongs; it belongs to the county in which the principal buildings are located.

NOTE 2. At the time the county superintendent credits each district of the county with the amount of money withheld by the county auditor for library purposes, he should secure from the county auditor a statement showing the amount withheld for each district to see that the amount credited to each district agrees with the amount withheld by the county auditor for that district.

4323. Purchase of books—distribution. Between the first Monday of July and the first day of October in each year, the county board of education shall expend all money withheld by the auditor, as provided in section 4322, in the purchase of books for the use of the school district, and shall distribute the books thus selected to the librarians among the several school districts in the proportion that the number of persons of school age living in the school district bears to the number of such persons living in the county.

4324. Lists of books. The state board of educational exam-

iners shall prepare annually lists of books suitable for use in school district libraries, and furnish copies of such lists to each county superintendent and to each member of each county board of education.

4325. Record of books. It shall be the duty of each secretary to keep in a record book, furnished by the board of directors, a complete record of the books purchased and distributed by him.

4326. Librarian. Unless the board of directors shall elect some other person, the secretary in independent districts and director in subdistricts in school townships shall act as librarian and shall receive and have the care and custody of the books, and shall loan them to teachers, pupils, and other residents of the district, in accordance with the rules and regulations prescribed by the state board of educational examiners and board of directors. Each librarian shall keep a complete record of the books in a record book furnished by the board of directors.

4327. Custody of library. During the periods that the school is in session the library shall be placed in the schoolhouse, and the teacher shall be responsible to the district for its proper care and protection.

4328. Board to supervise. The board of directors shall have supervision of all books, and shall make an equitable distribution thereof among the schools of the corporation.

CHAPTER 222

STANDARDIZATION AND STATE AID

4329. Standard schools—maintenance—requirements. Any school located in a district, other than a city independent or consolidated district, not maintaining a high school, which has complied with the provisions of this chapter, shall be known as a standard school. Every standard school, before it may be designated as such, shall have been maintained for eight school months during the previous year. It shall during the previous school year:

1. Have a suitable schoolhouse, grounds, and outbuildings in proper condition and repair.
2. Be equipped with needful apparatus, textbooks, supplies, and an adequate system of heating and ventilation.
3. Have done efficient work.
4. Have complied with such requirements as shall be specified by the superintendent of public instruction.

4330. Minimum requirements. The superintendent of public instruction shall prescribe for standard schools the mini-

mum requirements of teaching, general equipment, heating, ventilation, lighting, seating, water supply, library, care of grounds, fire protection, and such other requirements as he may deem necessary.

4331. County superintendent—reports. On or before June thirtieth of each year, and at such other times as the superintendent of public instruction may direct, the county superintendent of schools shall make reports and furnish such other data in regard to said schools as the department of public instruction may desire on blanks to be furnished by the superintendent of public instruction.

4332. State aid. State aid shall be given to rural districts maintaining one or more standard schools to the amount of six dollars for each pupil who has attended said schools in said district at least six months of the previous year.

4333. Minimum standard. No school shall be deemed a standard school unless the teacher is the holder of a first-class county certificate or its equivalent, has contracted for the entire school year, and unless such school shall have maintained an average daily attendance of at least ten pupils, during the previous school year.

4334. Door plate. Each standard school shall be furnished by the superintendent of public instruction with a suitable door plate or mark of identification, and the expense of the same shall be paid from the fund created for the promotion of standard schools.

4335. State aid—how obtained and expended. Upon receiving from the county superintendent a satisfactory report showing that any rural school has fulfilled the requirements of a standard school, the superintendent of public instruction shall issue a requisition upon the state comptroller for the amount due any rural school district entitled to state aid for the school year just past; whereupon the comptroller shall draw a warrant on the treasurer of state payable to the secretary of the school corporation entitled thereto and forward to the secretary of said school corporation, who shall cause the same to be deposited with the other funds of the district. The money shall be expended in the district or districts maintaining standard schools in amounts proportionate to the number of pupils upon which state aid was granted. The money shall be expended with the approval of the county superintendent in making improvements and in purchasing necessary apparatus, but no part thereof shall be paid to any teacher for compensation.

CHAPTER 223

TEACHERS

4336. Qualifications—compensation prohibited. No person shall be employed as a teacher in a common school which is to receive its distributive share of the school fund without having a certificate of qualification given by the county superintendent of the county in which the school is situated, or a certificate or diploma issued by some other officer duly authorized by law.

No compensation shall be recovered by a teacher for services rendered while without such certificate or diploma.

See 4106(7), duty of county superintendent to enforce law.

1. Employment of uncertified teachers. The employment of a teacher without a certificate is an unauthorized act, under the law, and injunction will lie to restrain such employment. *Clay v Ind. Sch. Dist.*, 187-89; 174 NW 47.

2. Employment of students as teachers. A court of equity will not require school directors to discontinue the permitting of normal school students with provisional certificates to practice teaching in the public schools, nor enjoin the school directors from paying school funds to teachers spending part of their time in supervising such teaching. *Clay v Ind. Sch. Dist.*, 187-89; 174 NW 47.

4337. Experience in teaching recognized. No regulations or orders by the state superintendent of public instruction or the board of educational examiners with reference to the qualifications of teachers, in regard to having taken certain high school or collegiate courses or teachers' training courses, shall be retroactive so as to apply to any teacher who has had at least three years' successful experience in teaching; and no teacher once approved for teaching in any kind of school shall be prevented by such regulations or orders from continuing to teach in the same kind of school for which he has previously been approved; provided, however, that this section shall not be construed as limiting the duties or powers of any school board in the selection of teachers, or in the dismissal of teachers for inefficiency or for any legal cause.

4338. State aid and tuition. No school shall be deprived of its right to be approved for state aid or approved for tuition by reason of the employment of any teacher as authorized under section 4337.

4339. Daily register. Each teacher shall keep a daily register which shall correctly exhibit the name or number of the school, the district and county in which it is located, the day of the week, month, year, and the name, age, and attendance of each scholar, and the branches taught; and when scholars reside in different districts separate registers shall be kept for each district, and a certified copy of the register shall,

immediately at the close of the school, be filed by the teacher in the office of the secretary of the board.

4340. Reports. The teacher shall file with the county superintendent such reports and in such manner as he may require.

4341. Minimum teachers' wage. All teachers in the public schools of this state shall be paid for their services a minimum wage of not less than fifty dollars per month; provided, that nothing herein shall be construed as limiting the right of a school board to make a contract for a higher wage than herein specified as a minimum.

1. Constitutionality. The statutes fixing a minimum wage for school teachers and providing a punishment for the employment of a teacher at a less rate are not violative of the constitutional provisions guaranteeing equal rights and forbidding special privileges or immunities. *Bopp v Clark,* 165-697.

2. Practice teaching. A normal school student, who has been issued a provisional certificate, may do practice teaching in the public schools for a nominal compensation, under supervision of a regular certified public school teacher. *Clay v Ind. Sch. Dist.,* 187-89; 174 NW 47.

3. Hiring teachers. The hiring of a school teacher at less than the minimum wage, and in violation of the statute prohibiting the acts and prescribing simply a fine as punishment for its violation, is a crime triable as a misdemeanor, although the statute itself does not declare that its violation shall be a crime. *Bopp v Clark,* 165-697.

4341-el. Temporary suspension. The county board of education may temporarily suspend the provisions hereof if, in its judgment, the financial conditions in any district warrant such action.

4345. Pension system. Any independent school district located in whole or in part within a city having a population of twenty-five thousand one hundred or more may establish a pension and annuity retirement system for the public school teachers of such district provided said system, in cities having a population less than seventy-five thousand, be ratified by a vote of the people at a general election.

NOTE 1. "General election" as used in this section refers to the regular school election.

4346. Fund. The fund for such retirement system shall be created from the following sources:

1. From the proceeds of an assessment of teachers in the school district not exceeding one per cent of their salaries in a given school year, or such greater percentage as the board of directors of such school district may authorize and a majority of such teachers shall, at the time of such authorization by the board, agree to pay;

2. From the proceeds of an annual tax levy, not exceeding the amount produced in the current school year by the assess-

ment of teachers as provided in the preceding paragraph of this section;

3. From the interest on any permanent fund which may be created by gift, bequest, or otherwise.

4347. Management. The board of directors of the independent school district shall constitute the board of trustees and shall formulate the plan of the retirement; and shall make all necessary rules and regulations for the operation of said retirement system.

CHAPTER 224

INSTRUCTION OF DEAF

4348. Instructors authorized. Any school corporation within the state having residing therein deaf children of school age may provide one or more special instructors for such deaf children, the instruction given under such special instructors to be substantially equivalent to that given other children of corresponding age in the graded schools.

See 4426 et seq., education of deaf children at state institution; 4068 et seq., institution for the deaf.

4349. State aid—amount. To any school corporation providing such instruction and complying with all of the provisions of this chapter there shall be granted and paid as hereinafter provided state aid in an amount to be computed at twenty dollars for each month that each child not more than sixteen years of age is instructed under the provisions of this chapter.

No child more than sixteen years of age shall be admitted to such instruction.

4350. State board of education to supervise. When any school corporation shall elect to proceed under the provisions of this chapter, it shall, through its proper officers, communicate that fact to the state board of education, and the state board of education shall have general supervision of all matters arising under this chapter, and no instructor shall be appointed hereunder and no courses or methods of instruction shall be installed hereunder without the approval of such state board of education.

4351. State aid—payment. The state aid herein provided for shall be paid annually at the end of the school year upon properly authenticated and verified claim in form as may be required by the state board of education, and when such claim is approved by the state board of education the state comptroller shall draw warrant accordingly.

4352. Appropriation. For the purpose of paying the state

aid granted under this chapter there is hereby appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient therefor.

CHAPTER 225

INDEBTEDNESS OF SCHOOL DISTRICTS

4353. Indebtedness authorized. Any school corporation shall be allowed to become indebted for the purpose of building and furnishing a schoolhouse or schoolhouses and additions thereto, gymnasium, teachers' or superintendent's home or homes, and procuring a site or sites therefor, or for the purpose of purchasing land to add to a site already owned, to an amount not to exceed in the aggregate, including all other indebtedness, five per cent of the actual value of the taxable property within such school corporation, such value to be ascertained by the last county tax list previous to the incurring of such indebtedness, anything contained in section 6238 to the contrary notwithstanding.

See 4190, original indebtedness cannot be incurred by board; 4406, propositions for which indebtedness can be authorized by electors; 6238, statutory limit of indebtedness; Art. XI, sec. 3, Constitution of Iowa, constitutional limit of indebtedness; 7109, actual value of taxable property, how obtained; 1172-1179, bond sale procedure; 1179-b1 et seq., mandatory retirement of bonds.

1. Rescinding action. The change of the law as to the limit of indebtedness for schoolhouse purposes may be taken into account by the board of directors in changing their action with reference to the establishment of a schoolhouse site. *Doubet v Board*, 135-95; 111 NW 326.

2. Limitation on municipal debts —construction of contract. The specific amount for which a municipal corporation obligates itself in a written contract for the construction of a schoolhouse in return for the contractor's agreement to "provide all the material and perform all of the work," etc., is in no wise lessened by a contract clause that said price "includes five thousand dollar figure for millwork." *Holst v Cons. Ind. Sch. Dist.*, 203-288.

3. Municipal debt limitation—tax as asset. In the marshaling of the assets and liabilities of a municipal corporation on the issue whether the debts of the corporation are in excess of constitutional limitation, a duly levied and collectible tax must be deemed a municipal asset, in the absence of proof showing the definite purpose of the tax and, if for current expenses, that legal obligations have been or necessarily will be created, sufficient to offset said tax fund. *Holst v Cons. Ind. Sch. Dist.*, 203-288.

4. Municipal debt limitation—what constitutes a debt. A contract between an architect and a municipal corporation, which contract imposes a financial obligation on the corporation only in case the corporation enters into a further contract for the erection of the building which the architect has planned, is properly classified as a liability of the corporation's from the moment the building contract is entered into. So held on the issue whether the municipal debt was in excess of constitutional limitation. *Holst v Cons. Ind. Sch. Dist.*, 203-288.

5. Express mention and implied exclusion. In statutes in which stated things are enumerated, things not named are excluded. *Vale v Messenger*, 184-553; 168

NW 281; *Pierce v Bekins V. & S. Co.*, 185-1346; 172 NW 191.

6. District debt—general obligations—trust fund. School warrants which are in form the general obligations of the district, and issued under a purported contract of the district providing for such unconditional issuance, are void if in excess of the constitutional limit of indebtedness, notwithstanding the fact that the said contract carries the inference that the warrants will be paid from a special fund arising from the sale of bonds. *Carstens Bros. v Cons. Ind. Sch. Dist. of Bayard*, 218 Iowa 812.

4354. Petition for election. Before such indebtedness can be contracted in excess of one and one-quarter per cent of the actual value of the taxable property, a petition signed by a number equal to twenty-five per cent of those voting at the last regular school election shall be filed with the president of the board of directors, asking that an election be called, stating the amount of bonds proposed to be issued and the purpose for which the indebtedness is to be created, and that the necessary schoolhouse or schoolhouses can not be built and equipped, or that sufficient land can not be purchased to add to a site already owned, within the limit of one and one-quarter per cent of the valuation.

NOTE 1. This section does not confer upon a school board authority on its own motion to contract indebtedness provided such indebtedness is not in excess of 1¼ per cent of the actual value of the taxable property of the district. The contracting of original indebtedness by the board on its own motion regardless of whether such indebtedness is less than or in excess of such valuation is definitely prohibited by section 4190.

Section 4354 means that if the indebtedness then outstanding, or that will be outstanding if the proposed indebtedness is incurred is not in excess of 1¼ per cent of the actual value of the taxable property of the district, the board, on its own motion as provided in sections 4218 and 4216-c2, may submit to the voters of the district either at the regular election or at a special election the proposition of authorizing such indebtedness by giving a ten-day notice, as provided in section 4216-c3; but if it is in excess of 1¼ per cent of such valuation, the board cannot on its own motion submit the proposition; there must first be a petition as provided in section 4354 followed by a meeting of the board and a notice published for four weeks as provided in sections 4355 and 4356.

1. Legal sufficiency of petition. The determination by the board of directors of the legal sufficiency of a petition as regards the signatures thereon is sufficient, even though the statute does not require the board to keep on file a record of the electors of the district. *Mershon v Cons. Sch. Dist.*, 204-221.

2. Special meeting on oral notice. A special meeting of the board of directors of a school corporation is legally called on oral notice to the directors by the secretary, at the direction of the president. *Mershon v Cons. Sch. Dist.*, 204-221.

4355. Election called. The president of the board of directors on receipt of such petition shall, within ten days, call a meeting of the board which shall call such election, fixing the time and place thereof, which may be at the time and place of holding the regular school election.

1. Special meeting on oral notice. A special meeting of the board of directors of a school corporation is legally called on oral

notice to the directors by the secretary, at the direction of the president. *Mershon v Con. Sch. Dist.*, 204-221.

4356. Notice — ballots. Notice of such election shall be given by publication once each week for four weeks in some newspaper published in the district, or, if there is none, in some newspaper published in the county and of general circulation in the district. The notice shall state the date of the election, the hours of opening and closing the polls and the exact location thereof, and the questions to be submitted, and shall be in lieu of any other notice, any other statute to the contrary notwithstanding. At such election the ballot shall be prepared and used in substantially the form for submitting special questions at general elections.

See 763-765, 4218, form of ballot.

1. Notice of election. As to conflicting statutes relative to notice of election, see: *Chambers v Board*, 172-340; 154 NW 581.

2. Form of notice — interest rate. No necessity exists to state the rate of interest the bonds will bear. *Chambers v Board*, 172-340; 154 NW 581; see *Wells v Boone Co.*, 171-377; 153 NW 220.

3. Advocacy of bonds by directors. The official position of a school director in nowise prohibits such director from conducting a campaign in favor of a proposition then before the electors. *Chambers v Board*, 172-340; 154 NW 581.

4357. Date of election. The election shall be held on a day not less than five nor more than twenty days after the last publication of notice.

4358. Bonds. If a majority of the qualified voters voting at such election vote in favor of the issuance of such bonds, the board of directors shall issue the same and make provision for the payment thereof.

See 1171-d4, vote required to carry bond proposition; 1172-1179, bond sale procedure; 1179-b1-1179-b3, maturity and payment of bonds.

CHAPTER 226

SCHOOLHOUSES AND SCHOOLHOUSE SITES

4359. Location. The board of each school corporation may fix the site for each schoolhouse, which shall be upon some public highway already established or procured by such board and not in any public park, and except in cities, towns, and villages, not less than thirty rods from the residence of any landowner who objects thereto.

In fixing such site, the board shall take into consideration the number of scholars residing in the various portions of the school corporation and the geographical location and convenience of any proposed site.

See 4178, location of schoolhouse in consolidated district.

1. Appeal to county superintendent. See under § 4298.

2. Primary right and duty. Primarily the location of a schoolhouse site is within the exclusive jurisdiction of the school board, subject to review on apeal to the county superintendent and from him to the state superintendent. After final decision on appeal to the state superintendent he has no authority to change such decision on account of subsequent change of conditions. *Doubet v Board,* 135-95; 111 NW 326; see: *Kinney v Howard,* 133-94; 110 NW 282.

3. Elements entering into final determination. *Peters v Warner,* 81-335; 46 NW 1001.

4. Controlling considerations. The controlling considerations in changing the site of a schoolhouse are the geographical position of the existing site, if one has been fixed, of the proposed site, and the convenience of the people of each portion of the district. The wishes of a majority of the voters are not necessarily controlling. *Carpenter v Ind. Dist.,* 95-300; 63 NW 708.

5. Changing site. The power given to fix the site of each schoolhouse carries with it the power to change the schoolhouse site. *Vance v Dist. Tp.,* 23-408; *Atkinson v Hutchinson,* 68-161; 26 NW 54.

6. Exercising right without vote of electors. The directors of a school township have power to change the site of a schoolhouse without a vote of the electors. *James v Gettinger,* 123-199; 98 NW 723.

7. Power not controllable by electors. A majority vote of school electors, cast in connection with a defeated bond proposition, in favor of retaining an old schoolhouse site, and personal pledges of divers directors to abide by such vote, do not deprive the directors of their statute-given power, on a subsequent voting of bonds, to select a new site and employ the proceeds of the bonds thereon. *Munn v Ind. Sch. Dist.,* 188-757; 176 NW 811.

8. Objections by landowner. Any owner of property may object to the procurement of a site for a schoolhouse within thirty rods of his residence. The objection is not limited to owners of land a portion of which is taken for such site. *Mendenhall v Board,* 137-554; 115 NW 11.

9. Holding under prior statute relative to "consent of owner". *Dennis v Ind. Sch. Dist.,* 166-744; 148 NW 1007.

10. Enjoining removal. It being the duty of a school district to maintain schools, it may maintain injunction to prevent the wrongful removal of schoolhouses, and is not limited to an action at law for damages in such case. *Dist. Tp. v Dist. Tp.,* 54-115; 6 NW 163.

11. Duty to rescind action. Upon the reversal of the action of the board in changing the site, it becomes their duty to restore the schoolhouse to the original site unless they are excused from doing so for some reason occurring after the appeal was taken. *Atkinson v Hutchinson,* 68-161; 26 NW 54.

12. Right to rescind action. When a change has been made by the board and on appeal has been approved by the state superintendent, the board has no authority in the absence of a change of conditions to reconsider its action and retain the former site. *Carpenter v Ind. Dist.,* 95-300; 63 NW 708.

13. Reversal on appeal—effect on contract of purchase. If the action of the board is reversed on appeal the district has no longer authority to hold or use the site purchased for the purpose, and a conveyance of property for such new site becomes invalid and inoperative without any action for rescission on the part of the board. *Ind. Sch. Dist. v McClure,* 136-122; 113 NW 554.

14. Adverse possession. A school district may acquire and hold real estate for schoolhouse sites, and therefore by occupation of land for that purpose under a claim of right thereto may acquire title by adverse possession although no former conveyance to it has ever been made. *Ind. Dist. v Fagen,* 94-676; 63 NW 456.

15. Damages from improper location. Action of the board in improperly locating or relocating schoolhouses cannot be made the basis of an action by a taxpayer in the name of the district against members of the board individually

for damages. *Ind. Dist. v Gookin*, 72-387; 34 NW 174.

16. Injunction to restrain application of bond issue. Although the board has authority to change the site it may be enjoined from using the proceeds of bonds voted for a school building on the old site in the erection of a building on a new site. *Rodgers v Ind. Sch. Dist.*, 100-317; 69 NW 544.

17. Purchase — rescission and cancellation. The purchase by a board of a schoolhouse site after bonds for such purchase had been duly voted, but prior to any bond levy, and the due issuance of a warrant in payment for such site, are not canceled or rescinded by the subsequent action of the electors in voting to rescind their former action authorizing the bonds. *Looney v Cons. Ind. Sch. Dist.*, 201-436; 205 NW 328.

18. Record—sufficiency. School record reviewed, and, while quite informal, held to clearly show the official action of the board in relocating a schoolhouse site. *Sanderson v Board*, 211-768; 234 NW 216.

19. Nonprejudicial order of court. An order of court commanding the school board forthwith to erect a schoolhouse on a specified site is unobjectionable when such site had been already legally selected by the board. *Sanderson v Board*, 211-768; 234 NW 216.

20. Order—sufficiency. An order fixing a schoolhouse site of at least one-half acre in the southeast corner of a named quarter section is not fatally indefinite on the theory that such order would require the location to be made in part in the contiguous public highway. *Sanderson v Board*, 211-768; 234 NW 216.

21. Appeal—jurisdiction of state superintendent. The superintendent of public instruction on an appeal involving an order of a school board locating a schoolhouse site, has no jurisdiction, after affirming the order of the board, to enter an order directing the school board to provide transportation for certain pupils, the matter of transportation not being mentioned in the order locating the site. Reason: The jurisdiction of said officers, on appeal, is strictly appellate. *Albrecht v Sch. Dist.*, 216-968; 250 NW 129.

4360. Two-acre limitation. Except as hereinafter provided, any school corporation may take and hold so much real estate as may be required for such site, for the location or construction thereon of schoolhouses, and the convenient use thereof, but not to exceed two acres exclusive of public highway.

1. Measurement of tract. The acreage authorized to be set apart may be so measured as not to include any portion of the highway. *Salisbury v Sch. Dist.*, 101-556; 70 NW 706.

2. Recreation grounds. Ample grounds are essential for the exercise or recreation of the children and land may be condemned for the purpose of providing such grounds in addition to grounds for a site already secured. *Ind. Sch. Dist. v Hewitt*, 105-663; 75 NW 497.

4361. Five-acre limitation. Any school corporation including a city, town, village, or city under special charter, may take and hold an area equal to two blocks exclusive of the street or highway, for a schoolhouse site, and not exceeding five acres for school playground or other purposes for each such site.

4362. Ten-acre limitation. Consolidated districts may take and hold not to exceed ten acres for any one site, and any school corporation may acquire additional ground by donation.

4363. Tax. The directors in any independent district whose territory is composed wholly or in part of territory occupied by any city or city under special charter may, at their regular meeting in July, or at a special meeting called for that purpose between the time designated for such regular meeting and the third Monday in August, certify an amount not exceeding one mill to the board of supervisors, who shall levy the amount so certified, and the tax so levied shall be placed in the schoolhouse fund and used only for the purchase of sites in and for said school district.

4364. Condemnation. If the owner of real estate desired for any purpose for which any school may be authorized to take and hold real estate refuses to convey the same, or is dead or unknown or cannot be found, or if in the judgment of the board of directors of the corporation they cannot agree with such owner as to the price to be paid therefor, such real estate shall be appraised by a board of referees, which shall be organized upon the application of either party in interest.

NOTE 1. Application to county superintendent for the appointment of referees may be substantially as indicated in Form 7, APPENDIX.

1. "Owner" defined. The holder of a tax certificate upon property sought to be condemned under these provisions is an "owner" in such sense that he is entitled to notice. *Cochran v Ind. Sch. Dist.*, 50-663.

2. Implied consent. One who fails to object to assessment of damages but appeals from the referee's award, then withdraws this pleading and elects to proceed to trial as to the amount of his damages and is awarded an increase, which with the original award is deposited, will be held to have consented to the taking of land. *Dennis v Ind. Sch. Dist.*, 166-744; 148 NW 1007.

3. Right of way for highway. The power to obtain the opening of public roads for better access to a schoolhouse having been conferred upon the district, it is fairly to be implied that the district may accomplish that purpose by purchase or by any of the usual and appropriate methods by which a public way may be established. The district may through its board of directors and electors petition the board of supervisors for a road for the benefit of the district, and the funds of the district may be lawfully appropriated for the payment of damages assessed in such proceeding. Certiorari will not lie to review the action of the board of supervisors in establishing such a road. *Brockway v Board*, 133-293; 110 NW 844.

4365. Board of referees. Such board shall consist of:

1. One freeholder appointed by the county superintendent.
2. One freeholder appointed by the owner of the real estate. If such owner can not be found the county auditor shall appoint a freeholder for him.
3. One freeholder selected by the two freeholders appointed under the two preceding paragraphs of this section.

All the members of the board shall be residents of the county and shall not be interested in the same or a like question.

4366. Notice—service. The county superintendent shall give notice of the time and place of making the assessment of

damages, to the persons in possession of the real estate and to the owner as shown by the transfer books in the office of the county auditor, or if the owner is so shown to be deceased, to the owners of the beneficial interest therein. Notice shall be given for the same length of time and in the same manner as for the commencement of actions in the district court.

1. Insufficient notice. Notice by publication is not sufficient as against a party residing in the county. *Cochran v Ind. Sch. Dist.*, 50-663.

4367. Assessment — report. The referees shall inspect the grounds proposed to be taken, fix the damage sustained, as nearly as may be, on the basis of the value of the real estate appropriated, and the damage caused by the taking thereof, and report in writing to the county superintendent their doings and findings, which report shall be filed and preserved in his office.

1. Elements of damages. Inconvenience due to the taking of property for school purposes and naturally resulting from such appropriation, by which the market value of the premises is unfavorably affected, should be considered in determining the damages resulting from such taking. *Haggard v Ind. Sch. Dist.*, 113-486; 85 NW 777.

4368. Appeal—costs. Within ten days after receiving notice of the award made, either party may appeal from the assessment to the district court by giving notice thereof as in the case of taking private property for works of internal improvement. If no appeal is taken the assessment shall be final. Upon appeal the school corporation shall not be liable for costs unless the owner shall be allowed a greater sum than given by the referees, but all costs of making the referees' assessment shall be paid by the school corporation.

NOTE 1. The county superintendent's notice to the land owner of the amount of damages assessed by the referees may be substantially as indicated in Form 12, APPENDIX.

1. Notice of award. The notice of the award should be in writing and from the county superintendent. Oral notice from nonofficial sources is not enough. The landowner's right of appeal continues indefinitely until proper notice is given. *Gregory v Kirkman Cons. Ind. Sch. Dist.*, 186-914; 173 NW 243.

2. Burden in re notice. Where a defendant school district seeks to defeat an appeal by a landowner on the ground that it was not taken within ten days after notice of award had been received by him, the burden is on it to show that the notice was received by him. *Gregory v Kirkman Cons. Ind. Sch. Dist.*, 186-914; 173 NW 243.

3. Mailing notice. The mailing of a notice in the United States mail, properly addressed to the residence or place of business of the addressee, with proper postage stamps, raises a rebuttable presumption that the notice was received by the addressee. *Gregory v Kirkman Cons. Ind. Sch. Dist.*, 186-914; 173 NW 243.

4. Notice in re appeal. Failure to serve the county superintendent with notice of appeal from an award in condemnation proceedings is fatal to the appeal. *Krcmar v Ind. Sch. Dist.*, 192-734; 185 NW

485; see *Haggard v Ind. Sch. Dist.*, 113-486; 85 NW 777.

5. Judgment not to be entered. Judgment for the damage to property should not be rendered against the school district on appeal where the property has not been actually appropriated. *Haggard v Ind. Sch. Dist.*, 113-486; 85 NW 777.

6. Attorney fees and costs. *Jones v Board*, 140-179; 118 NW 265.

4369. Possession and deposit. The board may at any time after the award is made by the referees take possession of the property upon depositing with the county treasurer the amount of the award, and if this deposit is not made within sixty days after the final determination of the proceedings, they shall be void.

4370. Erection or repair of school house. Before erecting a schoolhouse, the board of directors shall consult with the county superintendent as to the most approved plan for such building, and secure his approval of the plan submitted. Before any one-room schoolhouse shall be erected or repaired at a cost exceeding five hundred dollars, or before any schoolhouse containing more than one room shall be erected or repaired at a cost exceeding one thousand dollars, proposals therefor shall be invited by advertisement published once each week for two consecutive weeks in some newspaper published in the county in which the work is to be done, and the contract shall be let to the lowest responsible bidder but the board may reject any and all bids and advertise for new bids. After any bid is accepted, a written contract shall be entered into, and the contractor shall furnish bonds with sureties for the faithful performance of the contract.

See 352, hearing before state comptroller on contracts costing $5,000 or more; 4370-c1, emergency repairs; chapter 452, labor and material, bonds, contracts.

NOTE 1. School board has no authority to erect a building without a favorable vote of the electors even if the necessary funds are on hand.

NOTE 2. Published notice inviting bids as provided in section 4370 may be substantially as indicated in Form 6, APPENDIX.

1. Number of schoolhouses. There is no provision that one school district shall have but one schoolhouse. If it be necessary, in order to maintain more than one school in a subdistrict, to build another house, the authority to erect it is implied from the authority to maintain more than one school. *Wood v Farmer*, 69-533; 29 NW 440.

2. Nondelegable acts. The board of directors may delegate to a committee the ministerial duty of carrying out a contract for the erection of a schoolhouse, but the duty of selecting the site, adopting the plans, and awarding the contract cannot thus be delegated. *Kinney v Howard*, 133-94; 110 NW 282.

3. Accrual of right to erect. After the voting of a tax for a schoolhouse on a proposition submitted to the electors, and the certification of such tax to the board of supervisors, nothing remains to be done before the board proceeds to the erection of the schoolhouse. *Kinney v Howard*, 133-94; 110 NW 282.

4. Anticipation of tax. The board may proceed to the erection of a schoolhouse in advance of the collection of the tax voted therefor. But it cannot bind the township by borrowing money to pay a debt

contracted after the limit fixed by the township has been reached. *Austin v Dist. Tp.*, 51-102; 49 NW 1051.

5. Illegal award. The award of a contract to a bidder whose bid does not comply with the requirements of statute is not binding. *Weitz v Ind. Dist.*, 79-423; 44 NW 696.

6. Illegal award. Upon refusal of the lowest bidder to enter into a contract for the construction of a schoolhouse, the board cannot disregard all the bids submitted and enter into a contract with a nonbidder and hold the lowest bidder liable under his deposit for the difference between his proposition and the price fixed in such subsequent contract. *Cedar Rapids Lbr. Co. v Fisher*, 129-332; 105 NW 595.

7. Insufficient acceptance of bid. A telegram to one whose bid was found to be the lowest, advising him that his bid was the lowest bid, held not to be such acceptance of his bid as to render the contract binding upon him. *Cedar Rapids Lbr. Co. v Fisher*, 129-332; 105 NW 595.

8. Refusal to erect—effect. A failure of the board to select a site or to receive proposals for the erection of a building will not render void the tax voted therefor. *Casey v Ind. Dist.*, 64-659; 21 NW 122.

9. Mandamus to compel award of contract. Where a proposal for bids stated that the right to reject any and all bids was reserved by the board, held, that a bidder could not by mandamus compel the contract to be awarded to him as being the lowest responsible bidder. *Hanlin v Ind. Dist.*, 66-69; 23 NW 268.

10. Authority to repair. A contract to repair a schoolhouse may be made by the board of directors without a previous vote of the electors. *Williams v Peinny*, 25-436.

11. Fixing terms of bond. The conditions of the bond here provided for are not prescribed by law, and the board may require such bond as shall protect third parties who furnish material or work in the performance of the contract, and action thereon may be brought by such parties. *Baker v Bryan*, 64-561; 21 NW 83.

12. Construction not controllable by electors. The insertion, without intent to mislead, in a petition for a schoolhouse and in the notices, etc., of the election, of a statement that the proposed schoolhouse would be built of brick, was not binding on the directors, nor were the directors obligated to spend the entire amount authorized. *Knaack v Sch. Tp.*, 179-410; 161 NW 446.

13. Contract for lightning rods. *Monticello Bank v Dist. Tp.*, 51-350; 1 NW 592; *Wolf v Ind. Sch. Dist.*, 51-432; 1 NW 695.

14. Right of municipality to complete contract. A school district may, though not authorized so to do and though protected by a bond taken under this section, complete its partially erected building when abandoned by the contractor and may apply the unpaid payments under the contracts to the cost of such completion, even though this defeats the material man in his attempt to establish a lien. *Ludowici v Dist.*, 169-669; 149 NW 845.

15. Contract with director—validity. It would be most unwise and contrary to public policy to permit a board of directors to contract with one of its members in the name of the district * * * The agreement may have been fair, and for the benefit of the district, but we are of the opinion that a sound public policy demands that agreements of the class to which it belongs be held to be invalid. *Weitz v Ind. Dist. of Des Moines*, 78-37.

16. Contracts for repairs. The board could not, under the name of "repairs", make contracts involving the rebuilding, or an addition, in no just sense a repair, and charge it to the contingent fund. If this could be done, then without a vote of the people they could remodel, and even rebuild, and the power given to the electors would exist in name merely. The theory of the system is to require all matters to originate with the people when a tax of any considerable amount is to be raised. Here is the source of power, and prudence, and the best interest of the schools demand that it be appealed to when there is doubt, rather than that the board shall assume doubtful powers, * * * Experience demonstrates that there

is more danger in extending, by construction, the powers of the board or officers than of the people. *Williams v Peinny*, 25-436.

17. Limitation on municipal debts — construction of contract. The specific amount for which a municipal corporation obligates itself in a written contract for the construction of a schoolhouse in return for the contractor's agreement to "provide all the material and perform all of the work," etc., is in no wise lessened by a contract clause that said price "includes five thousand dollar figure for millwork." *Holst v Cons. Ind. Sch. Dist.*, 203-288.

18. Municipal debt limitation—what constitutes a debt. A contract between an architect and a municipal corporation, which contract imposes a financial obligation on the corporation only in case the corporation enters into a further contract for the election of the building which the architect has planned, is properly classified as a liability of the corporation's from the moment the building contract is entered into. So held on the issue whether the municipal debt was in excess of constitutional limitation. *Holst v Cons. Ind. Sch. Dist.*, 203-288.

19. Municipal debt limitation—tax as asset. In the marshaling of the assets and liabilities of a municipal corporation on the issue whether the debts of the corporation are in excess of constitutional limitation, a duly levied and collectible tax must be deemed a municipal asset, in the absence of proof showing the definite purpose of the tax and, if for current expenses, that legal obligations have been or necessarily will be created, sufficient to offset said tax fund. *Holst v Cons. Ind. Sch. Dist.*, 203-288.

20. Construction — suggested change in contract—effect. A subcontractor who "suggests" to the contractor that the latter make certain modifications in the plans in the way of extras does not thereby obligate himself to pay to the contractor the cost entailed by such changes, even though such changes were advantageous to the subcontractor. *Berger Mfg. Co. v Salyers & Co.*, 203-565.

4370-c1. Emergency repairs. When emergency repairs costing more than one thousand dollars are necessary in order to prevent the closing of any school, the provisions of the act with reference to advertising for bids shall not apply, and in that event the board may contract for such emergency repairs without advertising for bids; provided, however, that before such emergency repairs can be made to any schoolhouse, it shall be necessary to procure a certificate from the county superintendent that such emergency repairs are necessary to prevent the closing of such school.

See 352, hearing before state comptroller on contracts costing $5,000 or more; 4370, approval by county superintendent also when advertisement for bids is required; chapter 452, labor and material, bonds, contracts.

1. Contract with director—validity. It would be most unwise and contrary to public policy to permit a board of directors to contract with one of its members in the name of the district. * * * The agreement may have been fair, and for the benefit of the district, but we are of the opinion that a sound public policy demands that agreements of the class to which it belongs be held to be invalid. *Weitz v Ind. Dist. of Des Moines*, 78-37.

2. Contracts for repairs. The board could not, under the name of "repairs", make contracts involving the rebuilding, or an addition, in no just sense a repair, and charge it to the contingent fund. If this could be done, then without a vote of the people they could remodel, and even rebuild, and the power

given to the electors would exist in name merely. The theory of the system is to require all matters to originate with the people when a tax of any considerable amount is to be raised. Here is the source of power, and prudence, and the best interest of the schools, demand that it be appealed to when there is doubt, rather than that the board shall assume doubtful powers, * * * Experience demonstrates that there is more danger in extending by construction, the powers of the board or officers than of the people. *Williams v Peinny*, 25-436.

4371. Uses for other than school purposes. The board of directors of any school corporation may authorize the use of any schoolhouse and its grounds within such corporation for the purpose of meetings of granges, lodges, agricultural societies, and similar rural secret orders and societies, and for election purposes, and for other meetings of public interest; provided that such use shall in no way interfere with school activities; such use to be for such compensation and upon such terms and conditions as may be fixed by said board for the proper protection of the schoolhouse and the property belonging therein, including that of pupils.

1. Use of schoolhouses for religious purposes. *Townsend v Hagan*, 35-194; *Davis v Boget*, 50-11.

2. Express mention and implied exclusion. In statutes in which stated things are enumerated, things not named are excluded. *Vale v Messenger*, 184-553; 168 NW 281; *Pierce v Bekins, V. & S. Co.*, 185-1346; 172 NW 191.

4372. Compensation. Any compensation for such use shall be paid into the general fund and be expended in the upkeep and repair of such school property, and in purchasing supplies therefor.

4373. Use forbidden. If at any time the voters of such corporation at a regular election forbid such use of any such schoolhouse or grounds, the board shall not thereafter permit such use until the said action of such voters shall have been rescinded by the voters at a regular election, or at a special election called for that purpose.

4374. Renting schoolroom. The board may, when necessary, rent a room and employ a teacher, where there are ten children for whose accommodation there is no schoolhouse.

1. Failure to provide school accommodations—remedy. The remedy against a school board for failing to provide school accommodations is not by certiorari. *Molyneaux v Molyneaux*, 130-100; 106 NW 370.

2. Right to rent premises. *Scripture v Burns*, 59-70; 12 NW 760.

3. Power discretionary. *Aananson v Anderson*, 70-102; 30 NW 38.

4. Abuse of discretion. The discretion of a school board to rent quarters suitable for school purposes is not an unbridled discretion. The renting of premises in such manner and under such conditions as to merge the public school into another school which is, in part, devoted to sectarian teachings, is such an abuse of discretion as to open the door to injunctive relief. *Knowlton v Baumhover*, 182-691; 166 NW 202.

4377. Fence around schoolhouse sites. Each board of directors in school districts where the school grounds adjoin cultivated or improved lands shall build and maintain a lawful fence between said grounds and cultivated or improved lands, and the owner of lands adjoining any such site shall have the right to connect the fence on his land with the fence around the school grounds, but he shall not be liable to contribute to the maintenance of such fence.

See 1846, definition of lawful fence; 4378, barbed wire prohibited.

4378. Barbed wire. No fence provided for in section 4377 shall be constructed of barbed wire, nor shall any barbed wire fence be placed within ten feet of any school grounds. Any person violating the provisions of this section shall be punished by a fine not exceeding twenty-five dollars.

See 4106(4), duty of county superintendent to enforce.

4379. Reversion of schoolhouse site. Any real estate owned by a school corporation, situated wholly outside of a city or town, and not adjacent thereto, and heretofore used as a schoolhouse site, and which, for a period of two years continuously has not been used for any school purpose, shall revert to the then owner of the tract from which the same was taken, provided that said owner of the tract last aforesaid shall, within the time hereinafter prescribed, pay the value thereof to such school corporation.

1. Holding under former statute. *Ind. Dist. v Fagen*, 94-676; 63 NW 456.

2. Warranty deed. Schoolhouse sites revert as here provided though originally secured by the school corporation by full warranty deed. *Waddell v Board*, 190-400; 175 NW 65.

3. Forfeiture of right. The right of a property owner to a reversion of a schoolhouse site which has been carved out of his farm, may be forfeited by a failure to meet the statutory conditions to such reversion. *Cons. Sch. Dist. v Thompson*, 194-662; 189 NW 803.

4. Reversion barred. Failure of the reversioner to move for the recovery of the premises for ten years after their use for school purposes has ceased, bars the reversion. *Sch. Dist. v Hanson*, 186-1314; 173 NW 873.

5. Vested interest. A statute providing that an abandoned schoolhouse site shall revert to the owner of the tract from which it was taken creates no vested interest in any person, and the legislature may, prior to an abandonment, change the statute and provide for a different disposition of the property. *Ind. Sch. Dist. v Smith*, 190-929; 181 NW 1.

6. Proviso in deed—nonuser. A clause in a voluntary deed to land for school site purposes, providing the conditions on which the land should revert to grantor, should be construed in the light of the statute governing reversion existing at the date of the execution of the deed. *Hopkins v Sch. Dist.*, 173-43; 151 NW 443; 155 NW 168.

4380. Appraisers. In case the school corporation and said owner of the tract from which such school site was taken, do not agree as to the value of such site, the county superintendent of the county in which the greater part of such school corporation is situated, shall, on the written application of

either party, appoint three disinterested voters of the county to appraise said site.

4381. Notice. The county superintendent shall give notice to both parties of the time and place of making such appraisement, which notice shall be served in the same manner and for the same time as for the commencement of action in the district court.

4382. Appraisement. Such appraisers shall inspect the premises and, at the time and place designated in the notice, appraise said site in writing, which appraisement, after being duly verified, shall be filed with the county superintendent.

4383. Public sale. If the owner of the tract from which said site was taken fails to pay the amount of such appraisement to such school corporation within twenty days after the filing of same with the county superintendent, the school corporation may sell said site to any other person at the appraised value, or may sell the same at public sale to the highest bidder.

4384. Sale of improvements. If there are improvements on said site, the improvements may, at the request of either party, be appraised and sold separately.

4385. Sale of unnecessary schoolhouse sites. Schoolhouses and school sites no longer necessary for school purposes, because of being located in consolidated school districts, may be sold immediately after the organization of such consolidated school districts, in the manner above provided.

During the use of such premises, no person owning a right of reversion shall have any interest in or control over the premises.

This and sections 4379 to 4384, inclusive, shall not apply to cases where schools have been temporarily closed by law on account of small attendance.

1. Power to convey school site. A city independent school corporation, holding title to a schoolhouse site by full warranty deed, may abandon such site for school purposes and, by pursuing the course provided by statute, convey full title to its grantee. *Ind. Sch. Dist. v Smith*, 190-929; 181 NW 1.

2. Conveyance—review by courts. The courts will not, at the suit of a taxpayer, overturn and nullify the action of a school board in executing and receiving, on behalf of the district, deeds in order to adjust the boundaries of a schoolhouse site, and in finally conveying the site when no longer needed, when the transactions have stood unquestioned for many years, and when there is no allegation or proof that the directors refused to perform their duty, or acted illegally or fraudulently. *Beck v Sch. Dist.*, 213-1282; 241 NW 427.

SALE OR LEASE IN CERTAIN DISTRICTS

4385-a1. Power to sell or lease. The board of directors of an independent district composed wholly or in part of a city

acting under a special charter and having a population of fifty thousand or more may lease, or by a unanimous vote pass a resolution to sell any schoolhouse, school site, or other property acquired for school purposes when in the opinion of said board such sale is for the benefit of the district.

4385-a2. **Advertisement for bids.** Before making a sale, the board shall advertise for bids for said property. Such advertisement shall definitely describe said property and be published by at least one insertion each week for two consecutive weeks in some newspaper having general circulation in the district.

4385-a3. **Acceptance of bids.** The board shall not, prior to two weeks after the said second publication, nor later than six months after said second publication, accept any bid. The board may accept only the best bid received prior to acceptance. The board may decline to sell if all the bids received are deemed inadequate.

4385-a4. **Rule of construction.** Sections 4385-a1 to 4385-a3, inclusive, shall be construed as independent of the power vested in the electors by section 4217, and as additional thereto.

CHAPTER 227

SCHOOL TAXES AND BONDS

4386. **School taxes.** The board of each school corporation shall at its regular meeting in July, or at a special meeting called between the time for the regular meeting and the twenty-fifth day of July, estimate the amount required for the general fund. The amount so estimated shall not exceed the following sum for each person of school age:

1. In consolidated districts maintaining an approved high school course, one hundred dollars.

2. In school corporations having a school enumeration of ten thousand or more, seventy dollars.

3. In all other school corporations, eighty dollars; provided that corporations not maintaining an approved high school and which have tuition pupils attending high school in other districts may levy such an additional amount above the said eighty dollars as will be necessary to pay the cost of tuition for such pupils.

See 369 et seq., estimates under budget law; 373, emergency levy; 4388, free textbooks and supplies; 4346, teachers' pension; 4391, library; 4433-4437, for playground; 4448, books and supplies; 4388, transportation; 4387, $1,000.00 minimum per school; 383, 4392, when certified; 4389, 7163, how certified—dollars or mills.

See reference under 4403 for tax in schoolhouse fund.

1. **Holdings relative to former teachers' and contingent levies.** *Manning v Dist. Tp.*, 28-332; *C. R. & M. R. R. Co. v Carroll Co.*, 41-153.

2. **Approximate accuracy of estimate.** Approximation of the amount of the tax to be levied is all that is called for from the board of directors in its estimate and from the board of supervisors in levying the tax. *Giliman v Talley*, 140-718; 119 NW 144.

3. *Limitation on levy.* The authorized annual levy of not to exceed a stated sum for each person of school age is not limited by the amount of funds on hand at the time the board makes the levy. *McEvoy v Christensen*, 178-1180; 159 NW 179.

4. **Presumption of legality.** Where a new township was formed in March and a tax levied therein, held, that in the absence of proof that said tax exceeded the limit imposed by statute it was legal, although the report of the county superintendent, being made before the creation of the township, did not show the number of pupils therein. *M. & St. P. R. Co. v Kossuth Co.*, 41-57.

5. **Levy—misdescription.** There being but one general fund in consolidated school districts, it is immaterial that the levy is entered on the tax records under the head of "Teachers' Fund". *McEvoy v Christensen*, 178-1180; 159 NW 179.

6. **Void estimate — effect.** Although the tax must be levied by the board of supervisors, their action is based solely upon the action of the board of directors, and if the action of the board of directors is void because made after the date specified, the levy by the supervisors will be of no effect. *Standard C. Co. v Ind. Dist.*, 73-304; 34 NW 870.

7. **Constitutionality of curative act.** A curative act curing an illegality in the levy will not be unconstitutional as a special statute because it applies to only one district and not to other districts in which illegal taxes may have been levied under the same circumstances. *C., R. I. & P. R. Co. v Ind. Dist.*, 99-556; 68 NW 881.

8. **Restraining tax levy.** Authorized tax levies may not be restrained on the ground that fraud existed in the original organization of the district. *Hufford v Herrold*, 189-853; 179 NW 53.

4387. Additional taxes. If the amount so estimated in any school corporation does not equal one thousand dollars for each school thereof, the corporation may estimate not to exceed one thousand dollars for each school in the corporation.

4388. Transportation fund—tax for free textbooks. In addition to the amounts authorized by sections 4386 and 4387, school boards may include in their estimates not to exceed five dollars for each person of school age for transporting children to and from school, when authorized by law; also the additional sum authorized by section 4448.

4389. Taxes estimated in mills. School corporations containing territory in adjoining counties may vote and estimate all taxes for school purposes in mills.

See 7163, when tax estimated in dollars.

4390. Apportionment of taxes. The boards of school townships shall apportion any tax voted by the electors for schoolhouse fund among the several subdistricts in such a manner as justice and equity may require, taking as the basis of such apportionment the respective amounts previously levied upon said subdistricts for the use of said fund.

1. Discretion in apportionment. The duty of determining what is a just and equitable apportionment of the schoolhouse fund rests, at least in the first instance, upon the board. They can be compelled to act, but their discretion cannot be controlled. *Cooper v Nelson*, 38-440.

4391. Contract for use of library. The board of directors of any school corporation in which there is no free public library may contract with any free public library for the free use of such library by the residents of such school district, and pay such library the amount agreed therefor as provided by law. During the existence of such contract, the board shall certify annually a tax sufficient to pay such library the consideration agreed upon, not exceeding one-fourth mill on the dollar of the taxable property of such district. During the existence of such contract, the school corporation shall be relieved from the requirement that the school treasurer withhold funds for library purposes. This section shall not apply in townships where a contract for other library facilities is in existence.

4393. Levy by board of supervisors. The board of supervisors shall at the time of levying taxes for county purposes levy the taxes necessary to raise the various funds authorized by law and certified to it by law, but if the amount certified for any such fund is in excess of the amount authorized by law, it shall levy only so much thereof as is authorized by law.

1. Duty directory. The provision as to the levy of the tax by the board of supervisors is directory, and if the levy is not made at the proper time it may be made at the time fixed for making the succeeding tax levy. *Perrin v Benson*, 49-325.

2. Duty to levy legal amount only. The board of supervisors should make a levy to the legal limit for the purpose of carrying out a vote of the electors although such vote is for a tax in excess of the amount which can be legally levied. *Kirchner v Board*, 141-43; 118 NW 51.

3. Erroneous percentage—effect. The board of supervisors fixes the per cent of the tax necessary to raise the amount certified to it by the secretary of the school board and the fact that they fix the per cent at more or less than is necessary to raise the amount certified does not destroy the right of the school district to receive the tax levied upon the property within its limits. *Ind. Sch. Dist. v Sch. Tp.*, 162-42; 143 NW 837.

4. Property taxable. Property brought into a school district by annexation after the voting and certification of a schoolhouse tax, but before the levy of such tax, is subject to the tax, although the owner was not a resident of the district at the time the election was held. *Grout v Illingworth*, 131-281; 108 NW 528.

5. Property taxable. Where land had for thirty years been taxed as included within a school district and treated as a part of it, held, that school taxes might properly be collected from the owner of such property. *Ind. Dist. v Taylor*, 100-617; 69 NW 1009.

6. Conflicting claimants to levy. The duty of the board of supervisors to levy the tax so certified is purely ministerial. When each of two districts claim certain territory, and asks a levy accordingly, the board cannot investigate as to the legality of organization, etc., but must make the levy asked by the one first taking steps to organize. *Ind. Dist. v Board*, 51-658; 2 NW 590.

4394. Special levies. If a schoolhouse tax is voted at a special election and certified to said board after the regular levy is made, it shall at its next regular meeting levy such tax and cause the same to be forthwith entered upon the tax list to be collected as other school taxes.

4395. General school levy. The board shall also levy a tax for the support of the schools within the county of not less than one-fourth nor more than three-fourths mills on the dollar on the assessed value of all the taxable property within the county.

4396. Apportionment of school funds. The county auditor shall, on the first Monday in April and the first Monday in October of each year, apportion the school tax, together with the interest of the permanent school fund and rents on unsold school lands to which the county is entitled as shown in notice from the state comptroller, and all other money in the hands of the county treasurer belonging in common to the schools of the county and not included in any previous apportionment, among the several corporations therein, in proportion to the number of persons of school age, as shown by the report of the county superintendent filed with him for the year immediately preceding.

He shall immediately notify the county treasurer of such apportionment and of the amount due thereby to each corporation.

The county treasurer shall thereupon give notice to the president of each corporation, and shall pay out such apportionment moneys in the same manner that he is authorized to pay other school moneys to the treasurers of the several school districts.

1. Conclusiveness of census. The school census as reported to the auditor is conclusive as to the apportionment of taxes by him. *Judson v Agan*, 134-557; 111 NW 943.

2. Overpayment—effect. *Dist. Tp. v Espeset*, 75-500; 39 NW 809.

3. Liability of treasurer for nonpayment. *Dist. Tp. v Espeset*, 75-500; 39 NW 809.

4397. County auditor to report. On the first day of January of each year the county auditor shall report to the state comptroller in such form as he may prescribe, giving the amount of permanent school funds held by the county, and the amount of interest due prior to January first, still remaining unpaid.

4398. Monthly payment of taxes. Before the fifteenth day of each month in each year, the county treasurer shall give notice to the president of the board of each school corporation in the county of the amount collected for each fund to the first day of such month, and the president of each board shall draw his draft therefor, countersigned by the secretary,

upon the county treasurer, who shall pay such taxes to the treasurers of the several school boards only on such draft.

1. Who entitled to tax. Two other school districts having been carved out of an original school district, and the agreement being that the original school district should collect taxes then due and make certain application thereof, held, that it was entitled to the proceeds of a railroad tax which should have been assessed prior to that time by the county board of supervisors, but was not in fact assessed until afterward. *Dist. Tp. v Dist. Tp.*, 47-183.

2. Who entitled to tax. Where a restoration of territory is agreed to, and no time fixed therefor, it will be considered as taking place the first of March following; and taxes collected prior to that time should be paid to the township to which the territory had previously been attached. *Dist. Tp. v Floete*, 59-109; 12 NW 809.

3. District estopped to claim lands. It seems that where a district township has exercised jurisdiction over certain territory claimed by another district, by collecting taxes therefrom and providing schools for the children therein for several years, during a portion of which time the other district has withheld its school privileges from such children and made no claim to said territory, the latter will be estopped from afterward asserting a claim to the territory in dispute. *Ind. Sch. Dist. v Hobson*, 25-275.

4. Wrong payments—recovery. Where certain lands in one township were set over into another for school purposes and both townships certified a percentage of tax for school purposes differing in amount, and the township in which the lands were situated received the money under its levy and the other levy was never collected, held, that as the tax collected was not the one levied by the township to which the lands were attached, the latter could not maintain an action for money had and received against the former on account of the tax collected. *Dist. Tp. v Dist. Tp.*, 27-323.

5. Wrongful payment — recovery. Where, in the division of a school district, it was provided that one district should recover taxes due from property included in another district, held, that the district entitled to such taxes might draw the same, and that the other district, in wrongfully drawing them from the county treasurer, did not become trustee of an express or implied trust. *Dist. Tp. v Dist. Tp.*, 62-62; 17 NW 205.

6. Wrong payments — recovery. Where territory has been attached to a district township for school purposes, the district township is entitled to the taxes collected in such territory, and if such taxes are received by another district may recover in an action at law the amount thus received within the statutory period of limitations. *Dist. Tp. v Ind. Dist.*, 80-495; 45 NW 907.

7. Wrongful payment — recovery. Where taxes were levied upon land in one school district at a rate applicable to an adjoining district and the same were erroneously paid to the adjoining district, the district in which the land was situated might recover back the taxes thus obtained as for money had and received, even though complaint might have been made by the taxpayers. *Ind. Sch. Dist. v Sch. Tp.*, 162-42; 143 NW 837.

8. Wrongful payments—statute of limitation. The statute of limitations will commence to run at the time of payment and not from the discovery of the mistake. *Ind. Sch. Dist. v Ind. Sch. Dist.*, 123-455; 99 NW 106.

9. Wrongful refund — recovery. Where for thirty years land had been taxed as included within an independent district, held, that further taxes regularly levied thereon for such district were valid and that the board of supervisors had no authority to refund such taxes to the taxpayer; and the independent district could recover from the taxpayer the taxes thus refunded, the presumption being that the land was properly included within the limits of the district. *Ind. Dist. v Taylor*, 100-617; 69 NW 1009.

10. Wrongful refund—recovery. Where the treasurer in refunding a school district tax illegally exacted improperly refunded it all out of the taxes due to one of three districts, which had been formed out of the territory of the original district to which the illegal tax had been paid, held, that such district might maintain an action for contribution against the other districts. *Dist. Tp. v Dist. Tp.*, 56-85; 8 NW 784.

11. Wrongful receipt—recovery. Where one school district is organized out of part of the territory included in another, and the entire amount of the taxes is received by the old district, an action for money had and received can be maintained against it by the new district. *Dist. Tp. v Dist. Tp.*, 11-506.

4399. Schoolhouse tax. He shall also keep the amount of tax levied for schoolhouse purposes separate in each subdistrict where such levy has been made directly upon the property of the subdistrict, and shall pay over the same monthly to the treasurer of the school township for the benefit of such subdistrict.

See 4219, special subdistrict schoolhouse tax.

4400. Payment of judgment. When a judgment shall be obtained against a school corporation, its board shall order the payment thereof out of the proper fund by an order on the treasurer, not in excess, however, of the funds available for that purpose.

1. Duty to satisfy. It is not essential that a judgment against a school district should specify the fund from which it is to be paid. It is the duty of the board to specify the fund from which payment is to be made or the amount to be paid from each fund, and the fact that plaintiff does not specify the fund or that it is difficult to apportion the claim among different funds, is no defense. *Dist. Tp. v Board*, 52-287; 3 NW 109.

2. Pro rata payment. The recovery of a judgment against a school district does not entitle the creditor to have all the funds of the district applied to his judgment to the exclusion of other creditors. He can only have a pro rata allowance out of such funds. *Chase v Morrison*, 40-620.

3. What constitutes payment. The issuance of an order under this section does not constitute a payment of the judgment. Such orders do not constitute an independent evidence of indebtedness. *Richards v Ind. Dist.*, 46 Fed 460; see *Boynton v Dist. Tp.*, 34-510; *Stevenson v Dist. Tp.*, 35-462.

4401. Judgment tax. If the proper fund is not sufficient, then, unless its board has provided by the issuance of bonds for raising the amount necessary to pay such judgment, the voters thereof shall at their regular election vote a sufficient tax for the purpose.

4402. Judgment levy. In case of failure or neglect to vote such tax, the school board shall certify the amount required to the board of supervisors, who shall levy a tax on the property of the corporation for the same.

1. Limitation on schoolhouse levy. See § 4217 and annotations thereunder.

2. Mandamus to compel levy. The issuance of the order on the treasurer does not satisfy the judg-

ment. The district is required to vote a tax to pay such orders, but if it fail to do so the board of directors of the district may be compelled by mandamus to levy such tax. *Boynton v Dist. Tp.*, 34-510; *Stevenson v Dist. Tp.*, 35-462; *Chase v Morrison*, 40-620.

3. Optional remedies. These sections contemplate the right of a creditor to a judgment against a school district, and the issuance to him of an order in payment of his claim does not prevent his obtaining judgment, nor is he required to resort first to an action of mandamus to enforce the levying and collection of a tax. *Cross v Dist. Tp.*, 14-28.

4403. Bond tax. The board of each school corporation shall, when estimating and certifying the amount of money required for general purposes, estimate and certify to the board of supervisors of the proper county for the schoolhouse fund the amount required to pay interest due or that may become due for the year beginning January first thereafter, upon lawful bonded indebtedness, and in addition thereto such amount as the board may deem necessary to apply on the principal.

The amount estimated and certified to apply on principal and interest for any one year shall not exceed seven mills on the dollar of the actual valuation of the taxable property of the school corporation. Provided that when because of reduced valuation a seven mill tax is not sufficient to produce the amount required to pay the interest and one-twentieth of the principal of the original issue of bonds legally issued prior to the year 1934, the board may certify such amount and the county auditor shall compute and apply such tax rate for such purposes as may be necessary to raise the amount so certified and the funds so raised shall be used only for the purpose of paying interest and principal on such bonds and shall not be subject to transfer.

Provided further that the tax limitation contained in this section shall not operate to restrict or prevent a school district in the issuance of refunding bonds to pay interest or principal of bonds outstanding on March 31, 1934.

See 369, et seq., estimates under budget law; 4217(7), tax authorized by electors; 4402, judgment tax; 4219, special subdistrict schoolhouse tax; 4363, sites in certain districts; 1179-b1 et seq., mandatory levy; 7181, levy by executive council; 383, 4392, when certified; 4389, 7163, how certified—dollars or mills.

See cross reference under 4386 for tax in general fund.

1. Limitation on bond levy. *United States ex rel v Board*, 20 Fed 294.

2. Limitation on schoolhouse tax—applicability. The limitation of taxation to ten mills for schoolhouse purposes (see § 4217) does not limit the amount which may be voted to pay interest upon a bonded debt contracted for schoolhouse purposes by vote of the electors of an independent district; and where the electors have failed to vote a sufficient tax to pay interest on the outstanding bonds it is lawful for the supervisors to do so. *Richards v Board*, 69-612; 29 NW 630.

4404. Levy. The board of supervisors of the county to which the certificate is addressed within the contemplation of

section 4403 shall levy the necessary tax to raise the amount estimated, or so much thereof as may be lawful and within the limitation of section 4403 which levy shall be made as other taxes for school purposes.

4405. Funding or refunding bonds. For the purpose of providing for the payment of any indebtedness of any school corporation represented by judgments or bonds, the board of directors of such school corporation, at any time or times, may provide by resolution for the issuance of bonds of such school corporation, to be known as funding or refunding bonds. The proceeds derived from the negotiation of such funding or refunding bonds shall be applied in payment of such indebtedness; or said funding bonds or refunding bonds may be issued in exchange for the evidences of such indebtedness, par for par.

1. Applicability of section. A statute authorizing bonds in payment of judgments rendered prior to the passage thereof, held, applicable to judgments rendered between the approval of the act and the time of its taking effect. *Thompson v Ind. Sch. Dist.*, 102-94; 70 NW 1093.

2. Extent valid. Bonds refunding a judgment which is in excess of the constitutional limit but rendered for a valid indebtedness will be valid to the extent of the amount of the judgment with lawful interest payable semiannually. *Thompson v Ind. Sch. Dist.*, 102-94; 70 NW 1093.

3. Bonds to retire prior bonds. Refunding bonds in excess of the constitutional limitation of liability are not valid unless in fact used to retire or refund a preexisting enforceable indebtedness. *Shaw v Ind. Dist.*, 62 Fed 911.

4. Burden of proof. If it is claimed that bonds which are apparently in excess of the constitutional limit are valid because issued for the payment of judgments, the particular judgment not being specified in the bonds, it is incumbent on the holder to show that the proceeds of his bonds were used in the satisfaction of such judgments. See notes to Const., Art. XI, § 3. *Ind. Dist. v Society for Savings*, 98-581; 67 NW 370.

4406. School bonds. The board of directors of any school corporation when authorized by the voters at the regular election or at a special election called for that purpose, may issue the negotiable, interest-bearing school bonds of said corporation for borrowing money for any or all the following purposes:

1. To acquire sites for school purposes.
2. To erect, complete, or improve buildings authorized for school purposes.
3. To acquire equipment for schools, sites, and buildings.

See 4190, indebtedness cannot be incurred by the board; 4353 et seq., indebtedness; 6238, Art. XI, sec. 3, Constitution of Iowa, indebtedness; 1172-1179, bond sale procedure; 1179-b1 et seq., mandatory retirement of bonds.

1. Authority to issue—procedure. It is not provided how the authority to issue bonds shall be given by the voters, and the sufficiency of the ballots on such a vote is to be determined under the provisions relating to annual meetings of the electors. *Calahan v Handsaker*, 133-622; 111 NW 22.

2. Nonimpairment of right to

issue. The power of a consolidated school district (1) to sell its authorized bonds and (2) to levy authorized taxes, is in nowise impaired by the fact that subsequent to the authorization the federal government acquired large tracts of land within the district and thereby removed such lands from taxation. *Hufford v Herrold*, 189-853; 179 NW 53.

3. Void bonds. Where bonds are issued in payment of a judgment or a decree which is satisfied they are not valid in the hands even of an innocent purchaser. *First Nat. Bank v Dist. Tp.*, 86-330; 53 NW 301; see *McPherson v Foster*, 43-48.

4. Bonds as "additional" indebtedness. If bonds are sold for the purpose of using the proceeds in the extinguishment of other bonds, the new issue creates an additional indebtedness, and if in excess of the constitutional limit they will be void (reversing 42 Fed 644). *Doon Tp. v Cummins*, 142 US 366.

5. Recitals as to indebtedness. Recital in the bonds that they are not in excess of the constitutional limitation cannot be relied on by the purchaser. *Fairfield v Rural Ind. Sch. Dist.*, 111 Fed 453.

6. Presumption as to indebtedness. In an action on bonds it will be presumed, until the contrary appears, that they are within the limit of indebtedness, and issued in proper manner and for proper purpose. *Mosher v Ind. Dist.*, 42-632.

7. Express mention and implied exclusion. In statutes in which stated things are enumerated, things not named are excluded: *Vale v Messenger*, 184-553; 168 NW 281; *Pierce v Bekins V. & S. Co.*, 185-1346; 172 NW 191.

4407. Form — duration — rate of interest — where registered. All of said bonds shall be substantially in the form provided for county bonds, but subject to changes that will conform them to the action of the board providing therefor; shall run not more than twenty years, and may be sooner paid if so nominated in the bond; be in denomination of not more than one thousand dollars or less than one hundred dollars each; bear a rate of interest not exceeding five per cent per annum, payable semiannually; be signed by the president and countersigned by the secretary of the board of directors; and shall not be disposed of for less than par value, nor issued for other purposes than this chapter provides.

All of said bonds shall be registered in the office of the county auditor.

The expenses of engraving and printing of bonds may be paid out of the general fund.

See 1179-b1–1179-b3, mandatory levy for bond retirement.

1. Breach of contract to buy. Inasmuch as a school district is required by law to sell its bonds for at least par, it may not, in an action for the breach of a contract to buy bonds at par, recover damages on the basis of the difference between par and a lower market value. *Ind. Sch. Dist. v First Nat. Bk.*, 196-1171; 194 NW 196.

4408. Redemption. Whenever the amount in the hands of the treasurer, belonging to the funds set aside to pay bonds, is sufficient to redeem one or more of the bonds which by their terms are subject to redemption, he shall give the owner of said bonds thirty days' written notice of the readiness of the district to pay and the amount it desires to pay. If not presented for payment or redemption within thirty days after the

date of such notice, the interest on such bonds shall cease and the amount due thereon shall be set aside for its payment whenever it is presented.

4409. Record of bond buyers. All redemptions shall be made in the order of their numbers. The treasurer shall keep a record of the parties to whom the bonds are sold, together with their postoffice addresses, and notice mailed to the address as shown by such record shall be sufficient.

CHAPTER 228

COMPULSORY EDUCATION

4410. Attendance requirement. Any person having control of any child over seven and under sixteen years of age, in proper physical and mental condition to attend school, shall cause said child to attend some public or private school for at least twenty-four consecutive school weeks in each school year, commencing with the first week of school after the first day of September, unless the board of school directors shall determine upon a later date, which date shall not be later than the first Monday in December.

The board may, by resolution, require attendance for the entire time when the schools are in session in any school year.

In lieu of such attendance such child may attend upon equivalent instruction by a competent teacher elsewhere than at school.

1. Applicability. This section has no bearing on the question as to the provisions for transportation of children to school. (See § 4376.) *Queeny v Higgins*, 136-573; 114 NW 51.

4411. Exceptions. Section 4410 shall not apply to any child:

1. Who is over the age of fourteen and is regularly employed.

2. Whose educational qualifications are equal to those of pupils who have completed the eighth grade.

3. Who is excused for sufficient reason by any court of record or judge.

4. While attending religious services or receiving religious instructions.

4412. Reports from private schools. Within ten days from receipt of notice from the secretary of the school corporation within which any private school is conducted, the principal of such school shall, once during each school year, and at any time when requested in individual cases, furnish to such secretary a certificate and report in duplicate of the names, ages, and number of days' attendance of each pupil of such school over seven and under sixteen years of age, the course of study

pursued by each such child, the texts used, and the names of the teachers, during the preceding year and from the time of the last preceding report to the time at which a report is required. The secretary shall retain one of the reports and file the other in the office of the county superintendent.

4413. Reports as to private instruction. Any person having the control of any child over seven and under sixteen years of age, who shall place such child under private instruction, not in a regularly conducted school, upon receiving notice from the secretary of the school corporation, shall furnish a certificate stating the name and age of such child, the period of time during which such child has been under said private instruction, the details of such instruction, and the name of the instructor.

4414. Proof of abnormality. Any person having the control of any child over seven and under sixteen years of age, who is physically or mentally unable to attend school, shall furnish proofs by affidavit as to the physical or mental condition of such child.

4415. Violations. Any person who shall violate any of the provisions of sections 4410 to 4414, inclusive, shall be fined not less than five dollars nor more than twenty dollars for each offense.

4416. Custody of records. All such certificates, reports, and proofs shall be filed and preserved in the office of the secretary of the school corporation as a part of the records of his office, and he shall furnish certified copies thereof to any person requesting the same.

4417. Truant defined. Any child over seven and under sixteen years of age, in proper physical and mental condition to attend school, who fails to attend school regularly as provided in this chapter, without reasonable excuse for his absence, shall be deemed to be a truant.

4418. Truant schools—rules for punishment. The board of directors may provide for the confinement, maintenance, and instruction of truant children and may for that purpose establish truant schools or set apart separate rooms in any public school building; and it shall prescribe reasonable rules for the punishment of truants.

4419. Truancy officers—appointment—compensation. The board of each school corporation may, and in school corporations having a population of twenty thousand shall, appoint a truancy officer who may be the school nurse.

In districts having therein a city or town, the board may appoint a member of the police force or marshal as such officer,

and other districts may appoint a constable or other suitable person.

Such officers shall be paid a reasonable compensation by the board, but where a police officer of a city under twenty thousand or a town is employed, he shall be paid not to exceed five dollars per month for his services.

4420. Duties of truancy officer. The truancy officer shall take into custody without warrant any apparently truant child and place him in the charge of the teacher in charge of the public school designated by the board of directors of the school corporation in which said child resides, or of any private school designated by the person having legal control of the child; but if it is other than a public school, the instruction and maintenance of the child therein shall be without expense to the school corporation.

The truancy officer shall promptly institute criminal proceedings against any person violating any of the provisions of the truancy law.

4421. Neglect by truancy officer. Any truancy officer or any director neglecting his duty to enforce the truancy law after written notice so to do served upon him by any citizen of the county or by the county superintendent shall be liable to a fine not exceeding twenty-five dollars and be removed from such office. The county attorney shall prosecute such persons upon request of the county superintendent.

4422. Incorrigibles. If the child is placed in a school other than a public school and does not properly conduct himself, the board may cause his removal to a public or to a truant school. If a truant placed in a public school fails to attend or properly conduct himself, he may be placed in a truant school, or the person in charge of the school may file information in the juvenile court, which may commit said child to a suitable state institution.

4423. Discharge from truant school. Any child placed in a truant school may be discharged therefrom at the discretion of the board under such rules as it may prescribe.

4424. Reports by school officers and employees. All school officers and employees shall promptly report to the secretary of the school corporation any violations of the truancy law of which they have knowledge, and he shall inform the president of the board of directors who shall, if necessary, call a meeting of the board to take such action thereon as the facts justify.

4425. Census by school officer. All school officers empowered to take the school census shall ascertain the number of children over seven and under sixteen years of age, in their

respective districts, the number of such children who do not attend school, and so far as possible the cause of the failure to attend.

4426. Blind and deaf children—assessor to record. The assessor shall, at the time of making assessments, record on suitable blanks furnished for that purpose by the secretary of the state board of education to the county auditor, the names, ages, sex and post office addresses of all deaf or blind persons within the assessment district.

The county auditor shall forward to the secretary of the state board of education such returns of the assessor within thirty days after the same are filed in his office.

4427. Education—state school. Children over seven and under nineteen years of age who are so deaf or blind as to be unable to obtain an education in the common schools shall be sent to the proper state school therefor, unless exempted, and any person having such a child under his control or custody shall see that such child attends such school during the scholastic year.

See 4066, admission of blind to state institutions; 4070, admission of deaf to state school for the deaf.

4428. Proceeding against parent. Upon the failure of any person having the custody and control of such child to require its attendance as provided in section 4427, the state board of education may make application to the district court or the juvenile court of the county in which such person resides for an order requiring such person to compel the attendance of such child at the proper state institution.

4429. Order. Upon the filing of the application mentioned in section 4428, the time of hearing shall be determined by the juvenile court or the district court. If, upon hearing, the court determines that the person required to appear has the custody and control of a child who should be required to attend a state school under section 4427, the court shall make an order requiring such person to keep such child in attendance at such school.

4430. Contempt. A failure to comply with the order of the court shall subject the person against whom the order is made to punishment the same as in ordinary contempt cases.

4431. When deaf and blind children excused. Attendance at the state institution may be excused when the superintendent thereof is satisfied:

1. That the child is in such bodily or mental condition as to prevent or render futile attendance at the school.
2. That the child is so diseased or possesses such habits as to render his presence a menace to the health or morals of other pupils.

3. That the child is efficiently taught for the scholastic year in a private or other school devoted to such instruction or by a private tutor, in the branches taught in public schools.

4432. Agent of the state board of education. The state board of education may employ an agent to aid in the enforcement of law relative to the education of deaf and blind children. The agent shall seek out children who should be in attendance at the state schools but who are not, and require such attendance. He shall institute proceedings against persons who violate the provisions of said law. The agent shall be allowed compensation at a rate fixed by the board of education, and his necessary traveling and hotel expenses while away from home in the performance of his duty.

CHAPTER 229

PUBLIC RECREATION AND PLAYGROUNDS

4433. Establishment—maintenance—supervision. Boards of school directors in school districts containing or contained in cities of the first or second class, cities under special charter, or cities under the commission plan of government, are hereby authorized to establish and maintain for children in the public school buildings and on the public school grounds under the custody and management of such boards, public recreation places and playgrounds and necessary accommodations for same, without charge to the residents of said school district; also to cooperate with the commissioners or boards having the custody and management in such cities of public parks and public buildings and grounds of whatever sort, and, by making arrangements satisfactory to such boards controlling public parks and grounds, to provide for the supervision, instruction, and oversight necessary to carry on public educational and recreational activities, as described in this section in buildings and upon grounds in the custody and under the management of such commissioners or boards having charge of public parks and public buildings on grounds of whatever sort, in such cities of the first or second class, cities under special charter, or cities under commission plan of government.

4434. Tax levy—petition—submission. The board of directors of any school district containing, or contained in, any city of the first or second class, city under special charter, or city under the commission plan of government, may, and upon petition to that effect signed by legally qualified voters aggregating not less than twenty-five per cent of the number voting at the last preceding school election, shall, submit to the electors of such school district the question of levying a tax as provided in section 4435; and if a majority of the votes cast upon such proposition be in favor thereof, then the board of

school directors shall proceed to organize the work as authorized in this chapter, and levy a tax therefor at the time and in the manner provided in section 4435. If at the time of filing said petition it shall be more than three months till the next regular school election, then the board of school directors shall submit said question at a special election within sixty days.

4435. Levy—collection—limitation. Boards of school directors in such districts shall fix and certify to the board of supervisors on or before the first Monday of September the amount of money required for the next fiscal year for the support of the aforementioned activities, in the same manner as the amount of necessary taxes for other school purposes is certified, and said board of supervisors shall levy and collect a tax upon all the property subject to taxation in said school district at the same time and in the same manner as other taxes are levied and collected by law, which shall be equal to the amount of money so required for such purposes by the said board of school directors; provided that the tax so levied upon each dollar of the assessed valuation of all property, real and personal, in said district, subject to taxation, shall not in any one year exceed one-half mill for the purpose of the activities hereinbefore mentioned. The said tax shall not be used or appropriated directly or indirectly for any other purpose than provided in this chapter.

4436. Duties of school treasurer. All moneys received by or raised in such city for the aforementioned purpose shall be paid over to the treasurer of the school district, to be disbursed by him on orders of such board of school directors in such district in the same manner as other funds of said district are disbursed by him, but the tax provided in section 4435 shall not be levied or collected nor shall the board have authority to certify the amount of taxes necessary for this purpose until after the question of the levy of such tax shall have been authorized by a majority vote at a regular or special election.

4437. Annual levy. After the question of the levy of such special tax has been submitted to and approved by the voters, the authority shall remain, and such tax shall be levied and collected annually until such time as the voters of the school district of such city shall by majority vote order the discontinuance of the levy and collection of such tax.

4438. Discontinuance of levy. The board of school directors in any district governed by sections 4433 to 4437, inclusive, of this chapter may, and on petition to that effect signed by legally qualified voters aggregating not less than twenty-five per cent of the number voting at the last preceding school election, shall, submit to the electors of such school

district the question of discontinuing the levying of such tax as may have been previously authorized under the said provisions, and if a majority of the votes cast upon such proposition be in favor thereof, then the levying of such tax shall be discontinued and shall not be resumed unless again authorized under the provisions of section 4434.

4439. Appropriation by city. The board of school directors in any district governed by sections 4433 to 4438, inclusive, of this chapter is also empowered to receive and expend for the purpose thereof any sums of money appropriated and turned over to them by the city council or commissioners of such city for such purposes; and the city council, or commissioners of such city, shall have authority to appropriate and turn over to the board of school directors of the school district containing or contained in such city any reasonable sums of money which the said council or commissioners may desire to appropriate out of the general funds of such city and turn over to the said board of school directors for the purposes herein set forth.

CHAPTER 231

TEXTBOOKS

DISTRICT UNIFORMITY

4446. Adoption—purchase and sale. The board of directors of each and every school corporation is hereby authorized and empowered to adopt textbooks for the teaching of all branches that are now or may hereafter be authorized to be taught in the public schools of the state, and to contract for and buy said books and any and all other necessary school supplies at said contract prices, and to sell the same to the pupils of their respective districts at cost, and said money so received shall be returned to the general fund.

1. Manner of purchase. *McNees v Sch. Tp.*, 133-120; 110 NW 325.

2. Illegal contract. The school board has no authority to contract with a bookseller and pay him out of the contingent fund for handling schoolbooks when the district has not adopted the plan of purchasing the books for sale to pupils, and payment under such an arrangement may be restrained at the suit of a taxpayer. *Ries v Hemmer*, 127-408; 103 NW 346.

4447. Custodian—bond. The books and supplies so purchased shall be under the charge of the board, who may select one or more persons within the county to keep said books and supplies for sale, and, to insure the safety of the books and moneys, the board shall require of each person so appointed a bond in such sum as may seem to the board to be desirable.

4448. Payment—additional tax. All the books and other

supplies purchased under the provisions of this chapter shall be paid for out of the general fund, and the board of directors shall annually certify to the board of supervisors the additional amount necessary to levy for the general fund of said district to pay for such books and supplies. Such additional amount shall not exceed in any one year the sum of one dollar and fifty cents for each pupil residing in the school corporation, and the amount so levied shall be paid out on warrants drawn for the payment of books and supplies only, but the district shall contract no debt for that purpose.

4449. Purchase — exchange. In the purchasing of textbooks it shall be the duty of the board of directors or the county board of education to take into consideration the books then in use in the respective districts, and they may buy such additional number of said books as may from time to time become necessary to supply their schools, and they may arrange on equitable terms for exchange of books in use for new books adopted.

4450. Suit on bond. If at any time the publishers of such books as shall have been adopted by any board of directors or county board of education shall neglect or refuse to furnish such books when ordered by said board in accordance with the provisions of this chapter, at the very lowest price, either contract or wholesale, that such books are furnished any other district or state board, then said board of directors or county board of education may and it is hereby made their duty to bring suit upon the bond given them by the contracting publisher.

4451. Bids—advertisement. Before purchasing textbooks under the provisions of this chapter, it shall be the duty of the board of directors, or county board of education, to advertise, by publishing a notice once each week for two consecutive weeks in one or more newspapers published in the county; said notice shall state the time up to which all bids will be received, the classes and grades for which textbooks and other necessary supplies are to be bought, and the approximate quantity needed.

4452. Awarding contract. Said board shall award the contract for said textbooks and supplies to any responsible bidder or bidders offering suitable textbooks and supplies at the lowest prices, taking into consideration the quality of material used, illustrations, binding, and all other things that go to make up a desirable textbook; and may, to the end that they may be fully advised, consult with the county superintendent, or, in case of city independent districts, with the city superintendent or other competent person, with reference to the selection of textbooks. The board may reject any and all bids, or any part thereof, and readvertise therefor as above provided.

4453. Change—election. It shall be unlawful for any board of directors or county board of education, except as provided in section 4450, to displace or change any textbook that has been regularly adopted or readopted under the provisions of this chapter, before the expiration of five years from the date of such adoption or readoption, unless authorized to do so by a majority of the electors present and voting at the regular election, due notice of said proposition to change or displace said textbooks having been included in the notice for the said regular election.

1. Change by electors. The statute prohibits any change in the textbooks adopted by the board of directors except as authorized at a regular meeting of the electors, upon notice of the submission of such proposition. *McNees v Sch. Tp.*, 133-120; 110 NW 325.

4454. Samples and lists. Any person or firm desiring to furnish books or supplies under this chapter in any county shall, at or before the time of filing his bid hereunder, deposit in the office of the county superintendent samples of all textbooks included in his bid, accompanied with lists giving the lowest wholesale and contract prices for the same. Said samples and lists shall remain in the county superintendent's office, and shall be delivered by him to his successor in office, and shall be kept by him in such safe and convenient manner as to be open at all times to the inspection of such school officers, school patrons, and school teachers as may desire to examine the same and compare them with others, for the purpose of use in the public schools.

4455. Bond. The board of directors and county board of education mentioned shall require any person or persons with whom they contract for furnishing any books or supplies to enter into a good and sufficient bond, in such sum and with such conditions and sureties as may be required by such board of directors or county board of education, for the faithful performance of any such contract. Bonds of surety companies duly authorized under the laws of Iowa shall be accepted.

COUNTY UNIFORMITY

4456. Petition—election. When petitions shall have been signed by one-third the school directors in any county, other than those in cities and towns, and filed in the office of the county superintendent of such county at least thirty days before the regular school elections, asking for a uniform series of textbooks in the county, then such county superintendent shall immediately notify the other members of the county board of education in writing, and within fifteen days after the filing of the petitions said board of education shall meet and provide for submitting to the electors at the next regular election the question of county uniformity of school textbooks.

See 763-765, 4218, form of ballot.

NOTE 1. Petition for county uniformity may be substantially as indicated in Form 13, APPENDIX.

NOTE 2. The ballot on county uniformity of textbooks may be substantially as indicated in Form 14, APPENDIX.

4457. Election and canvass. The boards of school officers, who are hereby made the judges of the school elections, shall certify to the board of supervisors the full returns of the votes cast at said elections the next day after the holding of said elections, who shall, at their next regular meeting, proceed to canvass said votes and declare the result.

NOTE 1. The word "meeting" as used in this section refers to a meeting of the board of supervisors.

4458. Selection of books. Should a majority of the electors voting at such elections favor a uniform series of textbooks for use in said county, then the county board of education shall meet and select the school textbooks for the entire county, and contract for the same under such rules and regulations as the said board of education may adopt.

4459. Use mandatory. When a list of textbooks has been so selected they shall be used by all the public schools of said county, except as hereinafter provided, and the board of education may arrange for such depositories as it may deem best.

4460. Purchase and sale. The board of education may pay for said schoolbooks out of the county funds, and sell them to the school districts at the same price as provided for in section 4446, and the money received from said sales shall be returned to the county funds by said board of education monthly.

4461. Custody and accounting. Unless otherwise ordered by the board of education, the county superintendent shall have charge of such textbooks and of the distribution thereof among the depositories selected by the board; he shall render to the board at each meeting thereof itemized accounts of his doings, and shall be liable on his official bond therefor.

4462. Reports required. A list of textbooks so selected, with their contract prices, shall be reported to the state superintendent with the regular annual report of the county superintendent.

4463. City schools. The provisions of sections 4456 to 4462, inclusive, shall not apply to schools located within cities or towns, nor shall the electors of said cities or towns vote upon the question of county uniformity; but nothing herein shall be so construed as to prevent such schools in said cities and towns from adopting and buying the books adopted by the county board of education at the prices fixed by them, if by a vote of the electors they shall so decide.

FREE TEXTBOOKS

4464. Petition—election. Whenever a petition signed by ten per cent of the qualified voters, to be determined by the school board of any school corporation, shall be filed with the secretary thirty days or more before the regular election, asking that the question of providing free textbooks for the use of pupils in the public schools thereof be submitted to the voters at the next regular election, he shall cause notice of such proposition to be given in the notice of such election.

4465. Loaning books. If, at such election, a majority of the legal voters present and voting by ballot thereon shall authorize the board of directors of said school corporation to loan textbooks to the pupils free of charge, then the board shall procure such books as shall be needed, in the manner provided by law for the purchase of textbooks, and loan them to the pupils.

4466. General regulations. The board shall hold pupils responsible for any damage to, loss of, or failure to return any such books, and shall adopt such rules and regulations as may be reasonable and necessary for the keeping and preservation thereof. Any pupil shall be allowed to purchase any textbook used in the school at cost. No pupil already supplied with textbooks shall be supplied with others without charge until needed.

4467. Discontinuance of loaning. The electors may, at any election called as provided in section 4464, direct the board to discontinue the loaning of textbooks to pupils.

4468. Officers as agents. It shall be unlawful for any school director, teacher, or member of the county board of education to act as agent for any school textbooks or school supplies during such term of office or employment, and any school director, officer, teacher, or member of the county board of education who shall act as agent or dealer in school textbooks or school supplies, during the term of such office or employment, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined not less than ten dollars nor more than one hundred dollars, and pay the costs of prosecution.

NOTE 1. School directors, teachers, and members of the county board of education are by this section absolutely prohibited from acting as agents for, or dealers in, school textbooks or school supplies.

1. Director as dealer. Code, section 2834 (now 4468), applies to and prohibits a school director from engaging on his own account in the sale of school books and supplies to the pupils, and is not limited to directors acting as agents of the board under code, section 2824 (now 4447). *State v Wick*, 130-31.

CHAPTER 232

SCHOOL FUNDS

4469. Permanent fund. The permanent school fund, the interest of which only can be appropriated for school purposes, shall consist of:

1. Five per cent of the net proceeds of the public lands of the state, which shall be paid to the state treasurer and be apportioned by the state comptroller among the several counties, taking into consideration the amount of the permanent school fund already in possession of and constantly loaned in said county.

2. The proceeds of the sale of the five hundred thousand acres of land granted the state under the eighth section of an act of congress passed September 4, 1841, entitled: "An act to appropriate the proceeds of all sales of public lands, and to grant preemption rights".

3. The proceeds of all intestate estates escheated to the state.

4. The proceeds of the sales of the sixteenth section in each township, or lands selected in lieu thereof.

1. Nature of fund. The state is the legal owner of the school fund, and actions for the benefit of such fund are to be conducted in accordance with the rules pertaining to actions by the state. *Des Moines Co. v Harker*, 34-84.

2. Bequest to county. While the school fund belongs in a sense to the state, that portion which is apportioned to a particular county may be referred to as the permanent school fund of that county; and held that a bequest to the permanent school fund of a county specified was not void for uncertainty. *Chapman v Newell*, 146-415; 125 NW 324.

4470. Lands and escheats. The proceeds of all lands sold, and all sums due from escheats, shall be payable to the treasurer of the county in which the lands or escheated estates are situated or found.

4471. Temporary fund. The temporary school fund, which shall be received and appropriated annually in the same manner as the interest of the permanent fund, shall consist of:

1. All forfeitures which are authorized to be made for the benefit of the school fund.

2. The proceeds of all fines collected for violation of the penal laws, and for the nonperformance of military duty.

3. The proceeds of the sale of lost goods and estrays.

These several funds shall be payable to the county treasurer of the several counties in which they arise, accounted for to the board of supervisors, and apportioned by it among the several school townships and independent districts of the county as provided by law.

1. Prosecution to recover fine. A prosecution to recover a fine should be in the name of the state and not in the name of the treas-

urer of the county to which the fine would go when recovered. *Rogers v Alexander*, 2 Gr 443.

2. "Fines" and "penalties" defined. The statute giving the owner of stock killed by a railroad company double damages does not conflict with the provision that all fines and penalties shall go to the school fund. Such damages do not constitute fines or penalties. *Mackie v Central R. of Iowa*, 54-540; 6 NW 723.

3. "Violation of penal laws" defined. Fines for contempt in violating a liquor injunction are not "collected for violation of the penal laws". *Gunn v Mahaska Co.*, 155-527; 136 NW 929.

4. Power relative to fines. The board of supervisors cannot make an agreement as to the time of paying the fine payable to the school fund. The governor alone can remit fines. *State v Stewart*, 74-336; 37 NW 400.

5. Collection fee. While the board of supervisors has authority to apportion the proceeds of fines after payment into the county treasury, it has no authority to contract for the payment of a portion of such fines to the person who collects them. *Gunn v Mahaska Co.*, 155-527; 136 NW 929.

4472. Division and appraisement. The board of supervisors may, at such time as it may fix, and as preliminary to a sale, authorize the trustees of any township, where the sixteenth section or land selected in lieu thereof has not been sold, to lay out the same into such tracts as in their judgment will be for the best interests of the school fund, conforming, as far as the interests of said fund will permit, to the legal subdivisions of the United States surveys, and appraise each tract at what they believe to be its true value, and certify to said board the divisions and appraisements made by them. Said division and appraisement shall be approved or disapproved by said board at its first meeting after such report, and in case it disapproves the same it may at once order another division and appraisement. If the board of supervisors approves, the county auditor shall make and keep a record of such division, appraisement, and approval; but no school lands of any kind shall be sold for less than the appraised value per acre, except as hereinafter provided; nor shall any member of the board of supervisors, county auditor, township trustee, or any person who was engaged in the division and appraisement of said land, be directly or indirectly interested in the purchase thereof; and any sale made, where such parties or any of them are so interested, shall be void.

4473. Notice—sale. When the board of supervisors shall offer for sale the sixteenth section or lands selected in lieu thereof, or any portion of the same, or any part of the five-hundred-thousand-acre grant, the county auditor shall give at least forty days' notice, by written or printed notices posted in five public places in the county, two of which shall be in the township in which the land to be sold is situated, and also publish a notice of said sale once each week for two weeks preceding the same in a newspaper published in the county, describing the land to be sold and the time and place of such sale. At such time and place, or at such other time and place

as the sale may be adjourned to, he shall offer to the highest bidder, subject to the provisions of this chapter, and sell, either for cash or one-third cash and the balance on a credit not exceeding ten years, with interest on the same at the rate of not less than six per cent per annum, to be paid at the office of the county treasurer of said county on the first day of January in each year, delinquent interest to bear the same rate as the principal.

4474. Sale without appraisement. When the board of supervisors of any county has once offered for sale any school lands in compliance with the requirements of this chapter, and they remain unsold, and it is unable to obtain therefor the appraised value thereof, and in the opinion of said board it is for the best interests of the school fund that the same be sold for a less price, it may instruct the auditor to transmit to the secretary of state a certified copy of its proceedings in relation to the order of sale thereof and subsequent proceedings in relation thereto, including the action of the township trustees, and the price per acre at which the land had been appraised, which transcript the secretary of state shall submit to the executive council; and if it approves of a sale at a less sum it shall certify such approval to the auditor of the county from which said transcript came, which certificate shall be transcribed in the minute book of the board of supervisors, and thereupon said land may again be offered and sold to the highest bidder, after notice given as in case of sales in the first instance, without being again appraised.

4475. Sale on credit—taxation—waste. When lands are sold upon a partial credit, the contract therefor shall be at once reduced to writing, signed by the proper parties, recorded in the county where the land is situated, and immediately thereafter filed in the office of the county auditor. Any purchaser or his assigns may at any time pay the full amount for lands with accrued interest, and receive from the county auditor a certificate of purchase, which shall be at once transmitted to the secretary of state and will entitle the holder to a patent for the lands, to be issued by the secretary of state and the governor. All school lands sold in pursuance of law shall be subject to taxation from and after the execution and delivery of a contract of purchase. All sales made, where the full price is not paid, shall be subject to the law relative to the prevention or punishment of waste, and in all such cases the township trustees in each township are charged with the duty of preventing the commission of waste upon any school lands lying in their township, and, if attempted, they shall apply by petition for an injunction to stay the same, and if granted the writ shall issue without bond, and the court issuing it may make such order in the premises as shall be equita-

ble and best calculated to prevent threatened injury, and may adjudge damages for any injury done, the costs to abide the event of the action, and the damages adjudged shall be paid to the county treasurer and become a part of the permanent school fund.

4476. Sale of lands bid in. When lands have been sold and bid in by the state in behalf of the school fund upon a judgment in favor of such fund, the land may be sold in like manner as other school lands, and when lands have been conveyed to the counties in which they are situated for the use of the school fund, instead of to the state, such conveyance shall be valid and binding, and upon proper certificates of sales patents shall issue in like manner as in cases where the conveyances were properly made to the state.

1. Applicability. This section applies to land purchased upon judgments recovered upon mortgages or contracts, such as the county authorities are authorized to take or make with relation to the school fund. Where the school fund was loaned by the state under the provision of a special statute, and not by the county under the general statutes, held, that the county had no authority to bid in such land at the sale thereof under foreclosure of such mortgage. *Carter v Sherman*, 63-689; 16 NW 707.

4477. Cash or collateral security. When, in the judgment of the board of supervisors, any school lands are of such a character that a sale upon partial credit would be unsafe or incompatible with the interest of the school fund, and especially in the case of timbered lands, the board of supervisors may in its discretion exact the whole of the purchase money in advance; or if it sells such land upon a partial credit, as hereinbefore prescribed, it shall require good collateral security for the payment of the part upon which credit is given.

4478. Uniform interest date. In all cases where money is due to the school fund, either for loans or deferred payments of the purchase price of land sold, the interest shall be made payable on the first day of January each year, and if the debtor fails to pay the interest within six months thereafter, the entire amount of both principal and interest shall become due, and the county auditor shall make a report thereof to the county attorney, who shall immediately commence action for the collection of the amount reported to him as due, and this section is hereby declared to be a part of any contract made by virtue of this chapter, whether expressed therein or not.

4479. School fund accounts — audit of losses. The state comptroller shall keep the school fund accounts in books provided for that purpose, separate and distinct from the revenue books. The auditor of state shall audit all losses to the permanent school or university fund which shall have been occasioned by the defalcation, mismanagement, or fraud of the

agents or officers controlling and managing the same, and for this purpose shall prescribe such regulations for those officers as may be necessary to ascertain such losses.

4480. Bonds to cover losses. When any sum not less than one thousand dollars shall be so audited and so become a debt of the state to the fund, as provided by the constitution, the auditor of state shall issue the bond or bonds of the state in favor of the fund, bearing six per cent interest, payable semi-annually on the first day of January and July after issuance, and the amount to pay the interest as it becomes due is appropriated out of any funds in the state treasury.

4481. Notice of apportionment — deficiency. Immediately after making the apportionment of the interest of the permanent school fund, the state comptroller shall notify the auditor of each county of the sum to which his county is entitled, and, if a county has less thereof than it is entitled to under the apportionment, the comptroller shall forward to the county auditor a warrant for the amount of the deficiency.

4482. Apportionment—excess. If the county has an excess of such interest above the amount apportioned to it, the county auditor shall forthwith draw and forward to the state comptroller a warrant on the proper fund of his county for the amount of the excess.

4483. Management. The board of supervisors shall hold and manage the securities given to the school fund in its county, and all judgments and lands belonging to said fund. It may have any part of the school lands surveyed when necessary, and employ a competent surveyor therefor, who shall be paid out of the county treasury upon proof made of the request and performance of the service.

1. **Right to compromise claims.** In the management of the school fund the board of supervisors has authority to do acts which, in the exercise of wisdom and care, men of affairs ordinarily do for the security and collection of debts. Therefore, held, that a compromise, in a particular case, of a claim in behalf of the school fund was valid. *Poweshiek Co. v Buttles,* 70-246; 30 NW 558.

2. **Purchase of tax title.** As the lien of a school fund mortgage is superior to that of a tax title subsequently acquired on the property, the county has no authority to buy in such tax title, such an act not being necessary for the protection of the fund; and, held, that it had no authority to buy in such title for the purpose of defeating the lien of a mortgage held by a third party and prior to the one in favor of the fund. *Miller v Gregg,* 26-75.

4484. Actions. All actions for and in behalf of said fund may be brought in the name of the county for the use of the school fund, by the county attorney or such other attorney as the board may select.

1. **County as "trustee".** The county being liable for all losses upon loans of the school fund made in the county may sue in behalf of such fund, in its own name, as trustee of an express trust. *Madison Co. v Tullis*, 69-720; 27 NW 487.

4485. Liability of county. Each county shall be liable for all losses upon loans of the school fund, principal or interest, made in such county, unless the loss was not occasioned by reason of any default of its officers or by taking insufficient or imperfect securities, or from a failure to bid at an execution sale the full amount of the judgment and costs.

4486. Exemption of county. All claims for exemption from liability on account of losses shall be examined into and adjusted by the state comptroller, upon proof submitted to him in writing in behalf of the county within three months after the county auditor shall be advised by the comptroller of his readiness to receive the proof. In the absence of evidence, or if that submitted is insufficient, the loss may be charged against the county and be conclusive, but if found sufficient, the comptroller shall present the facts in his report to the next general assembly.

4487. Loans — officers may not borrow. The permanent school fund shall be loaned out by the county auditor, as it comes into the hands of the county treasurer, in sums of five thousand dollars or less to one person or company, in case it is found impracticable to keep the whole amount of funds loaned in sums of five hundred dollars or less to one person or company. In the event it can be kept loaned out in sums of five hundred dollars or less to one person or company, then no loan shall exceed five hundred dollars, nor shall a loan of said fund be made to or be carried by the county auditor, the treasurer, or a member of the board of supervisors.

4488. Terms—appraisement—fee. Each loan shall be made for at least one and not more than five years, evidenced by promissory notes bearing not less than five per cent per annum, payable annually, and delinquent interest to draw the same rate, to be secured by a mortgage on unincumbered real estate situated in the county in which the loan is made, and appraised, as hereinafter provided, for at least double the sum borrowed; the appraisement to be made by three persons under oath, selected by the county auditor, who shall not in making the valuation take into consideration the buildings upon the lands; for such service each shall be allowed fifty cents, to be paid by the borrower, who shall also pay for recording the mortgage.

1. **Failure to take security—liability.** A loan made by an officer out of the school fund, without first taking the security provided by the statute, may be repudiated by the proper authorities and the officer and his sureties held liable, or the loan may be ratified and its collec-

tion enforced against the borrower and sureties on the note given for the money. *Bremer Co. v Barrick,* 18-390.

2. Interest on interest. Simple interest should be computed on each installment of interest from maturity. *Hamilton Co. v Chase* (NOR); 152 NW 580.

4489. Application for loan. All applications to borrow from the permanent school fund shall be made to the auditor of the county in which the land is situated which it is proposed to mortgage as security, who shall cause the proper appraisement to be made, and, if satisfactory, shall examine any abstract of title which the proposed borrower may submit, or he may cause an abstract to be prepared at such proposed borrower's expense. If the title is found to be perfect, and the lands unincumbered, he shall certify this fact and submit the applications and all the papers connected therewith to the board of supervisors at its next meeting, regular or called, at which meeting the loan shall be approved or disapproved.

4490. Duty of auditor. If the application is accepted, the auditor shall complete the contract by taking a note payable to the county, and a mortgage upon the lands securing the same, and certify the same to the treasurer, who shall pay over to the borrower the amount named in the note, less a fee of two dollars to be paid to the auditor for his services. The board may reject the application for any good cause.

1. Custody of securities. It is the duty of the auditor to preserve and safely keep the notes and mortgages, and when he fails to do so without sufficient excuse he becomes liable on his bond. *Madison Co. v Tullis,* 69-720; 27 NW 487.

4491. Redemption of prior lien—assignments. If it shall happen that a loan is made upon real estate which is in fact incumbered other than for taxes, the board of supervisors may, when necessary for the safety of the loan, appropriate out of any school fund on hand, if such incumbrance does not exceed one-half of the real value of the lands, so much as may be needed to take up and purchase the same, and may also at any meeting, by resolution, assign without recourse, upon payment of the amount due, any school fund note and mortgage to one holding a subsequent lien upon the mortgaged real estate.

4492. Loans reported — examination. Each loan made, when fully completed, shall be by the auditor reported to the board of supervisors, and a minute of such report shall be entered upon its records, and from time to time, and at least once a year, all loans, with the security given, shall be carefully examined and report made to the board, which examination shall be conducted by a member thereof, or some competent person selected by it.

4493. Additional security. When a report shows that the

security in a given case has for any cause depreciated so that it is no longer sufficient, or it appears that there was a prior incumbrance thereon which materially affects the value of the security, the board shall order the debtor to furnish additional security, and fix a reasonable time within which the same shall be given, and if the party so ordered fails to comply therewith for thirty days after service upon him of a copy of the order, the entire debt shall become due, and an action may be brought to enforce the collection thereof, and these provisions shall enter into and form a part of all contracts of loans, whether incorporated therein in words or not.

4494. Renewal. When a loan has been made and the borrower desires to renew the same for one or more years, it may be done in the same manner as the loan was made in the first instance, but no new abstract, except a continuation of the same down to the time, nor examination of title prior to the original loan, nor new mortgage, need be given, unless the mortgage is to be given upon other lands. The time of payment, without further security, may be extended in writing, to be recorded as the original security was, and before maturity of the claim, when the board of supervisors for cause shall so order; but such extension of time shall not operate to release any security held.

1. Mandamus to compel renewal of loan. The right to reborrow the principal must be exercised under such regulations as the board of supervisors may establish. Such right cannot be set up as a defense in an action for the principal sum, but may be enforced, if it exists, by action of mandamus against the auditor. *Emmet Co. v Skinner*, 48-244.

4495. Statute of limitation. Lapse of time shall in no case be a bar to any action to recover any part of the school fund, nor shall it prevent the introduction of evidence in such an action, any provision in this code to the contrary notwithstanding.

1. Unauthorized receipt of bail money. Where money intended to be given in place of bail was paid to the sheriff, who was not authorized to receive it, held, that, upon a forfeiture of bail, such money did not become a part of the school fund, and an action to recover the same would be barred by lapse of time. *State v Farrell*, 83-661; 49 NW 1038.

4496. Payments. All payments to the school fund upon contracts, or loans of any other nature, shall be made to the treasurer of the county upon a certificate from the auditor showing the amount due.

1. Authority to receive. The county auditor is not authorized to receive money paid into the school fund. *Mahaska Co. v Searle*, 44-492; *Mahaska Co. v Ruan*, 45-328.

2. Unauthorized payment to auditor. The fact that the clerk of the court had previously made payment of money collected for the school fund to the auditor, held,

not sufficient to relieve him from liability for a subsequent payment, made in the same manner, which did not reach the treasurer. *Mahaska Co. v Searle*, 44-492.

3. What constitutes payment. Where, although money is paid to the auditor, it appears that it was paid over by the auditor to the treasurer and thus came into the treasurer's hands, the debtor will not be required to pay again. *Poweshiek Co. v Allen*, 90-195; 57 NW 706.

4497. Release of mortgage. The auditor shall, when the debt is paid, release any mortgage or issue a certificate of purchase, as the case may be, and report the same to the board of supervisors at its next meeting, which report shall be carried into the records of the board.

1. Unauthorized release. The auditor has no authority to release a portion of the premises covered by a school-fund mortgage upon the payment of the pro rata amount secured thereby. *Madison Co. c Kridler*, 56-32; 8 NW 682.

4498. School fund account—settlement. The auditor shall also keep in his office, in books to be provided for that purpose, an account to be known as the school fund account, in which a memorandum of all notes, mortgages, bonds, money, and assets of every kind and description which may come into his hands and those of the treasurer shall be entered, and separate accounts of principal and interest be kept; and the county treasurer shall keep a like account and record of all school funds coming into his hands. Settlements of such account shall be made with the board of supervisors at its January and June sessions, which settlements shall be recorded with the proceedings of the board.

1. Nonimpairment of title. Failure of the county auditor to report a foreclosure sale to the state auditor, or to keep the account of the school funds in a separate book, or withholding the proceeds of the sale for a time before turning them over to the county treasurer, will not impair the title acquired under the deed in the foreclosure proceeding. *Mahaska Co. v Bennett*, 150-216; 129 NW 838.

4499. Notice of default. When outstanding contracts for the sale of school lands or notes for money of the school fund loaned, or interest thereon, are due, the auditor shall by mail at once notify the debtor to make payment thereof within three months.

4500. Suit—attorney fee. If such debtor shall neglect to comply with such notice, the auditor shall report the same to the county attorney, who shall bring an action to recover the same, and an injunction may issue for cause, without bond when so prayed, and there shall be allowed in the judgment, entered and taxed as a part of the costs in the case, a reasonable sum as compensation to plaintiff's attorney, not exceeding the amount as provided by law for attorneys' fees.

1. Constitutionality. The provision of this section relating to attorney's fees pertains to the mere question of costs, and is therefore not unconstitutional as referring to mortgages executed prior to its passage. *Kossuth Co. v Wallace*, 60-508; 15 NW 305.

4501. Bid at execution sale. Upon a sale of lands under an execution founded upon a school fund claim or right, the auditor shall bid such sum as the interests of the fund require, and, if struck off to the state, it shall be thereafter treated in all respects the same as other lands belonging to said fund.

4502. Sheriff's deed to state. When lands have been bid in by the county for the state under foreclosure of school fund mortgages and the time for redemption has expired, a sheriff's deed shall be issued to the state for the use and benefit of the permanent school fund. The county auditor shall file the said deed for record in the office of the county recorder who shall record the same without fee and return the same when recorded to the county auditor who shall then forward the same to the secretary of state. The secretary of state shall record the said deed in his records and then file the same with the state comptroller.

4503. Resale by state. All lands now acquired under permanent school fund foreclosure proceedings shall be resold within six years from January 1, 1934, and lands acquired after such date shall be resold within six years from date of foreclosure. Such land shall be appraised, advertised, and sold in the manner provided for the appraisement, advertisement, sale and conveyance of the sixteenth section or lands selected in lieu thereof.

4504. Proceeds on resale. When a resale is made, the county auditor shall notify the state comptroller, who shall thereupon charge the county with the full amount of the resale, except that when the lands are sold for more than the unpaid portion of the principal, the excess shall be applied to reimburse the county for the costs of foreclosure and the interest paid by the county to the state by reason of default of payment of same by the makers of the notes, previous to the time when the right of redemption has expired, not to exceed three years.

4505. Excess—loss borne by county. Any excess over the amount of the unpaid portion of the principal, costs of foreclosure, and interest on the principal as above provided, shall inure to the county and be credited to the general county fund. If the lands shall be sold for a less amount than the unpaid portion of the principal, the loss shall be sustained by the county, and the board of supervisors shall at once order the amount of such loss transferred from the general fund of the county to the permanent school fund account.

4506. Report as to sales—interest. County auditors shall, on or before the first day of January of each year, report to the state comptroller the amount of all sales and resales made during the year previous, of the sixteenth section, five-

hundred-thousand-acre grant, escheat estates, and lands taken under foreclosure of school fund mortgages, and the comptroller shall charge the same to the counties with interest from the date of such sale or resale to January first, at the rate of four and one-half per cent per annum.

4507. Interest charged to counties. The state comptroller shall also, on the first day of January, charge to each county having permanent school funds under its control, interest thereon at the rate of four and one-half per cent per annum for the preceding year, or such part thereof as such funds shall have been in the control of the county, which shall be taken as the whole amount of interest due from such county. All interest collected above the four and one-half per cent charged by the state shall be transferred to the general county fund.

4508. Uncollected interest. If any county fails or refuses to collect the amount of interest due the state, the deficiency shall be paid to the state from the general county fund. Any county delinquent in the payment of interest due the state shall be charged one per cent per month on the amount delinquent until paid.

4509. Report as to rents. County auditors shall, upon the first day of January of each year, report to the state comptroller the amount of rents collected during the preceding year on unsold school lands and lands taken under foreclosure of school fund mortgages then in the hands of the county treasurer, and the comptroller shall include the amount so reported in his semiannual apportionment of interest.

4510. Transfer of unloaned funds. When there are funds belonging to the permanent school fund in any county, amounting to one thousand dollars, that can not be loaned, the county auditor may certify the fact to the state comptroller, who shall order a transfer thereof to some other county or counties, where in his opinion it can be loaned. Upon such transfer being made, he shall give the county making the transfer credit for the amount, and shall charge the county or counties to which the transfer is made with the amount transferred, and shall afterwards charge interest on the actual amount in possession of each county.

4511. Penalty against county auditor. Any county auditor failing or neglecting to perform any of the duties which are required of him by the provisions of this chapter, shall be liable to a penalty of not less than one hundred nor more than five hundred dollars, to be recovered in an action brought in the district court by the board of supervisors, the judgment to be entered against the party and his bondsmen, and the proceeds to go to the school fund.

CHAPTER 234

LIBRARY COMMISSION AND TRAVELING LIBRARIES

4533. State commission—term—chairman. The governor shall appoint four persons, at least two of whom shall be women, who, with the state librarian and superintendent of public instruction and president of the state university, shall constitute a state library commission. The first members appointed by the governor shall be appointed for terms of two, three, four, and five years from the first day of July, 1900, and all subsequent appointments shall be for terms of five years, except appointments to fill vacancies. The commission shall annually elect a chairman.

4535. Traveling libraries. The state library board shall transfer to the Iowa library commission all associate and traveling libraries belonging to the state, and the said library commission is authorized to accept the same; and it shall be the duty of said commission to operate the said associate and traveling libraries, also to properly equip and circulate the books thus acquired or subsequently purchased to be loaned within the state to libraries, schools, colleges, universities, library associations, farmers' institutes, granges, study clubs, charitable and penal institutions, and individuals, free of cost except for transportation, under such conditions and rules as shall protect the interests of the state and best increase the efficiency of the service it is expected to render the public.

CHAPTER 250

USE OF HIGHWAYS

4857-b1. Construction of sidewalks. Where an independent school district has within its limits a city of one hundred twenty-five thousand population or more, and has a schoolhouse located outside the city limits of such city and outside the limits of any city or town, the board of supervisors of the county in which such school district is located shall upon the filing of a petition signed by the owners of at least seventy-five per cent of the property which will be assessed, order the construction or reconstruction of a permanent sidewalk not less than four feet in width along the highway adjacent to the property described and leading to such schoolhouse.

4857-b2. Assessment of costs. Said work shall be undertaken and consummated and the cost thereof assessed to the abutting property in the manner and method and with the same effect as provided for the construction of sidewalks and the assessment of the costs thereof against benefited property by city councils within the limits of a city or town.

4857-b3. Repairs. After the construction of such sidewalk the board of supervisors shall keep the same in repair and assess and certify the cost thereof in the same manner and to the same extent in which like repairs are assessed and certified by city councils.

CHAPTER 251

MOTOR VEHICLES AND LAW OF ROAD

GENERAL PROVISIONS

4863. Definitions. In all laws of this state regulating motor vehicles, except where otherwise expressly provided:

6. "Chauffeur" shall mean any person who operates an automobile in the transportation of persons or freight and who receives any compensation for such service in wages, commission or otherwise, paid directly or indirectly, or who as owner or employee operates an automobile carrying passengers or freight for hire, including drivers of ambulances, passenger cars, trucks, light delivery, and similar conveyances; provided, however, that this definition shall not include manufacturers' agents, proprietors of garages and dealers, salesmen, mechanics, or demonstrators of automobiles in the ordinary course of their business, nor to employees operating motor trucks for parties engaged in agricultural enterprises, nor to any individual owner actually driving and operating his own motor vehicle in the business of transferring and drayage of baggage, trucking, and cartage for hire nor to the operator of a motor vehicle while engaged in transporting children to and from public school, providing, however, such operators shall have first secured written permission from the board of directors of the school district in which such service is performed.

NOTE 1. An operator's permission from the board of directors of a school district may be substantially as indicated in Form 15, APPENDIX.

4960-d10. Age limits in special cases. It shall be unlawful for any person, whether licensed under this act nor not, who is under the age of sixteen years to drive a motor vehicle while in use as a school bus for the transportation of pupils to or from school or for any person, whether licensed under this act or not, who is under the age of twenty-one years to drive a motor vehicle while in use as a public passenger-carrying vehicle.

4991-f1. Vehicles for hire. It shall be unlawful after January 1, 1935, to operate on any public highway or street, in this state, a motor vehicle registered in the state, manufactured or assembled after said date, designed or used for the purpose of carrying passengers for hire, or designed or used for the purpose of carrying school children, unless such vehicle

be equipped in all doors, windows and windshields with safety glass.

NOTE 1. Sections 4991-f1 to 4991-f6, relating to the use of safety glass in automobiles, appear to relate only to motor vehicles registered in Iowa which are manufactured or assembled after July 1, 1935, and not to cars manufactured or assembled prior to that date. Opinion attorney general.

4991-f2. Vehicles not for hire. It shall be unlawful after July 1, 1935, to operate on any public highway or street in this state, any motor vehicle registered in the state, manufactured or assembled after said date, designed or used for the purpose of carrying passengers, unless such vehicle be equipped in all doors, windows and windshields with safety glass.

4991-f3. Definitions. The term "safety glass" as used in this section shall be construed to mean any product composed of glass, so manufactured, fabricated or treated as substantially to prevent shattering and flying of the glass when struck or broken.

4991-f4. License conditional. The secretary of state shall maintain a list of approved types of glass which conform to the requirements of section 4991-f3, and shall not issue a license for or relicense any motor vehicle subject to the provisions of section 4991-f1 and section 4991-f2 after the effective date of each section unless said motor vehicles are equipped as therein provided with such approved type of glass.

4991-f5. Violations. The owner and operator of any motor vehicle operated in violation of the provisions of this act shall be deemed guilty of a misdemeanor and on conviction shall be fined twenty-five dollars or sentenced to ten days in jail or both.

4991-f6. Revocation or suspension of license. In case of the violation of this act by any common carrier or person operating under a permit issued by the Iowa railroad commission (or other authorized body or person), said permit shall be revoked, or, in the discretion of the commission, suspended until the provisions of this act are satisfactorily complied with.

4997-d1. School zones. Cities and towns shall have the power to establish school zones and provide for the stopping of all motor vehicles approaching said zones, when movable stop signs have been placed in the streets at the limits of the zones, this notwithstanding the provisions of any statute to the contrary.

5030. Municipal speed districts. For the purpose of controlling traffic on their streets and highways, cities and towns, are hereby divided into business districts, residence districts, school districts and suburban districts, as follows:

1. "Business district". The territory contiguous to a highway when fifty per cent or more of the frontage thereon for a distance of three hundred feet or more is occupied by buildings in use for business;

2. "School district". The territory contiguous to a highway for a distance of two hundred feet in either direction from a schoolhouse.

3. "Residence district". The territory contiguous to a highway, not comprising a business district or a school district where forty per cent or more of the frontage on such highway for a distance of three hundred feet or more is occupied by dwellings or by dwellings and buildings in use for business;

1. **Purpose of statute.** Whether the failure to erect signboards, as provided for in this section, affects the validity of a speed-limit ordinance enacted thereunder, or relieves from the penalty of the ordinance those misled by the absence of such signs, or affects the rule as to negligence per se, quaere. *Pilgrim v Brown*, 168-177; 150 NW 1.

2. **Ordinances in criminal cases.** An ordinance prescribing the rate of speed within suburban and business districts is inadmissible in a criminal case unless accompanied by proof that the city had established such districts and had erected the proper signboards, as required by statute. *State v Clark*, 196-1134; 196 NW 82.

3. **Location of signs.** A fair interpretation of this section does not require the warning signs to be placed exactly "where" the town line crosses the highway. (Note change in statute.) *Pilgrim v Brown*, 168-177; 150 NW 1.

4. **Sufficiency of signs.** The presence of the arrow on warning signs is a mandatory requirement. *Decatur v Gould*, 185-203; 170 NW 449.

5. **Ordinance requirement on motor vehicle only—effect.** An ordinance prescribing a maximum speed of fifteen miles an hour for motor vehicles on the public streets, by necessary implication requires the drivers of non-motor vehicles, while attempting concurrent use of the street with motor vehicles, to be not less careful in their rate of speed. *Dice v Johnson*, 187-1134; 175 NW 38.

6. **Presumption in re warning signs.** The enactment of an ordinance under this section, limiting the speed of automobiles on the public streets, may generate a presumption that the city has erected the warning signs provided and required by said section. *Remington v Machamer*, 192-1098; 186 NW 32.

5030-b2. Speed signs—duty to install. The state highway commission shall furnish and place on the extension primary roads, within any city or town suitable standard signs showing the points at which the rate of speed changes and the maximum rate of speed in the district which the vehicle is entering. On all other main highways the city or town shall furnish and erect suitable signs giving similar information to traffic on such highways.

1. **Absence of signs — effect.** The statutory limitation on speed within "residence districts" as provided in section 5030, C., '31, applies even though the speed limit signs provided by this section have not been erected within said district. *Waldman v Motor Co.*, 214-1139; 243 NW 555.

SCHOOL BUSSES

5079-c8. Full stop required—penalty. The driver or operator of every motor vehicle when meeting or overtaking a school bus shall bring said vehicle to a full stop at least five feet from the front or rear (as the case may be) of such bus when pupils are being taken upon or discharged from said bus, and shall keep said vehicle at a standstill until all said pupils or passengers have entered said bus, or alighted therefrom and reached a place of reasonable safety. A violation of this section shall constitute a misdemeanor, and any person convicted thereof shall be punished by imprisonment in the county jail not more than thirty days or by a fine not exceeding one hundred dollars.

5079-c9. "School bus" signs. No school bus shall be operated, except under circumstances of unavoidable necessity, while conveying pupils to and from their homes, unless there is displayed in a conspicuous place both on the front and rear of such bus, a placard or sign substantially six inches wide and fifteen inches long on which appear the words "SCHOOL BUS" in letters, each stroke of each letter of which shall be at least four inches long and five-eighths of an inch wide, and so designed as to show a marked contrast between the color of the letters and the color of the material on which the letters are printed or painted.

The provisions of this section shall not apply to automobiles equipped and used for the purposes set out in section 5079-c11.

5079-c10. Front and rear entrance to bus. School directors shall not hereafter purchase or hire a school bus unless it is provided with an adequate front and rear entrance.

5079-c11. Exceptions. The provisions of section 5079-c10 shall not apply to horse-drawn vehicles or horse-drawn school busses, nor to automobiles used in transporting children to and from school where such automobiles are equipped with at least two doors, one on each side thereof.

CHAPTER 252-A1

REGULATION OF MOTOR VEHICLE CARRIERS

5105-a1. Definitions. When used in this chapter.

1. The term "motor vehicle," shall mean any automobile, automobile truck, motor bus, or other self-propelled vehicle, including any trailer, semi-trailer or other device used in connection therewith not operated upon fixed rails or track, used for the public transportation of freight or passengers for compensation between fixed termini, or over a regular route, even though there may be occasional, periodic or irregular departures from such termini or route; except those owned by school corporations or used exclusively in conveying school children to and from schools.

CHAPTER 252-A2

TAXATION OF MOTOR VEHICLE CARRIERS

5105-a40. Definitions. When used in this chapter:

1. The term "motor vehicle" shall mean any automobile, automobile truck, motor bus, or other self-propelled vehicle, not operated upon fixed rails or track, used for the public transportation of freight or passengers for compensation between fixed termini, or over a regular route, even though there may be occasional, periodic or irregular departures from such termini or route; except those busses owned by school corporations and used exclusively in conveying school children to and from schools.

CHAPTER 254

POWERS AND DUTIES OF BOARD OF SUPERVISORS

5130. General powers. The board of supervisors at any regular meeting shall have power:

7. To manage and control the school fund of its county, as provided by law.

School fund, ch. 232.

8. To require any county officer to make a report to it, under oath, on any subject connected with the duties of his office and to give such bonds as shall be necessary for the faithful performance of his duties.

9. To remove from office by a majority vote any officer who shall refuse or neglect to make any report or give any bond mentioned in subsection 8, within twenty days after being required so to do.

Removal from office, ch. 56.

10. To fix the compensation for all services of county and township officers not otherwise provided by law, and to provide for the payment of the same.

17. To lease or sell to school districts, real estate owned by the county and not needed for county purposes.

See 5232, salary of county superintendent.

1. Appeal in re salary. An appeal may be taken from an order of the board of supervisors denying a claim for salary by a county officer. *Garber v Clayton Co.*, 19-29; see *Armstrong v Tama Co.*, 34-309; *Curtis v Cass Co.*, 49-421.

2. Purchase of tax title. The board of supervisors cannot take advantage of the exemptions from tax sales accorded to school-fund mortgages, and buy in land sold for taxes upon which such a mortgage exists for the express purpose of defeating a prior mortgage. The purchase of such tax title not being necessary for the protection of the fund, they have no power to make it. *Miller v Gregg*, 26-75.

3. Nonpermissible contract. The board of supervisors has no power to provide for the payment of a percentage of fines to be collected which are to go to the school fund. *Gunn v Mahaska Co.*, 155-527; 136 NW 929.

4. *Compromising claims.* A county has power to make a valid compromise of a disputed claim. *Grimes v Hamilton Co.*, 37-290; *Mills Co. v Burlington & M. R. R. Co.*, 47-66; *Collins v Welch*, 58-72; 12 NW 121.

5. *Compromise with officer.* The board of supervisors has the authority to adjust with an officer any claim which the county may have for moneys irregularly drawn from the treasury, and to allow him as against such claims reasonable compensation for necessary assistance in his office procured and paid for by him notwithstanding irregularity in the method adopted at the time for securing from the county reimbursements for the amounts thus paid. *McCarty v Eggert*, 154-28; 134 NW 426.

6. *Acceptance of note.* The board of supervisors has authority to accept from an officer who is in default a promissory note in settlement of the claims of the county against him; and such note will be based upon such consideration that it can be enforced. *Sac Co. v Hobbs*, 72-69; 33 NW 368.

7. The power obviously intended to be conferred by the legislature upon boards of supervisors is to, at any regular meeting of the board, fix the salary of the county superintendents and others, not that it may be fixed at the will of the board at any or at each successive regular meeting thereof. When once fixed for the term, the power of the board of supervisors was at an end. *Holmes v Lucas Co.*, 53 Iowa 211; *Goetzman v Whitaker*, 81 Iowa 527; *Kellogg v Story Co. Board of Supervisors*, 219 Iowa 399.

5133. Offices furnished. The board of supervisors shall furnish the clerk of the district court, sheriff, recorder, treasurer, auditor, county attorney, county superintendent, and county surveyor or engineer, with offices at the county seat, but in no case shall any such officer, except the county attorney, be permitted to occupy an office also occupied by a practicing attorney.

5134. Supplies. The board of supervisors shall also furnish each of said officers with fuel, lights, blanks, books, and stationery necessary and proper to enable them to discharge the duties of their respective offices, but nothing herein shall be construed to require said board to furnish any county attorney with law books or library.

CHAPTER 255

COUNTY AUDITOR

5148. Duty as to school fund. When the auditor of any county shall receive from the state comptroller notice of the apportionment of school moneys to be distributed in the county, he shall file the same in his office, and transmit a certified copy thereof to the county treasurer, and he shall also lay a certified copy thereof before the board at its next regular meeting.

5153. Additional matter. Said financial report shall also contain the following:

1. The report of the county auditor as required by law to

be made to the superintendent of public instruction, relating to school funds and property.

CHAPTER 256

COUNTY TREASURER

5165. Funds—separate account. The treasurer shall, for each term of his office, keep a separate account of the several taxes for state, county, school, highway, or other purposes, and of all other funds created by law, whether regular, temporary, or special, and no moneys in any such fund shall be paid out or used for any other purpose, except as specially authorized by law. The treasurer shall charge himself with the amount of the tax or other fund and credit himself with the amounts disbursed on each and with the amount of delinquent taxes, when authorized to do so.

CHAPTER 258

COUNTY ATTORNEY

5180. Duties. It shall be the duty of the county attorney to:

7. Give advice or his opinion in writing, without compensation, to the board of supervisors and other county officers and to school and township officers, when requested so to do by such board or officer, upon all matters in which the state, county, school, or township is interested, or relating to the duty of the board or officer in which the state, county, school, or township may have an interest; but he shall not appear before the board of supervisors upon any hearing in which the state or county is not interested.

See section 149, duty of attorney general; 4245, employment of counsel.

1. School board—employment of county attorney. School boards are under no mandatory duty to secure the services of the county attorney in litigation affecting the corporate affairs of the school districts, even though the statute does require such officers to give legal advice to such boards. *Rural Ind. Sch. Dist. v Daly,* 201-286; 207 NW 124.

2. Powers—reinstatement of action. A county attorney, who, in his official capacity, brings an action in behalf of the state, and later, by amendment, changes said action to a personal action by himself and others, may not, after he ceases to be such officer, reinstate said action as one on behalf of the state. Nor may the court reinstate said action as an official action in the name of said ex-county attorney. Especially is this true when the official county attorney objects to such procedure. *State v Power Co.,* 214-1109; 243 NW 149.

5180-a3. County attorney — prohibitions — disqualified assistants. No county attorney shall accept any fee or reward from or on behalf of anyone for services rendered in any prosecution or the conduct of any official business, nor shall

he, or any member of a firm with which he may be connected, be directly or indirectly engaged as an attorney or otherwise for any party other than the state or county in any action or proceeding pending or arising in his county, based upon substantially the same facts upon which a prosecution or proceeding has been commenced or prosecuted by him in the name of the county or state; nor shall any attorney be allowed to assist the county attorney in any criminal action, where such attorney is interested in any civil action brought or to be commenced, in which a recovery is or may be asked upon the matters and things involved in such criminal prosecution.

CHAPTER 261

COMPENSATION OF COUNTY OFFICERS, DEPUTIES, AND CLERKS

5232. County superintendent. Each county superintendent of schools shall receive an annual salary of not less than eighteen hundred dollars, and such additional compensation as may be allowed by the board of supervisors in each particular county, but in no case to exceed three thousand dollars.

1. Holding under prior statute. *Morris v Hosmer*, 182-883; 166 NW 295.

2. Salary fixed for term. The power obviously intended to be conferred by the legislature upon boards of supervisors is to, at any regular meeting of the board, fix the salary of the county superintendent and others, not that it may be fixed at the will of the board at any or at each successive regular meetings thereof. When once fixed for the term, the power of the board of supervisors was at an end. *Holmes v Lucas Co.*, 53 Iowa 211; *Goetzman v Whitaker*, 81 Iowa 527. Having at a prior regular meeting of the board of supervisors fixed the salary of the appellee county superintendent at $2,100 per year, it could not at any subsequent or on successive regular meetings of such board, alter or change the salary thus fixed during the term of office for which appellee was elected. Such construction of the statute removes a doubt and uncertainty as to the salaries of officers referred to in the statute. *Kellogg v Story Co. Board of Supervisors*, 219 Iowa 399; 257 NW 778.

5233. Expenses of county superintendent. The county superintendent shall, on the first Monday of each month, file with the county auditor an itemized and verified statement of his actual and necessary expenses incurred during the previous month in the performance of his official duties within his county and such expenses shall be allowed by the county board of supervisors and paid out of the county fund, as other expenses of the county, but the total amount so paid in any one year for traveling expenses of the superintendent shall not exceed the sum of four hundred dollars, unless approved by the board of supervisors. In determining the actual and necessary expenses incurred under this section, mileage at the rate of five cents per mile for distance actually traveled may be included.

1. Statement not conclusive. The sworn statement of the superintendent is not conclusive upon the board, and it cannot be compelled by mandamus to allow the amount so shown to be due. *Bean v Board*, 51-53; 49 NW 1049.

5234. Deputy county superintendent. Each deputy county superintendent shall receive such annual salary as shall be allowed by the county board of education, and which said board shall fix each year in accordance with the provisions of the teachers' minimum wage law.

1. Validity of appointment. Where deputy county superintendent of schools was orally appointed, duly qualified, and her bond was approved and she discharged duties of deputy, validity of appointment could not be questioned in action for salary on ground certificate of appointment was not filed (Code 1935, sec. 5239). *Kellogg v Story Co.*, 253 NW 915.

2. Acceptance of bond of deputy —effect. Where plaintiff was orally appointed deputy superintendent of schools and her bond reciting appointment for three years was approved by board of supervisors, appointment was sufficiently authorized by board of supervisors, though no resolution was passed. *Kellogg v Story Co.*, 253 NW 915.

3. Limitations. County board of supervisors has only such power in relation to deputy county officers as statutes give board (Code 1935, sec. 5238). *Kellogg v Story Co.*, 253 NW 915.

4. Supervisors powerless to abolish office of deputy county superintendent. County board of supervisors could not abolish office of deputy county superintendent of schools (Code 1935, sections 5238, 5240). *Kellogg v Story Co.*, 253 NW 915.

5. County superintendent's wife as deputy. County superintendent's appointment of wife as deputy county superintendent was valid where board of supervisors approved appointment by approving deputy's bond (Code 1935, sec. 1166). *Kellogg v Story Co.*, 253 NW 915.

5235. Monthly installments. The salaries fixed by the foregoing sections of this chapter shall be paid out of the general fund of the county.

CHAPTER 262

DEPUTY OFFICERS, ASSISTANTS, AND CLERKS

5238. Appointment. Each county auditor, treasurer, recorder, sheriff, county attorney, clerk of the district court, coroner, and county superintendent of schools, may, with the approval of the board of supervisors, appoint one or more deputies or assistants, respectively, not holding a county office, for whose acts he shall be responsible. The number of deputies, assistants, and clerks for each office shall be determined by the board of supervisors, and such number together with the approval of each appointment shall be by resolution made of record in the proceedings of such board.

1. Unauthorized assistants. Where an officer accepts his position with a knowledge of the work to be done and the remuneration promised, while he may employ assistants, he cannot recover compensation for them. *Benton v Decatur Co.*, 36-504.

2. Unauthorized deputy. A deputy employed merely for the personal accommodation of the officer cannot recover compensation from the county. *Harvey v Tama Co.*, 46-522; see *Mahaska Co. v Ingalls*, 14-170.

3. Deputy de facto. One who is orally designated as deputy, and to whom the oath is orally administered, and of whom no bond is exacted, but who in fact performs the duties of deputy, is an officer de facto. *Murphy v Lentz*, 131-328; 108 NW 530.

4. Defalcation of a deputy treasurer. Where a deputy treasurer and bookkeeper was employed by the board of supervisors, held, that for defalcation of such officer, without fault on the part of the treasurer, the latter was not liable. *Scott Co. v Fluke*, 34-317.

5. See under section 5234 for additional annotations.

5239. Certificate of appointment. When any such appointment has been approved by the board of supervisors, the officer making such appointment shall issue in writing a certificate of such appointment, and file the same in the office of the auditor where it shall be kept.

1. Appointment — prima facie evidence. The fact that the records of the auditor and of the board of supervisors do not show the filing of the appointment of a deputy sheriff is prima facie evidence that no such appointment was made. *Buck v Hawley*, 129-406; 105 NW 688.

5240. Revocation of appointment. Any certificate of appointment may be revoked in writing at any time by the officer making the appointment, which revocation shall be filed and kept in the office of the auditor.

5241. Qualifications. Each deputy shall be required to give a bond in an amount to be fixed by the officer having the approval of the bond of his principal, with sureties to be approved by such officer. Such bond when approved shall be filed and kept in the office of the auditor. Each deputy shall take the same oath as his principal, which shall be indorsed on the certificate of appointment.

1. Disqualification. The official acts of the deputy sheriff are in law the acts of his principal, and the interest which will prevent the principal from acting will disqualify his deputy. *Gollobitsch v Rainbow*, 84-567; 51 NW 48.

2. Deputy sheriff. One disqualified by nonresidence from holding the office of sheriff may yet be qualified to hold the deputyship. *Rehmel v Board*, 172-455; 154 NW 596.

5242. Powers and duties. Each deputy, assistant, and clerk shall perform such duties as may be assigned to him or her by the officer making the appointment, and during the absence or disability of his principal, the deputy or deputies shall perform the duties of such principal, except a deputy superintendent of schools shall not perform the duties of his or her principal in visiting schools or hearing appeals.

CHAPTER 264

GENERAL DUTIES OF COUNTY OFFICERS

5249. Officers to furnish information. It is the duty of each county officer, whenever called upon by the governor or either house of the general assembly, to communicate to the governor or such house any information that may be in his possession as such officer, and to furnish any statistics at his command, when thus called upon.

See 84-e12, requests for information by comptroller.

5253. Examination of accounts — expense. If any officer required by law to report the fees collected by him to the board of supervisors shall neglect or refuse to make such report, it shall be the duty of the board to employ an expert accountant to examine the books, papers, and accounts of such officer, and to make said report, the expense of which shall be charged to such delinquent officer, and shall be collectible upon his official bond.

5254. Violations. Failure on the part of any officer to perform any duty required of him by sections 5249 to 5253, inclusive, of this chapter shall render him liable to prosecution and punishment for a misdemeanor.

5255. Purchase of warrants. No officer of any county, nor any deputy or employee of such officer, shall, directly or indirectly, be permitted to take, purchase, or receive in payment, exchange, or in any way whatever, any warrant, scrip, or other evidence of its indebtedness or any demand against it, for a less amount than that expressed on the face of the warrant, scrip, or other evidence of indebtedness or demand, with accrued interest thereon.

1. **Discounting claims.** The statute prohibits the purchase at a discount by an officer of any claim against the county, whether it be evidenced in writing or not. *Harrison Co. v Ogden,* 133-677; 108 NW 451.

5256. Money for sectarian purposes. Public money shall not be appropriated, given, or loaned by the corporate authorities of any county or township, to or in favor of any institution, school, association, or object which is under ecclesiastical or sectarian management or control.

See Art. I, sec. 3, Constitution of Iowa, constitutional prohibition against the establishment of religion; 13252-f2, questioning teacher as to religious affiliations prohibited; 4258, Bible in public schools.

1. **Diversion of public taxes.** Public taxes may not be legally diverted to the maintenance of a school which is under sectarian management. *Knowlton v Baumhover,* 182-691; 166 NW 202.

2. **Trustee for religious society.** A municipal corporation may by devise properly become trustee to hold funds to aid religious societies of the city. *Phillips v Harrow,* 93-92; 61 NW 434.

5257. Violations. Any officer of any county, or any deputy or employee of such officer, who violates any of the provisions of sections 5255 and 5256, shall be guilty of a misdemeanor, and fined not less than one hundred dollars, nor more than five hundred dollars, for each offense.

5258. Expenditures confined to receipts. It shall be unlawful for any county, or for any officer thereof, to allow any claim, or to issue any warrant, or to enter into any contract, which will result, during said year, in an expenditure from any county fund in excess of an amount equal to the collectible revenues in said fund for said year, plus any unexpended balance in said fund for any previous years.

Any officer allowing a claim, issuing a warrant, or making a contract contrary to the provisions of this section, shall be held personally liable for the payment of the claim or warrant, or the performance of the contract.

5260. Unallowable claims. No claims shall be allowed or warrant issued or paid for the expense incurred by any county officer in attending any convention of county officials.

See 84-e13(2), convention expenses.

CHAPTER 264-C1

COUNTY BUDGET

5260-c1. Annual itemized estimates. On or before the thirty-first day of December of each year, each elective or appointive officer of any county having charge of any county office or department shall prepare and submit to the board of supervisors a detailed estimate itemized in the same manner that the various expenditures of such office or department are itemized on the records of the county auditor, showing the proposed expenditures of his office or department for the following calendar year. If the estimated expenditures show an increase over those for the current year, a statement in writing of the reason for such estimated increase must also be submitted.

5260-c2. Appropriation. On or before the thirty-first of January of every year, the board of supervisors shall appropriate, by resolution, such amounts as are deemed necessary for each of the different county officers and departments during the ensuing year, and shall specify from which of the different county funds created by law the appropriated sums shall be derived. The appropriations to each separate county office or department shall be itemized in the same manner that the accounts are itemized on the records of the county auditor.

5260-c3. Contingent fund. The board of supervisors may also appropriate to a contingent account for one or each of the

county funds, a sum which may be spent for purposes which cannot be anticipated at the beginning of the year, but said contingent appropriation together with other appropriations shall not exceed the anticipated revenues.

5260-c4. Form of resolution—limitation. Such resolution of appropriation also shall list, in three separate columns and opposite each separate appropriation item, the itemized expenditures of each county office or department for each of the two preceding years. The total amount appropriated from any county fund shall not exceed the anticipated receipts of that fund.

5260-c5. Contents of resolution. Such resolution of appropriation shall also contain an itemized statement of the anticipated receipts to each separate county fund for the current year, together with a statement of any balance carried over in any of the county funds from the preceding year. Such resolution of appropriation shall also contain in two columns and opposite each item of anticipated receipts, the actual receipts collected during each of the two preceding years.

5260-c6. Supplemental appropriation. If it shall have been determined during the course of any year that the actual receipts to any of the different county funds will be larger than were anticipated in the original resolution of appropriation, the board of supervisors may make a supplementary appropriation by resolution at any regular meeting, appropriating the sums in excess of the estimated receipts from any county fund augmented by larger revenues than were anticipated, to any county office or offices supported by said fund or funds. No such supplementary appropriation shall be made to any such county office or offices unless it shall be shown that a specific need therefor exists. Such supplementary appropriation shall clearly state the amount collected into such augmented county fund in excess of the amount estimated in the general resolution of appropriation.

5260-c7. Report of unexpended balances. On the fifteenth of April, July, and October of each year, the county auditor shall furnish to each county office or department, a statement showing the various original appropriations to each office or department, expenditures of the office or department from its different appropriation accounts during the expired portion of the year, together with a statement of the balance of the appropriations for said office remaining unexpended.

5260-c8. Transfer of funds. In the event that any office has exceeded, or may find it necessary to exceed, the amount of its appropriation in any particular account, the board of supervisors, by resolution, may authorize a transfer from one

or more of the other appropriation accounts of said office, any portion of such unexpended appropriation balance, to any other appropriation account of said office.

5260-c9. Transfers from other departments. In the event it shall be found necessary for any office or department to spend an amount in excess of the total of its original appropriations, the board of supervisors at a regular or special meeting may by resolution authorize a transfer of a portion of the appropriation balance of one office or department or contingent account to the account of another office or department, provided that the funds transferred are derived from the same tax fund and that the transfer does not violate existing statutes.

5260-c10. Expenditures exceeding appropriation. It shall be unlawful for any county official, the expenditures of whose office comes under the provisions of this chapter, to authorize the expenditure of a sum for his department larger than the amount which has been appropriated by the county board of supervisors.

Any county official in charge of any department or office who violates this law shall be guilty of a misdemeanor and punished accordingly.

5260-c11. Scope of statute. Nothing in this chapter shall be construed as affecting the provisions of section 5259, and provisions of this chapter with reference to the penalty, shall be in addition to the provisions of section 5258.

CHAPTER 266-F1

OLD AGE ASSISTANCE

5296-f34. Pension fund created. There is hereby created a fund to be known as the old age pension fund to be administered by the commission, the proceeds of which shall be used to pay the expenditures incurred under this chapter. To provide money for said fund, there is hereby levied on all persons residing in this state and who are citizens of the United States and of twenty-one years of age and upwards, except inmates of state and county institutions, an annual tax of two dollars.

From the list certified to the county treasurer under the provisions of section 5296-f35, it shall be the duty of such county treasurer to place the names of all persons subject to said tax on a tax list as specified by the auditor of state, and the said annual tax levied by the provisions of this section and chapter shall be collected in 1935, and each year thereafter, by the county treasurer as of January first, with a delinquency date of July first, after which latter date a penalty of one per cent for each month or fractional month

of delinquency, and the county treasurer shall make remittance thereof to the treasurer of state who shall credit same to the old age pension fund.

In any subsequent year to that in which any tax is due and payable, the county treasurer shall charge any unpaid tax and/or penalty against the property owned by the person by whom said tax is payable; or said county treasurer, when such delinquent person is not the owner of real estate, shall cause to be served a notice, which shall be served in the same manner as an original notice, upon the delinquent taxpayer's spouse or employer, if either, of the amount of the tax and penalties due and costs of collection and said spouse or employer shall pay the same, and thereupon the employer may subsequently withhold the amount thus paid in tax, penalty and cost of collection from any wages or salary then or in the future due said employee but costs of collection shall not be chargeable unless the tax and penalties are collected.

Any person, firm, association or corporation, including municipal corporations and special charter cities, having in their employ continuously for a period of thirty days or more any resident of this state and who is a citizen of the United States, and to whom this chapter applies and who has not paid the tax provided for in this section, shall deduct said tax from the earnings of such employee and deliver to such employee a receipt for said collection and remit same to the treasurer of state, together with a report showing the amount and name of the person from whom collected; and the treasurer of state shall credit said tax as other taxes provided for in this section and chapter, and report to the county treasurer of the county from which such remittance was received, giving the name of the employee and the amount of such tax collected; and when said report has been received by the county treasurer, he shall credit such person on his books with said payment. Any employer failing to collect and so report said tax shall be liable therefor. As a condition for obtaining assistance under this chapter and from this fund, satisfactory proof shall be furnished to the board or commission that the applicant for said aid has paid all taxes due to said fund. Anyone who becomes in arrears more than three years on this tax for any year shall forfeit all claim to old age pensions provided for herein.

The officer of each department, division, or bureau of the state government, including state educational institutions, whose duty it is to make out a payroll and to certify the same, shall be liable, personally and under his bond, for the failure of any state employee, under his jurisdiction, to pay the per capita tax levied under the provisions of this section. Such officer is hereby authorized to act in the same manner in withholding the tax from the salary or wages of a state employee

as is granted a private employer and a municipal employer under the provisions of this section and chapter.

The penalties accruing under the provisions of this section shall accompany the tax and be credited to the old age pension fund. * * *

5296-f35. Census of taxpayers. Each assessor shall at the time of listing property for assessment list and return to the county auditor on or before June 1, 1936, and each year thereafter, the names and post office addresses of all persons subject to the tax provided for in this chapter; and the county auditor shall certify said list to the county treasurer on or before June 30, 1936, and each year thereafter.

CHAPTER 268

COUNTY HOMES

5346. Education of children. Poor children, when cared for at the county home, shall attend the district school for the district in which such home is situated, and a ratable proportion of the cost of the school, based upon the attendance of such poor children to the total number of days' attendance thereat, shall be paid by the county into the treasury of such school district, and charged as part of the expense of supporting the county home.

CHAPTER 283

TOWNSHIPS AND TOWNSHIP OFFICERS

5528. School townships not disturbed. The board shall not change the lines of any civil township so as to divide any school township or district, unless a majority of the voters of said school township or district shall petition therefor, except in cases where such boundary lines are changed to conform to congressional township lines.

5529. Boundaries coterminous with city. Where the boundaries of any city have been changed, the board of supervisors of the county in which the same is situated shall have power to change the boundary lines of townships so as to make them conform to the boundaries of the city, and to make such other changes in township lines, and the number of townships, as it may deem necessary; but no action shall be taken affecting the boundaries or existing conditions of school districts.

CHAPTER 284

TOWNSHIP HALLS

5576. Transfer of fund. When there are funds in the hands of any township clerk, raised under the provisions of

this chapter, when same is not desired for the purposes for which it was raised, then said fund may be transferred to the school fund of any school district or districts pro rata wherein same was raised, when a petition is presented to the trustees, signed by a majority of the electors of said township that voted at the last regular election prior to the signing of said petition, as shown by the poll books of said township, said transfer of funds to be made by the township clerk upon order of the trustees after the filing of said petition with said clerk.

CHAPTER 287

ORGANIZATION AND OFFICERS

5623. Classes of cities—towns—villages. The municipal corporations referred to in this title shall be divided into cities of the first class, cities of the second class, and towns.

1. *First class.* Every municipal corporation now organized as a city of the first class, or having a population of fifteen thousand or over, shall be a city of the first class.

2. *Second class.* Every municipal corporation now organized as a city of the second class, or having a population of two thousand, but not exceeding fifteen thousand, shall be a city of the second class.

3. *Towns.* Every municipal corporation having a population of less than two thousand shall be deemed a town.

4. *Villages.* Town sites platted and unincorporated shall be known as villages.

CHAPTER 295

COMMUNITY CENTER HOUSES AND RECREATION GROUNDS

5834. Maintenance in connection with school premises. The name that may be adopted for said community center district, and the location of the improvements, shall be determined by the city council; and in this connection said city council is authorized, if it shall deem it advisable, and with the consent of the school board, to locate such community center improvement in connection with, adjacent to, or as a part of public school buildings and grounds erected or to be erected and maintained within said community center district, and to cooperate with the boards having the custody and management of public school buildings or grounds within said district, and, by making arrangements satisfactory to such boards, to provide for the supervision, instruction, and oversight necessary to carry on public educational and recreational activities, and for a division between the school board and the community center district of the cost of buildings, recreation grounds, and equipment to be used in connection with such

school as a community center, and of the expense of operation thereof; provided further that in case such community center shall be established or maintained in connection with a public school operated within said community center district, the city council shall have authority to arrange as it may deem best with the school board for the necessary personal supervision of such community center, other than that contemplated herein where such center is operated independently.

CHAPTER 298

JUVENILE PLAYGROUNDS

5846. Joint maintenance. Cities shall, so far as possible, cooperate with the school boards within said cities in providing for joint operation and maintenance of all public playgrounds within said cities.

5848. Cooperation—rules. The council or commission shall cooperate with the board of education, the superintendent of schools, and with public-spirited citizens interested in child welfare in the government and operation of playgrounds and to that end it may, from time to time, adopt and enforce such rules as it may deem advisable.

CHAPTER 299

PUBLIC LIBRARIES

5859. Power to contract. Contracts may be made between the board of trustees of any free public library and any city, town, school corporation, township, or county for its use by their respective residents. Townships and counties may enter into such contracts, but may only contract for the residents outside of cities and towns. Such contract by a county shall supersede all contracts between the library trustees and townships or school corporations outside of cities and towns.

5860. Method of use. Such use shall be accomplished by one or more of the following methods in whole or in part:

1. By lending the books of such library to such residents on the same terms and conditions as to residents of the city or town in which said library is situated.
2. By the establishment of depositories of books of such library to be loaned to such residents at stated times and places.
3. By the transportation of books of such library by wagon or other conveyance for lending the same to such residents at stated times and places.
4. By the establishment of branch libraries for lending books to such residents.

5861. Rate of tax. Such contracts shall provide for the rate of tax to be levied during the period thereof, and shall remain in force until terminated by a majority vote of the electors of such school corporation, civil township, county, city, or town voting on the proposition at such election.

5862. Township tax. The board of trustees of any township which has entered into such a contract shall at the April meeting levy a tax not exceeding one-fourth mill on the dollar on all taxable property in the township to create a fund to fulfill its obligation under the contract.

5863. County tax. The board of supervisors, after it makes such contract, shall levy annually on the taxable property of the county outside of cities and towns, a tax of not more than one-fourth mill to create a fund to fulfill its obligation under the contract.

CHAPTER 319

INDEBTEDNESS

6238. Limitation. No county or other political or municipal corporation shall become indebted in any manner for its general or ordinary purposes to an amount exceeding in the aggregate one and one-fourth per cent of the actual value of the taxable property within such corporation. The value of such property shall be ascertained by the last tax list previous to the incurring of the indebtedness.

Indebtedness heretofore or hereafter incurred by a county for poor relief purposes shall not be construed or regarded as having been incurred for its general or ordinary purposes insofar as said indebtedness may be incurred solely for poor relief purposes.

See 4190, original indebtedness cannot be contracted by the board; 4353-4358, statutory limit and procedure when in excess of one and one-fourth per cent; 4406, board may be authorized by electors to incur indebtedness; Art. XI, sec 3, Constitution of Iowa, constitutional limit; 7109, actual, assessed, and taxable value defined; 1179-b1–1179-b3, mandatory retirement of bonds; 1172-1179, bond sale procedure; 1171-b4, vote required to carry bond issue.

1. Additional annotations. See under Const., Art. XI, § 3.

2. Nonapplicability to special charter cities. *Reed v Cedar Rapids,* 136-191; 113 NW 773.

3. "Taxable property" defined. In determining whether a bond issue of a county for highway purposes exceeds the permissible percentage "on the actual value of the taxable property within such county", moneys and credits must be included and added to the actual value of the real and personal property other than moneys and credits. *McLeland v Marshall Co.,* 199-1232; 201 NW 401; 203 NW 1.

4. Bridge construction. This section does not work a limitation on § 5880. *France v City,* 183-1311; 168 NW 208.

5. Curing illegality in contract. Any invalidity in a contract for the construction of a street improvement arising from the fact that the contract contains a clause

which might be construed as imposing on the city an absolute indebtedness beyond its legal power to contract, is cured by the act of the city council and its contractor in mutually agreeing, before any part of the contract had been performed, that said clause should be deemed wholly eliminated, and by the subsequent execution of said contract in strict accord with said agreement and the statute. *Waller v Pritchard,* 201-1364; 202 NW 770.

6. "Taxable property" defined. "Taxable property" embraces "moneys and credits", within the meaning of the constitutional provision which limits municipal indebtedness. (Const., Art. XI, § 3.) *Mack v Ind. Sch. Dist.,* 200-1190; 206 NW 145.

7. Construction of contract. The specific amount for which a municipal corporation obligates itself in a written contract for the construction of a schoolhouse in return for the contractor's agreement to "provide all the material and perform all of the work," etc., is in no wise lessened by a contract clause that said price "includes five thousand dollar figure for millwork". *Holst v Cons. Ind. Sch. Dist.,* 203-288; 211 NW 398.

8. Municipal debt limitation—tax as asset. In the marshaling of the assets and liabilities of a municipal corporation on the issue whether the debts of the corporation are in excess of constitutional limitation, a duly levied and collectible tax must be deemed a municipal asset, in the absence of proof showing the definite purpose of the tax and, if for current expenses, that legal obligations have been or necessarily will be created, sufficient to offset said tax fund. *Holst v Cons. Ind. Sch. Dist.,* 203-288.

9. Municipal debt limitation—what constitutes a debt. A contract between an architect and a municipal corporation, which contract imposes a financial obligation on the corporation only in case the corporation enters into a further contract for the erection of the building which the architect has planned, is properly classified as a liability of the corporation's from the moment the building contract is entered into. So held on the issue whether the municipal debt was in excess of constitutional limitation. *Holst v Cons. Ind. Sch. Dist.,* 203-288.

CHAPTER 321

PLATS

6308. Public squares transferred for school purposes. The people of any town located wholly within an independent school district, wherein is situated a public square or plat of ground deeded or dedicated to the town or public, may transfer or rededicate to said school district such square or plat for the purposes of a public school lot, to be used for the erection thereon of a public schoolhouse, or for playgrounds in connection with such schoolhouse.

1. Abandoned public square. Ten years' unquestioned possession, under recorded deeds, of a public square of an abandoned municipal corporation ripens into an indefeasible title against a school corporation which embraced such land. *Ind. Sch. Dist. v Timmons,* 187-1201; 175 NW 498.

6309. Manner of transfer. When a plat or lot of the character described in section 6308 is located in such town, and one-half of the resident voters thereof, according to the last census, shall petition the mayor and council, asking them to submit to the voters of the town, at a general or

special election, the question whether or not such public plat or lot shall be transferred to such independent district and dedicated and used for school purposes, they shall submit the question to the voters of the town, in accordance with the prayer of said petition, after giving ten days' notice in writing or printing thereof, in which the proposition submitted shall be clearly set forth and signed by the mayor, three of which notices shall be posted in public and conspicuous places in the town, and one published in the last two issues preceding such election of a weekly newspaper published therein, or, if there be none, then in the weekly newspaper published elsewhere in the county, having the largest circulation in said town. The notice shall also state the manner of voting, which shall be by ballot. The ballot shall contain the words: "Shall the proposition to transfer lot (or block, or square, as the case may be, describing it), for the purposes of a public schoolhouse lot, be adopted?" Such election shall be conducted as ordinary town elections are, under the supervision of the town authorities, who shall canvass the vote as provided in other cases. If it shall appear that two-thirds of the votes cast at such election are in favor thereof, then such transfer shall be complete, and the lot, block, or square may be appropriated and used for the purposes indicated by said vote, and shall be no longer held for any other purpose.

In the event that any such town shall have discontinued its organization or shall have failed to exercise its municipal powers and elect officers for a period of more than ten years, then the petition hereinbefore provided for may be presented to the board of directors within such school corporation, whereupon, if signed by one-third of the resident electors thereof, it shall be the duty of said board within ten days after the filing of the same to call an election in said district for which they shall give the same notices as required in sections 4195* and 4197*, at which election the proposition submitted shall be in the same form as in the instance of a submission of such proposition in the case of a town election, and such election shall be held as provided for the holding of other school elections. If it shall appear that a majority of the votes cast at such election are in favor of such proposition, then a transfer of such public square or plat of ground shall be complete and such lot, plat, block, or square may be appropriated and used for the purposes indicated by said vote and shall be no longer held for any other purpose.

*Repealed.

CHAPTER 329

CITIES UNDER SPECIAL CHARTER

6846. Contagious diseases. Whenever by reason of the prevalence of smallpox, or other contagious or infectious

disease, in any such city or the vicinity thereof, the board may deem it dangerous to permit the congregation together of people, the board may, with the consent of the council, by public proclamation published once in some newspaper of general circulation in the city, prohibit the congregation of people in schools, churches, theaters, and in all other buildings in said city, and it shall thereupon become the duty of the principals, teachers, and other persons in charge of such places or buildings specified in said publication to keep the same closed and to prevent the congregation of people therein; and when smallpox is prevalent in said city or its vicinity, the said board of health may, with the consent of the council, by notice served upon the teachers or persons in charge of any of the public or private schools, prohibit the admission therein of any pupil until such pupil shall have proved, to the satisfaction of the board or the persons selected by it for that purpose, that such pupils have been vaccinated within five years prior thereto, or within such time as the board may designate; and said board may in like manner prevent the admission of persons not furnishing satisfactory proof of vaccination into churches, theaters, or other buildings, by notifying the persons in charge thereof not to admit such persons.

1. Unvaccinated school children. The appellate court will be slow to interfere with an order by the trial court refusing a temporary injunction against the enforcement by a school board of its order which temporarily excluded unvaccinated pupils from the public school; and especially will the appellate court decline to disturb such refusal when it affirmatively appears that the order of the board has expired ex vi termini. *Baehne v Ind. Sch. Dist.*, 201-625; 207 NW 755.

CHAPTER 329-C2

STATE BOARD OF ASSESSMENT AND REVIEW

6943-c27. Powers. In addition to the powers and duties transferred to the state board of assessment and review, said board shall have and assume the following powers and duties:

5. To require city, town, township, school districts, county, state or other public officers to report information as to the assessment of property and collection of taxes and such other information as may be needful or desirable in the work of the board in such form and upon such blanks as the board may prescribe.

1. Reduction in assessment—power of board. The state board of assessment and review has power, in an even numbered year, and for the purpose of attaining a new basis for the computation of taxes in and for said year, to order the county board of equalization with notice to lower the assessed valuation of the real property in a township, though it be true, of course, that said assessed valuation was made and legally confirmed in the preceding odd numbered year. *State v Board*, 211-1116; 235 NW 303.

2. Order for reduction—discretion. A valid order by the state board of assessment and review to a board of supervisors to reduce certain assessed valuations, leaves said board of supervisors with no discretion as to compliance with the order. *State v Board,* 211-1116; 235 NW 303.

6943-c28. Duties of public offiicers. It shall be the duty of all public officers of the state and of all municipalities to give to the board information in their possession relating to taxation when required by the board, and to cooperate with and aid the board in its efforts to secure a fair, equitable and just enforcement of the taxation and revenue laws.

CHAPTER 329-F1

INCOME, CORPORATION, AND SALES TAX

DIVISION IV. RETAIL SALES TAX

6943-f38. Definitions. The following words, terms, and phrases, when used in this division, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

a. "Person" includes any individual, firm, copartnership, joint adventure, association, corporation, municipal corporation, estate, trust, business trust, receiver, or any other group or combination acting as a unit, and the plural as well as the singular number.

b. "Sale" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

c. "Retail sale" or "sale at retail" means the sale to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property and the sale of gas, electricity, water, and communication service to retail consumers or users.

d. "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect.

e. "Retailer" includes every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or the furnishing of gas, electricity, water and communication service, and tickets or admissions to places of amusement and athletic events as provided in this division.

f. "Gross receipts" means the total amount of the sales of retailers, valued in money, whether received in money or otherwise, provided, however, that discounts for any purpose allowed and taken on sales shall not be included, nor shall the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit. Provided, further, that on all sales of retailers, valued in money, when such sales are made under conditional sales contract, or under other forms of sale wherein the payment of the principal sum thereunder be extended over a period longer than

sixty days from the date of sale thereof that only such portion of the sale amount thereof shall be accounted, for the purpose of imposition of tax imposed by this division*, as has actually been received in cash by the retailer during each quarterly period as defined herein.

g. "Relief agency" means the state, any county, city and county, city or district thereof, or any agency engaged in actual relief work.

* "Bill" in enrolled bill.

6943-f40. Exemptions. There are hereby specifically exempted from the provisions of this division and from the computation of the amount of tax imposed by it, the following:

a. The gross receipts from sales of tangible personal property which this state is prohibited from taxing under the constitution or laws of the United States or under the constitution of this state.

b. The gross receipts from the sales, furnishing or service of transportation service.

c. The gross receipts from sales of tangible personal property used for the performance of a contract on public works executed prior to the effective date of this division.

d. The gross receipts from sales of tickets or admissions to state, county, district and local fairs, and the gross receipts from educational, religious, or charitable activities, where the entire amount of such receipts is expended for educational, religious or charitable purposes.

CHAPTER 330

PROPERTY EXEMPT AND TAXABLE

6944. Exemptions. The following classes of property shall not be taxed:

1. *Federal and state property.* The property of the United States and this state, including university, agricultural college, and school lands.

2. *Municipal and military property.* The property of a county, township, city, town, school district, or military company, when devoted to public use and not held for pecuniary profit.

5. *Public securities.* Bonds or certificates issued by any municipality, school district, drainage or levee district, river front improvement commission or county within the state of Iowa. No deduction from the assessment of the shares of stock of any bank or trust company shall be permitted because such bank or trust company holds such bonds as are exempted above.

11. *Property of educational institutions.* Real estate owned by any educational institution of this state as a part of its endowment fund, to the extent of one hundred sixty acres in any civil township.

1. Exemptions strictly construed. Taxation is the rule, exemption is the exception, and the statute under which exemption is claimed should therefore be strictly construed. *Morseman v Younkin*, 27-350; *Trustees of Griswold Coll. v State*, 46-275; *Sioux City v Ind. Sch. Dist.*, 55-150; 7 NW 488; *Farwell v Des Moines B. M. Co.*, 97-286; 66 NW 176; In re Assessment of Boyd, 138-583; 116 NW 700; *Morril v Bentley*, 150-677; 130 NW 734; see *Davenport Nat. Bank v Mittelbuscher*, 4 McCrary 361.

2. Lands condemned for public use. Land which has been acquired by condemnation by a school district for a schoolhouse site cannot be sold at tax sale for taxes already due thereon at the time of condemnation. *Ind. Sch. Dist. v Hewitt*, 105-663; 75 NW 497.

3. Scope of exemption. The statute comprehends equitable as well as legal ownership. *Ellsworth College v Emmet Co.*, 156-52; 135 NW 594.

4. Lands in foreign county. The exemption of real estate owned by such institution as part of its endowment fund extends to land situated in another county. *Webster City v Wright Co.*, 144-502; 123 NW 193.

5. Lots within city. Real estate which is owned by an educational institution of this state as a part of its endowment fund is exempt from taxation to the extent of 160 acres in any civil township, even though such township is coterminous with a city, and even though such real estate consists of ordinary city lots. In re Iowa Col. Trustees, 185-434; 170 NW 813.

6. Partial exemption. Where an educational institution became the equitable owner of lands subject to a devise for the benefit of a home for the aged subsequently to be created, held that to the extent of such devise, the educational institution was taxable on such land. *Ellsworth Col. v Emmet Co.*, 156-52; 135 NW 594.

7. Burden of proof. On a plea by an educational institution of this state that certain endowment lands belonging to it are exempt from taxation, the burden is on the public authorities to show, if such be the case, that such institution has already been granted an exemption of 160 acres on like lands in the civil township in question. In re Iowa Col. Trustees, 185-434; 170 NW 813.

8. Lands under long-time lease. Real estate not exceeding one hundred sixty acres in any civil township owned by an educational institution of this state, is exempt from taxation even though it is under long-time lease and extensively bettered in the way of improvements by the lessee, the lease providing that all improvements shall be deemed a part of the realty. *Frost v Bennett*, 199-744; 202 NW 776.

9. Exemption from general taxes does not exempt from special taxes. *B. & M. R. R. Co. v Spearman*, 12-112; *Sioux City v Sch. Dist.*, 55-150; 7 NW 488; *Cassady v Hammer*, 62-359; 17 NW 588; *Farwell v Des Moines B. M. Co.*, 97-286; 66 NW 176; *Edwards & Walsh Const. Co. v Jasper Co.*, 117-365; 90 NW 1006.

CHAPTER 332

MONEYS AND CREDITS

6985. Moneys — credits — annuities — bank notes — stock. Moneys, credits, and corporation shares or stocks, except as otherwise provided, cash, circulating notes of national banking associations, and United States legal tender notes, and other notes, and certificates of the United States payable on demand, and circulating or intended to circulate as currency, notes, including those secured by mortgage, accounts, con-

tracts for cash or labor, bills of exchange, judgments, choses in action, liens of any kind, securities, debentures, bonds other than those of the United States, annuities, and corporation shares or stocks not otherwise taxed in kind, shall be assessed and, excepting shares of stock of national, state, and savings banks, and loan and trust companies, and moneyed capital as hereinafter defined, shall be taxed upon the uniform basis throughout the state of five mills on the dollar of actual valuation, same to be assessed and collected where the owner resides.

See 7109, actual, assessed, and taxable value of property defined.

1. Moneys and credits as "taxable property." In determining whether a bond issue of a county for highway purposes exceeds the permissible percentage "on the actual value of the taxable property within such county," moneys and credits must be included and added to the actual value of the real and personal property other than moneys and credits. *McLeland v Marshall Co.*, 199-1232; 201 NW 401; 203 NW 1.

2. Double taxation. Although the taxation of the property of a corporation to the corporation, and the shares of its capital stock to its stockholders, may amount to double taxation, yet such a provision is not unconstitutional. *Cook v Burlington*, 59-251; 13 NW 113; see Appeal of Des Moines Water Co., 48-324.

3. Extent of taxation. The stockholder is taxable upon his interest in the corporate property, including surplus, as well as upon his capital stock. *Equitable L. Ins. Co. v Board*, 74-178; 37 NW 141.

4. Insurance company stock. Shares of stock of a domestic accident and health insurance company are taxable at the five mill rate provided by this section. *Great W. A. Ins. Co. v Martin*, 183-1009; 166 NW 705.

5. "Moneyed capital". Purchase-money mortgages, bank deposits, loans as investments, loans on real estate, accounts, and notes representing goods sold, do not constitute "moneyed capital" employed in competition with savings banks, and are, therefore, properly taxed as moneys and credits. *Poweshiek Co. Sav. Bank v Johnston*, 199-555; 202 NW 384; *Citizens Nat'l Bank v Johnston*, 199-460; 202 NW 384; *First Nat'l Bank v Board*, 200-131; 204 NW 223.

6. Federal tax exempt securities. Any portion of the capital of a private bank which is invested in U. S. bonds should be exempted from taxation. *Campbell v Centerville*, 69-439; 29 NW 596.

7. Mistaken classification—waiver. An insurance company which lists its corporate stock to itself as personal property, and at an inadequate value which it induces the assessor to accept,—all on the assumption that it was subject to the consolidated levy,—and thereafter interposes no counter objection, may neither obtain a refund for taxes paid nor enjoin the collection of taxes unpaid, on the theory that the property was in fact only subject to a five-mill levy, as moneys and credits. (See Book of Anno., Vol. 1, § 7235.) *Farmers Ins. Co. v Linn Co.*, 202-444; 208 NW 929.

8. Unauthorized classification. Whether certain securities shall be assessed as moneys and credits or as moneyed capital, within the meaning of the federal statutes, must, in the first instance, be determined by the judgment of the assessor, and lastly by the judgment of the board of review; and the county auditor has no power to change such determination. *Ft. Madison Sec. Co. v Maxwell*, 202-1346; 212 NW 131.

CHAPTER 342

LOCAL ASSESSOR

7109. Actual, assessed and taxable value. All property subject to taxation shall be assessed at its actual value which shall be entered opposite each item. The terms "actual value", "assessed value" and "taxable value" shall hereafter be construed as referring to "actual value".

The tax rate shall be applied to the actual value, except as otherwise provided.

In arriving at said actual value the assessor shall take into consideration its productive and earning capacity, if any, past, present, and prospective, its market value, if any, and all other matters that affect the actual value of the property; and the burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate, or inequitable.

See 6985, moneys and credits defined.

1. Purpose of total value. The only object in entering the total value of the property listed is to facilitate computation and assure the accuracy of the taxable value at which property is listed and on which taxes are to be levied. In re Appeal of Seaman, 135-543; 113 NW 354.

2. Applicability of 25 per cent clause. As to whether the provision that property shall be valued for purposes of taxation at its actual value and assessed at twenty-five per cent of such value is applicable to railroad property in special charter cities, the court was equally divided. *C. & N. W. R. Co. v Cedar Rapids,* 127-678; 103 NW 997; *C., M. & St. P. R. Co. v Davenport,* 127-677; 103 NW 996.

3. Constitutional limitation. The constitutional limitation as to municipal indebtedness to five per cent of the actual value of property subject to taxation is not affected by the provision that property is to be assessed at twenty-five per cent of the actual value at which it is listed. *Halsey v Belle Plaine,* 128-467; 104 NW 494.

4. Nonapplicability. This provision held not applicable where the holder of bonds issued prior to the adoption of such provision sought by mandamus to compel the levy of a tax in the payment of such bonds in accordance with the provisions in force when the bonds were issued. *Ft. Madison v Ft. Madison Water Co.,* 134 Fed 214.

5. Disregarding 25 per cent clause—effect. Even though property is returned for taxation at a full cash value, the property owner is not entitled to have the collection of the tax enjoined in equity. His remedy is by securing correction of the assessment. *Reed v Cedar Rapids,* 138-366; 116 NW 140.

6. Insurance company stock. Shares of stock of a domestic accident and health insurance company are taxable at the five-mill rate provided by § 6985, and not on the basis of the tax rate on twenty-five per cent of value provided by this section. *Great W. A. Ins. Co. v Martin,* 183-1009; 166 NW 705.

CHAPTER 345

TAX LEVIES

CERTIFICATION OF TAXES

7162. Basis for amount of tax. In all taxing districts in the state, including townships, school districts, cities, towns,

and counties, when by law then existing the people are authorized to determine by vote, or officers are authorized to estimate or determine, a rate of taxation required for any public purpose, such rate shall in all cases be estimated and based upon the adjusted taxable valuation of such taxing district for the preceding calendar year.

1. Actual levy required. Where a tax is authorized by special vote it must be actually levied, the act of the electors in authorizing the levy not being alone sufficient. *Iowa R. Land Co. v Woodbury Co.*, 39-172.

7163. Amounts certified in dollars. When any authorized tax rate within any taxing district, including townships, school districts, cities, towns, and counties, shall have been thus determined as provided by law, the officer or officers charged with the duty of certifying said authorized rate to the county auditor or board of supervisors shall, before certifying the same, compute upon the adjusted taxable valuation of such taxing district for the preceding calendar year (not including moneys and credits, and other moneyed capital taxed at a flat rate as provided in section 6985), the amount of tax said rate will raise, stated in dollars, and shall certify said computed amount in dollars and not by rate, to the county auditor and board of supervisors.

See 4389, when estimate may be in mills.

7164. Computation of rate. When the valuations for the several taxing districts shall have been adjusted by the several boards for the current year, the county auditor shall thereupon apply such a rate, not exceeding the rate authorized by law, as will raise the amount required for such taxing district, and no larger amount.

Provided that the county auditor shall, in computing the tax rate for any taxing district, deduct from the total budget requirements certified by any such district all of the tax to be derived from the moneys and credits and other moneyed capital taxed at a flat rate as provided in section 6985 and shall then apply such rate to the adjusted taxable value of the property in the district, necessary to raise the amount required after the deductions herein provided have been made.

7166. Fractional rates disregarded. If in adjusting the rate to be levied in any taxing district to conform to law, such rates shall make necessary the levying of a fraction of a mill in excess of one-half of one-tenth of a mill, said fractional excess may be computed as one-tenth of a mill, which latter shall be the smallest required to be spread upon the tax lists for any purpose except rates applicable to a state purpose.

7167. Interpretative clause. Nothing herein shall be construed as interfering with the right of any taxing district to

receive its due proportion of the taxes on moneys and credits and other moneyed capital taxed at a flat rate as provided in section 6985.

7168. Record of rates. On the determination by the auditor of the necessary rates as herein directed, it is made his duty to enter a record of such rates for each taxing district upon the permanent records of his office in a book to be kept for that purpose.

7169. Excessive tax prohibited. It is hereby made a misdemeanor for the board of supervisors to authorize, or the county auditor to carry upon the tax lists for any year, an amount of tax for any public purpose in excess of the amount certified or authorized as provided by law.

7170. Mandatory provisions. The provisions of sections 7162 to 7169, inclusive, and the methods of computation, certification, and levy therein provided shall be obligatory on all officers within the several counties of the state upon whom devolves the duty of determining, certifying, and levying taxes.

LEVIES BY STATE BOARD OF ASSESSMENT AND REVIEW

7181. Levy to pay municipal bonds. Whenever any municipal corporation, board, or tribunal is charged with the duty of levying a tax to pay any bonds or interest thereon, and fails to make such levy, the holder thereof may, after obtaining final judgment thereon, in addition to any other remedies he may have, file a transcript thereof with the state board of assessment and review, taking its receipt therefor, and the same shall be registered in its office, and the state board of assessment and review at its regular annual session shall levy upon the taxable property of the county, city, town, or school district for which such bonds were issued a sufficient rate of taxation to realize the amount of interest, or principal and interest, due or to become due on the bonds so filed, prior to the next levy, and the money arising from such levy shall be known as the bond fund, and collected as a part of the state tax, paid into the state treasury, and placed to the credit of such county, city, town, or school district for the payment of said bonds and interest, and shall be paid out as the interest installments or the principal may mature, by warrants drawn by the state comptroller in favor of the holder of such bonds, as shown by the register aforesaid, until the same shall be paid; and, when paid, the bonds and coupons shall be canceled and returned to the treasurer of the county, city, town, or school district issuing the same, who shall receipt therefor.

CHAPTER 346

COLLECTION OF TAXES

7208. Certain warrants receivable. State comptroller's warrants shall be received by the county treasurer in full payment of state taxes, and county warrants shall be received by the treasurer of the proper county for ordinary county taxes, but money only shall be received for the school tax.

CHAPTER 347

TAX SALE

7268. School, agricultural college, or university land. When any school, agricultural college, or university land sold on credit is sold for taxes, the purchaser shall acquire only the interest of the original purchaser therein, and no sale of any such lands for taxes shall prejudice the rights of the state, agricultural college, or university. In all cases where the real estate is mortgaged or otherwise incumbered to the school, agricultural college, or university fund, the interest of the person who holds the fee shall alone be sold for taxes, and in no case shall the lien or interest of the state be affected by any sale thereof. The foregoing provision shall include all lands exempt from taxation by law, and any legal or equitable estate therein held, possessed, or claimed for any public purpose, and no assessment or taxation of such lands, nor the payment of any such tax by any person, or the sale and conveyance for taxes of any such lands, shall in any manner affect the right or title of the public therein, or confer upon the purchaser or person who pays such taxes any right or interest in such land.

1. Interest which may be sold. As against a mortgage to the school or university fund, only the interest of the person holding the fee title can be sold for taxes. *Crum v Cotting*, 22-411; *Winnebago Co. v Brones*, 68-682; 28 NW 15.

2. Priority. Such purchaser takes subject to the mortgage. *Jasper Co. v Rogers*, 17-254; see *State v Shaw*, 28-67.

3. Purchase at foreclosure. The state purchasing at foreclosure sale under such mortgage takes free from the lien of delinquent taxes, and a conveyance from it passes title to the purchaser discharged from such liens. *Helphrey v Ross*, 19-40; *Miller v Gregg*, 26-75.

4. Foreclosure—effect of sale. Any purchaser at a foreclosure sale under such mortgage, equally with the state, takes free from the lien of delinquent taxes. *Lovelace v Berryhill*, 36-379.

5. Parties to foreclosure. A purchaser at tax sale of premises covered by a school-fund mortgage has a lien thereon junior to that of the mortgage, and in an action to foreclose the school-fund mortgage must be made a party or his right of redemption will not be extinguished. *Ayres v Adair Co.*, 61-728; 17 NW 161.

6. Mortgage protected. A mortgage designed to be a security to the university fund is within the provisions of the statute relating to the sales of land in such cases, whether made directly to the institution or to its proper officer. *Lovelace v Berryhill*, 36-379.

7. Tax-sale purchaser excluded. Where the surety of a note given

for the purchase of school lands, who has a mortgage thereon for security, buys in the land at foreclosure sale under such mortgage, he acquires a title free from claims of a purchaser at the tax sale. *La Rue v King*, 74-288; 37 NW 374.

CHAPTER 352-D1

DEPOSIT OF PUBLIC FUNDS

7420-d1. Deposits in general. The treasurer of state, and of each county, city, town, and school corporation, and each township clerk and each county recorder, auditor, sheriff, each clerk and bailiff of the municipal court, and clerk of the district court, and each secretary of a school board shall deposit all public funds in their hands in such banks as are first approved by the executive council, board of supervisors, city or town council, board of school directors, or township trustees, respectively. The term "bank" shall embrace any corporation, firm, or individual engaged in a general banking business.

1. Wrongful deposits — effect. *City v Leach*, 201-316; 207 NW 348; *Leach v Bank*, 204-1083; 216 NW 748; *Leach v Bank*, 205-1345; 219 NW 483; *Leach v Bank*, 207-478; 223 NW 171.

2. Bond—nonapproval by board of supervisors—effect. A bond given by a bank and by sureties interested in the bank, and given for the purpose of inducing the county treasurer to make deposit of public funds in said bank, and which did induce such deposits, is enforcible even though the board of supervisors did not formally approve it. *Floyd Co. v Ramsay*, 210-1161; 230 NW 404.

3. Right to secure deposits. *Andrew v Bank*, 203-1335; 214 NW 559.

4. Bonds and sureties under prior statutes. *Andrew v Bank*, 205-878; 219 NW 34; *Dallas Co. v Bank*, 205-672; 216 NW 119; *Ind. Dist. v Morris*, 208-588; 226 NW 66.

5. School district as depositor. A school district is the depositor of school funds which are placed by the school treasurer in a legally selected depositary. *Runyan v Bank*, 210-147; 230 NW 418.

6. Burden of proof. Proof that a municipality had deposited public funds to a named amount in an authorized public depositary casts the burden on the depositary, or on the receiver therefor, to show what payments were made from such deposits and the legality of such payments. And such burden is not met by the introduction of unexplained ledger entries. *Winnebago Co. v Horton*, 204-1186; 216 NW 769.

7. Rescinding authority. The action of the governing board (1) in rescinding its former action authorizing its treasurer to deposit public funds in a named depositary to a named amount, and (2) in authorizing such deposits in said depositary in a lesser amount, renders all existing deposits in said depositary in excess of the latter authorization, after the lapse of a reasonable time, unlawful and unauthorized, and to that extent deprives the municipality of the right to reimbursement from the state sinking fund for public deposits. *Andrew v Bank*, 203-1089; 213 NW 232.

8. Rescinding authority. The act of a city council in rescinding its authority to the city treasurer to deposit municipal funds in a named bank to a named amount, and in authorizing deposits in a lesser amount, does not render an existing deposit unlawful and unauthorized to the extent that it exceeds the latter authorization, when the treasurer is wholly unable to withdraw said excess from said bank because of the distressed financial condition of the bank.

Andrew v Bank, 206-464; 221 NW 342.

9. Rescinding authority. Even though the county treasurer deposits its public funds in a depositary bank in an amount authorized by a resolution of the board of supervisors, yet if the board later, by resolution, reduces the amount authorized to be deposited, the treasurer and his surety are liable for a loss resulting from the failure of the treasurer to exercise reasonable diligence to reduce his deposit to the amount authorized in the latter resolution. So held where the treasurer might have withdrawn the excess in the ordinary course of business but failed to do so. *State v Surety Co.*, 210-215; 230 NW 308.

10. Excessive bank deposits—effect. *State v Carney*, 208-133; 217 NW 472.

7420-d2. Approval—requirements. The approval of a bank as a depository shall be by written resolution or order which shall be entered of record in the minutes of the approving board, and which shall distinctly name each bank approved, and specify the maximum amount which may be kept on deposit in each such bank.

7420-d3. Increase conditionally prohibited. The maximum amount so permitted to be deposited in a named bank shall not be increased except with the approval of the treasurer of state.

7420-d4. Location of depositories. Deposits by the treasurer of state shall be in banks located in this state; by a county officer, in banks located in his county or in an adjoining county within this state; by a city or town treasurer, in banks located in the city or town, but in the event there is no bank in such city or town then in any other bank located in this state which shall be selected as such depository by the city or town council; by a school treasurer or by a school secretary in a bank within this state which shall be selected by the board of directors or the trustees of such school district; by a township clerk in a bank located within this state which shall be selected by such township clerk and approved by the trustees of such township. Provided, that deposits may be made in banks outside of Iowa for the purpose of paying principal and interest on bonded indebtedness of any municipality when such deposit is made not more than ten days before the date such principal or interest becomes due.

7420-d5. Refusal of deposits—procedure. If none of the duly approved banks will accept said deposits under the conditions herein prescribed or authorized, said funds may be deposited in any approved bank or banks conveniently located within the state.

7420-d6. Interest on deposits. Said deposits shall draw interest at the rate of not less than two per cent per annum on ninety per cent of the collected daily balances, payable by the bank at the end of each month, provided that interest at the rate of one per cent per annum on ninety per cent of the

daily balance shall be required on such funds deposited for the months of April and October, provided further that in order that public bodies throughout the state may be able at all times to obtain sufficient acceptable depositories the treasurer of state with the approval of the executive council may from time to time adjust the rate of interest that shall be payable by all depositories on public funds in their hands but in no event shall such rate of interest be adjusted below one per cent per annum on ninety per cent of the collected daily balances payable as hereinbefore required. Henceforth public deposits shall be deposited with reasonable promptness and shall be evidenced by pass book entry by the depository legally designated as depository for such funds. Provided, however, that the rate of interest set by the treasurer of state shall apply to all public deposits of the state of Iowa.

7420-d7. Interest credited. Said interest, except when legally diverted to the state sinking fund for public deposits, shall be credited to the general fund of the governmental body making the deposit, except that interest on township funds shall be credited to such township fund or funds as the township trustees may determine.

7420-d8. Liability of public officers. No officer referred to in section 7420-d1 shall be liable for loss of public funds by reason of the insolvency of the depository bank when said funds have been deposited as herein provided.

CHAPTER 352-A1

STATE SINKING FUND FOR PUBLIC DEPOSITS

7420-a1. State sinking fund. There is hereby created in the office of the treasurer of state a separate fund to be known as the state sinking fund for public deposits.

7420-a2. Purpose of fund. The purpose of said fund shall be to secure the payment of their deposits to state, county, township, municipal, and school corporations having public funds deposited in any bank in this state, when such deposits have been made by authority of and in conformity with the direction of the local governing council or board which is by law charged with the duty of selecting depository banks for said funds.

See annotations under chapter 352-D1.

1. "Public funds" defined. Funds raised by general taxation for the maintenance of public libraries are public funds, and within the protection of this chapter. *Andrew v Bank*, 203-349; 212 NW 742.

2. Embezzlement by depository. School funds duly deposited in a bank under legal authorization of the directors, and embezzled by an officer of the bank, are a legal charge against the state sinking fund for public deposits, in case the bank becomes insolvent. *Runyan v Bank*, 210-147; 230 NW 418.

3. Illegal deposit. A deposit in

a bank of the public funds of a school district is not a legally authorized deposit, within the meaning of this chapter, when made simply on the individual and non-official written direction of the several members of the board of directors to the school treasurer to make such deposit, nor will such deposit be rendered legal by the fact (1) that the board of directors, after the deposit was made, had knowledge thereof, or (2) that interest was paid on said deposit. *Andrew v Bank*, 204-570; 215 NW 807.

7420-a3. How constituted. There shall be paid into said sinking fund by the treasurer of state all collections either from assessments or diversions of interest as well as receipts received from the collection of claims assigned or paid whether from security, bonds, or other sources.

7420-a4. Availability of funds. Any sums in the sinking fund shall be available for the payment of claims.

7420-a5. Investment of funds. All above a necessary working balance shall be kept invested in United States government bonds under the direction of the executive council.

7420-a6. Interest diverted. All interest hereafter collected under sections 7420-d1 to 7420-d8, inclusive, and any other interest hereafter collected from depositories of public funds, as provided by statute, is hereby diverted from the general fund or township fund, as the case may be, and shall be paid into the state treasury and kept in the fund created by this chapter, or so much thereof as shall be ordered so paid by the treasurer of state.

1. Power to divert. The general assembly has ample authority to divert from the county general fund to the state sinking fund for public deposits interest accruing on deposits of public funds in the hands of the county treasurer. *Scott Co. v Johnson*, 209-213; 222 NW 378.

2. Trust funds—diversion of interest. This section has no application to interest on a trust fund which the school district does not own but is administering. *Boyd v Johnson*, 212-1201; 238 NW 61.

3. Right to question constitutionality. Neither a school district nor a taxpayer thereof has any standing to question the constitutionality of the act which diverts the future-accruing interest on school funds to the state sinking fund for public deposits (chapter 352-A1, C., '31), for the reason that they have no such thing as a vested right in said interest. *Boyd v Johnson*, 212-1201; 238 NW 61.

7420-a7. Limitations. No part of said interest above two per cent per annum on ninety per cent of the collected daily balances shall be so diverted or collected for said sinking fund. No interest shall be diverted until the necessity therefor shall arise.

7420-a8. Duty of treasurers. It shall be the duty of all school treasurers, city and town treasurers, and township clerks of the county to keep on file with the county treasurer a list of such depositories, and when so ordered by the county

treasurer such depositor shall cause the interest upon such funds to be paid to the county treasurer for the benefit of the state sinking fund.

7420-a9. Certification of deposits. Whenever any such depository bank is hereafter closed and placed in the hands of a receiver or a trustee in bankruptcy or has been heretofore or is hereafter reorganized, either by reopening, sale to another bank of all or part of its assets with assumption of all or part of deposit liability, consolidation with another bank, purchase of part or all of assets of another bank, merger with another bank or banks, or in any manner authorized by sections 9283-e1 to 9283-e6, inclusive, or by sections 9283-e12 to 9283-e24, inclusive, or by the national bank conservation act, (48 Stat. L ch 1.) and especially section 207 of title II thereof, and trust certificates have issued pursuant to depositors' agreements; or whenever any bank that has assumed all or part of the deposit liability of a depository bank, has heretofore or is hereafter reorganized in any manner authorized by sections 9283-e1 to 9283-e6, inclusive, or by sections 9283-e12 to 9283-e24, inclusive, or by the national bank conservation act and especially section 207 of title II thereof, and trust certificates have issued pursuant to depositors' agreements, and the amount of the several deposits of public funds deposited therein by authority of and in conformity with the direction of the legal governing council or board which is by law charged with the duty of selecting depository banks for said funds and fixing the amount thereof has been ascertained and fixed by an order of court or by the treasurer of state if the matter is not pending in court, the superintendent of banking shall then certify such list of public deposits so approved by the court to the treasurer of state and the state comptroller.

7420-a10. Duty of treasurer of state. The treasurer of state shall thereupon simultaneously divert all interest coming into his hands from state deposits and deposit the same in said sinking fund and shall issue an order to the county treasurers of the several counties directing them to collect from the depository banks the interest upon all public deposits of their counties, including all interest on school funds, city and town funds, township and county funds, from the date of said order.

7420-a11. Duty of depositories. It shall then become the duty of all depository banks to pay such interest to the county treasurers.

7420-a12. Duty of county treasurers. The county treasurers of the several counties shall so collect such funds in accordance with such order and shall remit the same to the treasurer of state.

7420-a13. Liability of depository. The failure on the part of any depository bank to pay to the county treasurer or the state treasurer any such interest on or before the tenth day of the month same becomes due, shall render such bank liable for a ten per cent penalty on the amount of interest due and the same may be recovered by the state treasurer or the county treasurer.

7420-a14. Liability of public officers. The fiscal governing officers of every county, township, school district, city, or town shall be personally liable to the sinking fund for any misappropriation of such interest on public balances or for withholding the same when proper call has been made by the state treasurer as herein provided.

7420-a15. Termination of diversion of interest. The diversion of such funds shall continue until such claims are paid and it shall then be the duty of the treasurer of state to discontinue such diversions of interest on state funds and collection of interest on other funds as herein provided, and to so notify the county treasurers of the various counties fixing in such notice the date of such termination.

7420-b1. Amount of deposit—determination—effect—objections. Whenever or wherever any depository bank or any bank which has assumed the whole or any part of the deposit liability of a depository bank, has been heretofore or is hereafter closed and placed in the hands of a receiver or trustee in bankruptcy, or has been heretofore or is hereafter reorganized, either by reopening, sale to another bank of a part or all of its assets with the assumption of all or part of deposit liability, consolidation with another bank, purchase of part or all of the assets of another bank, merger with another bank or banks, or in any manner authorized by sections 9283-e1 to 9283-e6, inclusive, or by sections 9283-e12 to 9283-e24, inclusive, or the national bank conservation act (48 Stat. L. ch. 1) and especially section 207 of title II thereof, and trust certificates have issued pursuant to provisions of depositors' agreements, the state of Iowa or any county, city, town, school district or township, having public funds on deposit therein, may by its governing board at such board's discretion, by written resolution or order, entered of record in the minutes of such board, or executive council, as the case may be, order and direct its treasurer or other officer to file with and furnish to the treasurer of state a statement of the amount of the deposit, a certified copy of the resolution under which the deposit was made, and any other information demanded by him.

Whenever trust certificates have issued as herein provided, the statement of the amount of deposit shall include only the balance due on the trust certificate unless the bank or trust

company is placed in the hands of a receiver or trustee in bankruptcy. Unless either the bank liable therefor, or claimant has paid all interest due the state sinking fund for public deposits to the date of its reorganization, both on that part of claimant's deposit left in the bank and that part represented by the trust certificate, the treasurer of state may refuse to file the claim of such claimant.

With the advice of the attorney general, the treasurer of state shall determine the amount thereof deposited by authority of and in conformity with the direction of the legal governing council or board and send a copy of his decision by registered mail to the claimant and to the bank and deliver a copy to the superintendent of banking, which decision shall be final except as to such depositors as within ten days after the mailing of such decision make objections to such decision in writing to the treasurer of state, and shall have the same force and effect as the court order and certificate of the superintendent of banking, as provided in this chapter.

If objections are made within the time and as above provided, the same shall be forwarded to the receiver, and shall be presented and heard and determined by the court as otherwise provided.

In the event a receiver or trustee in bankruptcy has not been appointed, the claimant may present the objections, if made within the manner and time provided, to any court of competent jurisdiction by any appropriate action. If objections are not made as above provided, the decision of the treasurer of state shall be final.

1. Judgments appealable. An appeal lies from an order of court which adjudges the amount of public funds on deposit in an insolvent bank for the purpose of payment out of the state sinking fund. *Winnebago Co. v Horton*, 204-1186; 216 NW 769.

7420-a16. Order of payment. It shall be the duty of the superintendent of banking to direct the order in which such deposits shall be paid.

7420-a17. Certification of claims. As soon as the money is available in such sinking fund the superintendent of banking shall certify to the state comptroller the amount due the several depositors of public funds as shown by such certified list and showing the order in which they shall be paid.

7420-a18. Warrant — payment — subrogation. Upon such certification the state comptroller shall issue his warrant upon such sinking fund in the hands of the treasurer of state payable to such depositor of public funds in the order certified by the superintendent of banking, and the same shall be paid to such depositor of public funds, and the treasurer of state shall thereupon be subrogated to all of the title, interest, and rights of the depositor in such deposit of public funds or segregated

trust fund and shall share in the distribution of the assets of such bank or trust fund ratably with the other depositors and the sum received from such distribution shall be paid by the receiver or trustees to the treasurer of state and deposited in said sinking fund. Until the depositor has been paid in full from the sinking fund, it may share in the distribution of the assets of the bank or trust fund.

7420-a19. Bonds — subrogation. Where public funds are secured by bond and the same are paid or advanced by the treasurer of state as herein provided, said treasurer shall be subrogated to all of the rights of the holder of such bond and is hereby authorized to enforce and collect the same and shall deposit the same in said sinking fund. However, no suit shall be maintained upon any such bond if the money was legally deposited by authority of the governing council or board, and no premium has been paid for the bond.

1. Improper parties. A county and its treasurer are not proper parties to an action by the treasurer of state to recover on a depositary bond in which the county and its treasurer no longer have any interest. *State v Bartlett*, 207-208; 222 NW 529.

2. Waiver of subrogation. The state, after reimbursing a county for the loss of county deposits in an insolvent bank, may validly prohibit an action in its own favor on the depositary bond to which it was legally subrogated by the process of reimbursing the county. *State v Bartlett*, 207-208; 222 NW 529.

7420-a21. Rule of construction. This chapter is deemed to be separable and if any section thereof is held to be void, it shall not avoid the other sections of this chapter.

7420-a22. Omnibus repeal. All acts or parts of acts in conflict with the provisions hereof are hereby repealed.

ANTICIPATORY WARRANTS

7420-b3. Anticipatory warrants. Whenever duly allowed and certified claims are on file with the treasurer of state to the amount of fifty thousand dollars or more and the state sinking fund for public deposits contains insufficient funds for immediate payment of said claims the treasurer of state with the written approval of the executive council of the state may issue anticipatory warrants for the purpose of raising funds for the immediate payment of said claims but said warrants outstanding and unpaid shall not exceed at any one time the sum of three million five hundred thousand dollars provided, however, that the treasurer of state by and with the approval of the executive council may issue such additional anticipatory warrants as may be necessary or required to refund existing warrants and the issuance of additional anticipatory warrants for the purpose of refunding anticipatory warrants shall not be considered to be a violation of the prohibition hereinbefore contained fixing the amount of said warrants to be outstand-

ing at any one time in an amount not to exceed three million five hundred thousand dollars.

7420-b4. Interest. Said warrants shall bear interest from date at a rate not to exceed five per cent, which interest shall be payable at the end of each year, or for such shorter period as said warrants may remain unpaid.

7420-b5. Form of warrants. Said warrants shall, subject to the foregoing limitations, be issued in such individual and gross amounts and in such form and such rate of interest as the executive council shall approve.

Each certificate or warrant issued under the provisions of this act (42GA, ch 92) shall have printed on the face thereof the words: "This warrant is an obligation of the state sinking fund for public deposits only."

7420-g1. Public sale—interest. Said warrants shall be offered by the treasurer of state at public sale and shall be sold at a price not less than par plus accrued interest to the date when the treasurer of state shall actually receive payment for said warrants and make delivery of the same to the purchaser.

7420-g2. Advertisement. When said anticipatory warrants are to be offered for sale, the treasurer of state shall by advertisement published for two or more successive weeks in at least two daily newspapers in the state, one of which shall be in Des Moines, give ten days' notice of the time and place of the sale of said warrants which notice shall contain a statement of the amount of such warrants to be offered for sale, the time and place of sale, and any further information which may be deemed pertinent.

7420-g3. Bids. Sealed bids may be received at any time prior to the call for open bids. After the sealed bids are on file, the executive council shall call for open bids. After all the open bids have been received the substance of the best bid shall be recorded in the minutes of the secretary of the executive council. The secretary of the executive council shall then in the presence of the executive council open all sealed bids that may have been filed and shall note the substance of the best sealed bids.

7420-g4. Private sale—preference. Any or all bids may be rejected and the sale may be advertised anew, in the same manner, or the anticipatory warrants or any portion thereof may thereafter be sold at private sale to any one or more of such bidders or other person providing, however, that preference shall be given to individuals residing in Iowa, corporations organized under the laws of the state of Iowa and resident partnerships in so far as possible to do so. In case of a private sale, the said warrants shall be sold upon terms not

less favorable to the public than the most favorable bid made by a bona fide and responsible bidder at the last advertised sale.

7420-g5. Commission and expense. No commission shall be paid directly or indirectly in connection with the sale of any anticipatory warrant. No expense shall be contracted or paid in connection with such sale other than the expenses incurred in advertising such anticipatory warrants for sale.

7420-g6. Misdemeanor. Any public officer or employee who fails to perform any duty required by this act [46 GA, ch 87], or who does any act prohibited by this act shall be guilty of an indictable misdemeanor.

7420-g7. Construction. Nothing contained in this chapter, as amended by this act [46 GA, ch 87], shall be deemed to prevent the refunding of any warrants heretofore or hereafter issued under the provisions of this chapter.

7420-g8. Repeal. All acts or parts of acts in conflict herewith [46 GA, ch 87], are hereby repealed.

7420-g9. Invalidity — effect. If any section, subsection, sentence, or phrase of this act [46 GA, ch 87] is for any reason held to be unconstitutional and/or invalid such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that they would have passed this act and each section, subsection, clause, sentence, and phrase, irrespective of whether any one or more of the sections, subsections, clauses, sentences, or phrases shall be declared unconstitutional.

7420-b7. Record of sales. Said treasurer shall make and retain in his office a complete record of all warrants sold to each purchaser and of the post office address of such purchaser.

7420-b8. Change in addresses. Purchasers of warrants may at any time notify said treasurer of their post office addresses, or of any change in said addresses, and of the warrants owned or held by them, and said treasurer shall change his sale record accordingly.

7420-b9. Payment. Said warrants and all interest thereon shall be payable by the treasurer of state solely from the funds paid into said state sinking fund for public deposits, and said funds are hereby exclusively and irrevocably pledged to such payment in the consecutive order in which said warrants are issued.

7420-b10. Application of funds. All funds which are derived from the sale of said warrants shall be applied exclusive-

ly to the payment of the allowed and certified claims on account of which such warrants were issued.

7420-b11. Termination of interest. After the sale of any series of warrants, the treasurer of state shall, at least by the twentieth day of each month thereafter, if he has funds in the state sinking fund for public deposits sufficient to pay one or more of said outstanding warrants, mail to the purchaser or holder of said warrant or warrants at his post office address as shown by the record of sale, a notice that said warrant or warrants will be paid on presentation and that interest thereon will cease after the expiration of ten days from the mailing of said notice. Upon the expiration of ten days from the mailing of said notice interest shall cease on said warrant or warrants.

7420-b12. Applicability. Sections 7420-b3 to 7420-b11, inclusive, shall apply to all unpaid claims allowed and certified either before or after said sections take effect.

CHAPTER 373

REGULATION OF CARRIERS

8128. Exceptions. The persons to whom tickets, free passes, free transportation, or discriminating reduced rates may be issued, furnished, or given, shall be as folows:

15. School children to and from public, private, or parochial schools.

CHAPTER 394

CORPORATIONS NOT FOR PECUNIARY PROFIT

8588. Power to confer degree. Any corporation of an academical character may confer the degrees usually conferred by such an institution. No academic degree for which compensation is to be paid shall be issued or conferred by such corporation or by any individual conducting an academic course unless the person obtaining the said degree shall have completed at least one academic year of resident work at the institution which grants the degree.

8588-b1. Penalty. A violation of section 8588 by a corporation shall be punished by a fine of not more than one thousand dollars. A violation of section 8588 by an individual conducting an academic course or by an officer or managing head of a corporation shall be punished by imprisonment in the penitentiary or men's or women's reformatory not more than seven years; or by fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

CHAPTER 399-E1

GROUP INSURANCE

8684-e1. Group insurance defined. Group insurance is hereby declared to be that form of either life, health or accident insurance covering not less than fifty employees with or without medical examination, written under a policy issued to the employer, the premium on which is to be paid by the employer or by the employer and employees jointly and insuring only all of his employees, or all of any class or classes thereof, determined by conditions pertaining to the employment, for amounts of insurance based upon some plan which will preclude individual selection for the benefit of persons other than the employer; provided, however, that when the premium is to be paid by the employer and employees jointly, and the benefits of the policy are offered to all eligible employees, not less than seventy-five per cent of such employees may be so insured.

8684-e2. Employer—scope of term. The word employer as used in section 8684-e1 shall also include:

2. Labor unions and teachers' associations whose members are actively engaged in the same occupation or profession; provided, however, that, when the premium is to be paid by a labor union or teachers' association and their members jointly, and the benefits are to be offered to all eligible members, not less than sixty-five per cent of such members may be so insured.

Provided also that, in case an insurance policy is renewable annually only at the option of both parties to the contract, and provided that the basis of premium rates may be changed by the insurance company at the beginning of any policy year, all members of a trade union or teachers' association may be insured.

8684-e3. Employee—scope of term. The word employee as used in sections 8684-e1 and 8684-e2 shall also include clergymen, priests and ministers of the gospel, members of any labor union, teachers' association or volunteer fire company, and members of fraternal societies or associations, or any subordinate lodges or branches thereof.

CHAPTER 404

INSURANCE OTHER THAN LIFE

8907. Membership in mutuals. Any public or private corporation, board, or association in this state, or elswhere, may make applications, enter into agreements for and hold policies in any such mutual insurance company. Any officer, stockholder, trustee, or local representative of any such corporation,

board, association, or estate may be recognized as acting for, or on its behalf for the purpose of such membership, but shall not be personally liable upon such contract of insurance by reason of acting in such representative capacity. The right of any corporation organized under the laws of this state to participate as a member of any such mutual insurance company is hereby declared to be incidental to the purpose for which such corporation is organized and as much granted as the rights and powers expressly conferred.

CHAPTER 434

COMBINATIONS, POOLS, AND TRUSTS

9928. Provision part of every contract—forfeit. The following provision shall be deemed and held to be a part of every contract hereafter entered into by any person, firm, or private corporation with the state, or with any county, city, town, city acting under special charter, city acting under commission form of government, school corporation, or with any municipal corporation, now or hereafter created, whether said provision be inserted in such contract or not, to wit:

"The party to whom this contract has been awarded, hereby represents and guarantees that he has not, nor has any other person for or in his behalf, directly or indirectly, entered into any arrangement or agreement with any other bidder, or with any public officer, whereby he has paid or is to pay to any other bidder or public officer any sum of money or anything of value whatever in order to obtain this contract; and that he has not, nor has another person, for or in his behalf, directly or indirectly, entered into any agreement or arrangement with any other person, firm, corporation, or association which tends to or does lessen or destroy free competition in the letting of this contract, and he hereby agrees that in case it hereafter be established that such representations or guaranties, or any of them, are false, he will forfeit and pay not less than five per cent of the contract price but in no event less than three hundred dollars, as liquidated damages to the other contracting party."

CHAPTER 445

GIFTS

10188. Gifts to municipal corporations. Counties, cities, towns, the park board of any city or town, including cities acting under special charter, and civil townships wholly outside of any city or town, and school corporations, are authorized to take and hold property, real and personal, by gift and bequest; and to administer the same through the proper officer

in pursuance of the terms of the gift or bequest. No title shall pass unless accepted by the governing board of the corporation, township, or park board. Conditions attached to such gifts or bequests become binding upon the corporation, township, or park board upon acceptance thereof.

1. Devise to city. A devise to a city may be valid although the purpose is one for which it is not authorized to levy taxes, if it is a purpose within the scope of its authority. *Phillips v Harrow*, 93-92; 61 NW 434.

2. Bequest to permanent school fund. A bequest to the permanent school fund of a designated county held valid, even though board of supervisors had no authority to administer such a trust. *Chapman v Newell*, 146-415; 125 NW 324.

3. Devise for "upbuilding of school". A devise in trust for the "upbuilding of the public schools" of a named school district is not void for uncertainty, and the trust may be executed by building a better schoolhouse for the district than the district could otherwise afford, even though the taxpayers may thereby be benefited. *Liggett v Abbott*, 192-742; 185 NW 569.

CHAPTER 452

LABOR AND MATERIAL ON PUBLIC IMPROVEMENTS

10299. Terms defined. For the purpose of this chapter:

1. "Public corporation" shall embrace the state, and all counties, cities, towns, public school corporations, and all officers, boards, or commissions empowered by law to enter into contracts for the construction of public improvements.

2. "Public improvement" is one, the cost of which is payable from taxes or other funds under the control of the public corporation, except in cases of public improvement for drainage or levee purposes the provisions of the drainage law in cases of conflict shall govern.

3. "Construction" shall, in addition to its ordinary meaning, embrace repair and alteration.

4. "Material" shall, in addition to its ordinary meaning, embrace feed, gasoline, kerosene, lubricating oils and greases, provisions, and fuel, but shall not include personal expenses or personal purchases of employees for their individual use.

5. "Service" shall, in addition to its ordinary meaning, include the furnishing to the contractor of workmen's compensation insurance, and premiums and charges for such insurance shall be considered a claim for service.

See 352, hearing before state comptroller on contracts costing $5,000 or more; 4370, approval by county superintendent also when advertisement for bids is required; 4370-c1, emergency repairs.

See chapter 23, public contracts and the state comptroller; chapter 62, duties relative to public contracts; chapter 63, sale of bonds; chapter 63-B1, maturity of bonds;

1. Statute not retroactive. This chapter has no retroactive effect—applies only to claims arising after it took effect, to wit, October 28, 1924. *Francesconi v Ind. Sch. Dist.*, 204-307; 214 NW 882.

2. **Bonds—scope.** A bond conditioned to pay all subcontractors for "materials" furnished embraces "fuel", when the statute under which the bond is given defines "materials" as including "fuel." *Standard Oil Co. v Marvill,* 201-614; 206 NW 37.

3. **Right to lien — groceries, meats, oil, and money loaned.** A statute which grants to a subcontractor on a public improvement a claim or lien on public funds "for labor performed or materials furnished for the construction" does not embrace a claim or lien for groceries, meats, and oil sold, and money loaned, to such contractor to enable him to execute his contract. *Teget v Polk Co. Drain. Ditch,* 202-747; 210 NW 954.

10300. Public improvements—bond and conditions. Contracts for the construction of a public improvement shall, when the contract price equals or exceeds one thousand dollars, be accompanied by a bond, with surety, conditioned for the faithful performance of the contract, and for the fulfillment of such other requirements as may be provided by law. Such bond may also be required when the contract price does not equal said amount.

1. **Bonds imposing nonstatutory requirements—effect.** *Nebraska C. & M. Co. v Freeman,* 197-720; 198 NW 7; *Schisel v Marvill,* 198-725; 197 NW 662; *Zapf v Ridenour,* 198-1006; 200 NW 618.

2. **Statutory bonds—estoppel.** A surety on a bond given for the performance of a public building contract, and containing some of the conditions which the statute mandatorily prescribes for such bond,—anything in any contract to the contrary notwithstanding,—will be deemed a statutory bond, with all the statutory conditions impliedly inserted therein. (See Book of Anno., Vol. 1, Ch. 452.) *Philip Carey Co. v Maryland Cas. Co.,* 201-1063; 206 NW 808; see *Francesconi v Ind. Sch. Dist.,* 204-307; 214 NW 882.

3. **Statutory bonds—sufficiency.** A statutory bond conditioned to pay a subcontractor on a public improvement the amount owed him by the principal contractor need not be signed by the latter. *Ft. Dodge Culv. & Steel Co. v Miller,* 200-1169; 206 NW 141.

4. **Statutory bonds—ipso facto inclusion of conditions.** Principle reaffirmed that the statutory conditions of a bond are necessarily a part of a bond executed under the statute. *Francesconi v Ind. Sch. Dist.,* 204-307.

10301. Bond mandatory. The obligation of the public corporation to require, and the contractor to execute and deliver said bond, shall not be limited or avoided by contract.

10302. Deposit in lieu of bond. A deposit of money, or a certified check on a solvent bank of the county in which the improvement is to be located, or state or federal bonds, or bonds issued by any city, town, school corporation, or county of this state, or bonds issued on behalf of any drainage or highway paving district of this state, may be received in an amount equal to the amount of the bond and held in lieu of a surety on such bond, and when so received such securities shall be held on the terms and conditions applicable to a surety.

10303. Amount of bond. Said bond shall run to the public corporation. The amount thereof shall be fixed, and the bond

approved, by the official board or officer empowered to let the contract, in an amount not less than seventy-five per cent of the contract price, and sufficient to comply with all requirements of said contract and to insure the fulfillment of every condition, expressly or impliedly embraced in said bond; except that in contracts where no part of the contract price is paid until after the completion of the public improvement the amount of said bond may be fixed at not less than twenty-five per cent of the contract price.

1. Successive actions by several beneficiaries. A recovery on a statutory bond by one beneficiary constitutes no bar to an action by another beneficiary to the extent of the unexhausted penalty of the bond. *Philip Carey Co. v Maryland Cas. Co.*, 201-1063; 206 NW 808.

2. Execution and delivery in foreign state. A statutory bond which is executed and delivered in a foreign state for the performance of a contract in this state will be construed in accordance with the laws of this state when such was the intention of the parties, as shown (1) by the nature of the transaction, (2) by the subject-matter, and (3) by the attending circumstances. *Philip Carey Co. v Maryland Cas. Co.*, 201-1063; 206 NW 808.

10304. Subcontractors on public improvements. The following provisions shall be held to be a part of every bond given for the performance of a contract for the construction of a public improvement, whether said provisions be inserted in such bond or not, to wit:

1. The principal and sureties on this bond hereby agree to pay to all persons, firms, or corporations having contracts directly with the principal or with subcontractors, all just claims due them for labor performed or materials furnished, in the performance of the contract on account of which this bond is given, when the same are not satisfied out of the portion of the contract price which the public corporation is required to retain until completion of the public improvement, but the principal and sureties shall not be liable to said persons, firms, or corporations unless the claims of said claimants against said portion of the contract price shall have been established as provided by law.

2. Every surety on this bond shall be deemed and held, any contract to the contrary notwithstanding, to consent without notice:

a. To any extension of time to the contractor in which to perform the contract.

b. To any change in the plans, specifications, or contract, when such change does not involve an increase of more than twenty per cent of the total contract price, and shall then be released only as to such excess increase.

c. That no provision of this bond or of any other contract shall be valid which limits to less than one year from the time of the acceptance of the work the right to sue on this bond

for defects in workmanship or material not discovered or known to the obligee at the time such work was accepted.

1. Bond to secure claims of subcontractors. A contractor's bond given to secure a public corporation against claims by materialmen and laborers inures to the benefit of those who furnish material and labor in carrying out such contract. *Hipwell v Nat. S. Co.*, 130-656; 105 NW 318; *Streator Co. v Henning-V. Co.*, 176-297; 155 NW 1001.

2. Bond silent as to subcontractors—effect. *Green Bay Lbr. Co. v Ind. Sch. Dist.*, 121-663; 97 NW 72; *Carr & Baal Co. v Cons. Ind. Dist.*, 187-930; 174 NW 780.

3. Right to rely on contractor's bond. Subcontractors are not bound to perfect their claims against funds in the hands of the officers of the public corporation, but may rely directly on the security afforded by the bond. *Hipwell v Nat. S. Co.*, 130-656; 105 NW 318; *Streator Co. v Henning-V. Co.*, 176-297; 155 NW 1001.

4. Subsequent bond affecting prior bond. Rights of a subcontractor fully vested under one bond cannot be affected by the giving of a subsequent bond less comprehensive in its conditions. *Clinton Bridge Works v Kingsley*, 188-218; 175 NW 976.

5. Insertion of nonstatutory obligations—effect. Common law or nonstatutory obligations inserted in such a bond must be treated as surplusage. *Schisel v Marvill*, 198-725;197 NW 662.

6. Liability of surety—assignee of contract. Sureties on a bond to pay for all labor and material furnished by a highway improvement contractor are not liable to an assignee of the contract for the amount of payments paid to the assignor because of the neglect of the assignee to notify the public authorities of the assignment. This for the reason that (1) the assignee simply stood in the shoes of the assignor, and (2) the bond contemplated no such liability. *Sibley Lbr. Co. v Madsen*, 198-880; 200 NW 425.

10305. Claims for material or labor. Any person, firm, or corporation who has, under a contract with the principal contractor or with subcontractors, performed labor, or furnished material, service, or transportation, in the construction of a public improvement, may file, with the officer, board or commission authorized by law to let contracts for such improvement, an itemized, sworn, written statement of the claim for such labor, or material, service, or transportation.

1. Absence of statute—effect. *Breneman v Harvey*, 70-479; 30 NW 846; *Iowa Pipe & Tile Co. v Parks & Gerber*, 169-438; 151 NW 438.

2. Rights acquired under prior statute. *Modern Steel Structural Co. v Van Buren Co.*, 126-606; 102 NW 536; *Empire State S. Co. v Des Moines*, 152-531; 131 NW 870; 132 NW 837.

3. Prior statute held not to create a lien. *Modern Steel Structural Co. v Van Buren Co.*, 126-606; 102 NW 536; *Thompson v Stephens*, 131-51; 107 NW 1095; *Empire State S. Co. v Des Moines*, 152-531; 131 NW 870; 132 NW 837; *Ind. Sch. Dist. v Hall*, 159-607; 140 NW 855; *Des Moines B. & I. Works v Plane*, 163-18; 143 NW 866.

4. Nonforfeiture of right. *Iowa Brick Co. v Des Moines*, 111-272; 82 NW 922.

5. Filing itemized and sworn statement. The claimant must file an itemized and sworn statement of his demand, but the fact that he claims items which by statute he is not entitled to does not nullify his proceeding. *Penn v Northern Bldg. Co.*, 140 Fed 973; *Epeneter v Montgomery Co.*, 98-159; 67 NW 93.

6. Evidence of sworn statement. The itemized statement must be one which shows on its face that it is a sworn statement. *McGilli-*

vray v Dist. Tp., 96-629; 65 NW 974.

7. Verification by attorney. The statement may be verified by the attorney when the showing of his knowledge is sufficient. *Ludowici Caladon Co. v Ind. Sch. Dist.*, 169-669; 149 NW 845.

8. Filing with proper officer. *Green Bay Lbr. Co. v Thomas*, 106-420; 76 NW 749; *Wackerbarth & Blamer Co. v Ind. Sch. Dist.*, 157-614; 138 NW 470; *Reynolds v City*, 192-398; 184 NW 729.

9. Failure to file. By failing to avail himself of the statutory provisions a subcontractor or materialman waives all rights which he would otherwise have to the fund. *Ind. Sch. Dist. v Hall*, 159-607; 140 NW 855.

10. Personal liability. The claim of the materialman against the corporation is personal and is not a lien on the property. *Whitehouse v Am. S. Co.*, 117-328; 90 NW 727; *Swearingen Lbr. Co. v Washington Sch. Tp.*, 125-283; 99 NW 730; *Wackerbarth & Blamer Co. v Ind. Sch. Dist.*, 157-614; 138 NW 470.

11. Contract method for protecting subcontractors. A contract for the construction of a public improvement may provide a contract method for securing the payment of claims of subcontractors and in such case the latter may disregard the statutory method. *Reynolds v City*, 192-398; 184 NW 729.

12. Place of filing claims. Claims for labor or materials employed on a public improvement were properly filed with the warrant-issuing officer as provided by 38 G. A., Ch. 347, even though a prior enacted and existing statute (§ 3102, C., '97) provided for a filing with the warrant-paying officer. *Francesconi v Ind. Sch. Dist.*, 204-307; 214 NW 882.

13. "Verified" statement as condition precedent. Failure to file a verified statement of material or labor employed on a public improvement as the basis of an action under § 3102, C., '97 and Acts 38 G. A., Ch. 347 is fatal to the validity of the claim and a mere "certification" is not a "verification". *Francesconi v Ind. Sch. Dist.*, 204-307; 214 NW 882.

14. Itemized statement — sufficiency. A statement for labor employed by the week upon a public improvement is sufficiently itemized when it shows the dates between which the labor was performed; likewise a statement for labor which consists of duly indorsed weekly time checks which show the date and number of hours worked during each day, even though the statement fails specifically to identify the building on which the work was performed. *Francesconi v Ind. Sch. Dist.*, 204-307; 214 NW 882.

10307. Officer to indorse time of filing claim. The officer shall indorse over his official signature upon every claim filed with him, the date and hour of filing.

10308. Time of filing claims. Claims may be filed with said officer as follows:

1. At any time before the expiration of thirty days immediately following the completion and final acceptance of the improvement.

2. At any time after said thirty-day period, if the public corporation has not paid the full contract price as herein authorized, and no action is pending to adjudicate rights in and to the unpaid portion of the contract price.

1. Duty of public corporation as to subcontractors. The public corporation is under no obligation to protect the subcontractor or materialman until such a statement as is required by statute is filed within the time specified. *Green Bay Lbr. Co. v Ind. Sch. Dist.*, 125-227; 101 NW 84; *Empire State S. Co. v Des Moines*, 152-531; 131 NW 870; 132 NW 837; *Ind. Sch. Dist. v Hall*, 159-607; 140 NW 855.

10309. Claims filed after action brought. The court may permit claims to be filed with it during the pendency of the action hereinafter authorized, if it be made to appear that such belated filing will not materially delay the action.

1. Belated filing—effect. *Breneman v Harvey*, 70-479; 30 NW 846.

2. Equitable right as to fund. Laborers who filed their claims in the manner provided, but not within the time provided, held to have an equitable right to participate in the fund consisting of moneys unpaid to the contractor as against the contractor and the sureties on his bond. *Humboldt Co. v Ward Bros.*, 163-510; 145 NW 49.

10310. Payments under public contracts. Payments made under contracts for the construction of public improvements, unless provided otherwise by law, shall be made on the basis of monthly estimates of labor performed and material delivered; said payments to be made for not more than ninety per cent of said estimates and to be so made that at least ten per cent of the contract price will remain unpaid at the date of the completion of the contract, anything in the contract to the contrary notwithstanding.

1. Assignment of contract payments as collateral security—effect. *Reynolds v City*, 192-398; 184 NW 729.

10311. Inviolability and disposition of fund. No public corporation shall be permitted to plead noncompliance with section 10310, and the retained percentage of the contract price, which in no case shall be less than ten per cent, shall constitute a fund for the payment of claims for materials furnished and labor performed on said improvement, and shall be held and disposed of by the public corporation as hereinafter provided.

1. Prior act unconstitutional. *Mosher v Ind. Dist.*, 44-122.

2. Payment of contractor in full. If the contractor has already been paid all that he is entitled to receive under his contract, the person furnishing labor or materials to him for the improvement has no redress against the corporation. *Modern Steel Structural Co. v Van Buren Co.*, 126-606; 102 NW 536.

3. Payment in accordance with contract. If the corporation pays its contractor in accordance with the terms of the contract it will not become liable except for the amount which becomes due to the contractor and which is not thus paid. *Epeneter v Montgomery Co.*, 98-159; 67 NW 93; *Green Bay Lbr. Co. v Ind. Sch. Dist.*, 125-227; 101 NW 84.

4. Nonmoney payments. The right of a materialman to establish a claim against the fund is subject to the right of the public corporation to make payments in accordance with its contract, and it is immaterial whether such payments be in money or in that which is treated as its equivalent. *Ludowici Caladon Co. v Sch. Dist.*, 169-669; 149 NW 845.

5. Unauthorized payments. As to the effect of unauthorized payments, see: *Bain v Bruce*, 164-327; 145 NW 865.

6. Payments on certificates of work. If the corporation has in good faith paid out money on certificates of work done, the correctness of such certificates can only be impeached for fraud or mistake. *Green Bay Lbr. Co. v Ind. Sch. Dist.*, 125-227; 101 NW 84.

7. Fraud of contractor. If on account of fraud the contractor is without lawful claim against the

corporation the contract which has been violated by the contractor cannot be effectual for the benefit of the subcontractor. *Modern Steel Structural Co. v Van Buren Co.*, 126-606; 102 NW 536.

8. Garnishment of corporation. Garnishment of a public corporation for funds due the contractor which is effected prior to service of a notice of a claim for material furnished, is a good defense to recovery against the corporation on such claim. *Swearingen Lbr. Co. v Washington Sch. Tp.*, 125-283; 99 NW 730.

9. Bond for benefit of subcontractors. A public municipal corporation which exacts from its contractor for the erection of a public improvement a bond conditioned for the payment of all subcontractors, and reserves the right to withhold final payment until all contract provisions have been performed, may validly insist that said final payment be applied in the discharge of unpaid claims of subcontractors, even though such claimants have taken no steps to compel the corporation to withhold said payment and even though the contractor has, to the knowledge of the corporation, equitably assigned to a third party his right to said payments. A written order by a contractor to the other party to the contract to pay all accruing payments to a third party works, as between the drawer and said third party, an equitable assignment of the contractor's right to said payments, even though the drawee has never accepted the order. *City Nat. Bank v Ind. Sch. Dist.*, 190-25; 179 NW 947.

10. Duty to protect subcontractors. A school district which, under its contract for the construction of a public building, reserves the right to retain a named percentage of the contract price until at least sixty days after the completion of the building, and pays out said retained amount prior to the time provided in the contract and statute, with knowledge that subcontractors were furnishing materials for said building, will, in equity, be held to have said retained percentage on hand for the discharge of claims duly filed under the statute. *Stukas & Sons v Miller & Ladehoff*, 197-824; 198 NW 65.

10312. Retention of unpaid funds. Said fund shall be retained by the public corporation for a period of thirty days after the completion and final acceptance of the improvement. If at the end of said thirty-day period claims are on file as herein provided the public corporation shall continue to retain from said unpaid funds a sum not less than double the total amount of all claims on file.

10312-d1. Exception. No part of the unpaid fund due the contractor shall be retained as provided in this chapter on claims for material furnished, other than materials ordered by the general contractor or his authorized agent, unless such claims are supported by a certified statement that the general contractor had been notified within thirty days after the materials are furnished or by itemized invoices rendered to contractor during the progress of the work, of the amount, kind and value of the material furnished for use upon the said public improvement.

10313. Optional and mandatory actions—bond to release. The public corporation, the principal contractor, any claimant for labor or material who has filed his claim, or the surety on any bond given for the performance of the contract, may,

at any time after the expiration of thirty days, and not later than sixty days, following the completion and final acceptance of said improvement, bring action in equity in the county where the improvement is located to adjudicate all rights to said fund, or to enforce liability on said bond.

Provided that upon written demand of the contractor served on the person or persons filing said claims requiring him to commence action in court to enforce his claim in the manner as prescribed for original notices, such action shall be commenced within thirty days thereafter, otherwise such retained and unpaid funds due the contractor shall be released; and it is further provided that, after such action is commenced, upon the general contractor filing with the public corporation or person withholding such funds, a surety bond in double the amount of the claim in controversy, conditioned to pay any final judgment rendered for such claims so filed, said public corporation or person shall pay to the contractor the amount of such funds so withheld.

1. Assignment for benefit of creditors—effect. *Wackerbarth & Blamer Co. v Ind. Sch. Dist.*, 157-614; 138 NW 470; *Des Moines B. & I. Wks. v Plane*, 163-18; 143 NW 866.

2. Permissible action by subcontractor on bond. *Thompson v Stephens*, 131-51; 107 NW 1095; *Clinton Bridge Works v Kingsley*, 188-218; 175 NW 976.

3. Liability of assignee of contract. *Hipwell v Nat. S. Co.*, 130-656; 105 NW 318.

4. Effect of bringing action. The bringing of an action under this section is not an admission of any right to or in the fund on the part of contractors or subcontractors. *Ind. Sch. Dist. v Hall*, 159-607; 140 NW 855.

5. Action by city for distribution of fund under contract. Where a school district in making a contract for the erection of a schoolhouse reserved the right to withhold payments from the principal contractor so long as the subcontractors were unpaid, held that as against the assignees of the contractor the district might maintain an action for distribution of the fund due the contractor among the subcontractors in proportion to their claims. *Ind. Sch. Dist. v Mardis*, 106-295; 76 NW 794.

6. Claims allowable. *Ind. Sch. Dist. v Mardis*, 106-295; 76 NW 794.

7. "Completion of work." Where a statutory provision declares that action may not be brought on the bond of a contractor "after six months of the completion" of a public improvement, the improvement will be deemed completed when the contractor has substantially performed on the improvement all that he contracted to perform, has turned it over to the public authorities, and it is immaterial that controversy exists as to extras, or that trifling defects or shortcomings afterwards come to light or that the formal certificate of acceptance was delayed. *Daniels Lbr. Co. v Ottumwa S. & C. Co.*, 204-268; 214 NW 481.

8. Dismissal before trial—effect. The dismissal of an action by plaintiff before trial, even though it is an equitable action which involves the liability of a defendant city relative to various claimants for work and materials on a public improvement, deprives the court of all jurisdiction thereafter to proceed with the trial and adjudicate any right of the dismissing plaintiff, when the pleadings of the defendant are solely defensive. *Eclipse Lbr. Co. v City*, 204-278; 213 NW 804; *Eclipse Lbr. Co. v Kepler*, 204-286; 213 NW 809.

10314. Parties. The official board or officer letting the con-

tract, the principal contractor, all claimants for labor and material who have filed their claim, and the surety on any bond given for the performance of the contract shall be joined as plaintiffs or defendants.

1. Impleading rival claimants.
City of Boone v Cary, 162-695; 144 NW 709.

10315. Adjudication—payment of claims. The court shall adjudicate all claims. Payments from said retained percentage, if still in the hands of the public corporation, shall be made in the following order:

1. Costs of the action.
2. Claims for labor.
3. Claims for materials.
4. Claims of the public corporation.

1. Drainage improvements. A subcontractor seeking to establish a claim to a fund in the hands of the county for the payment of a drainage improvement must show the amount due the principal contractor from the county. *Iowa P. & T. Co. v Parks & Gerber*, 169-438; 151 NW 438.

2. Materials not actually used. A materialman is not protected as to material furnished the contractor to enable him to carry on his work but not actually used in the completion of the improvement. *Empire St. S. Co. v Des Moines*, 152-531; 131 NW 870; 132 NW 837.

10316. Insufficiency of funds. When the retained percentage aforesaid is insufficient to pay all claims for labor or materials, the court shall, in making distribution under section 10315, order the claims in each class paid in the order of filing the same.

10317. Converting property into money. When it appears that the unpaid portion of the contract price for the public improvement, or a part thereof, is represented, in whole or in part, by property other than money, or if a deposit has been made in lieu of a surety, the court shall have jurisdiction thereover, and may cause the same to be sold, under such procedure as it may deem just and proper, and disburse the proceeds as in other cases.

10318. Attorney fees. The court may tax, as costs, a reasonable attorney fee in favor of any claimant for labor or materials who has, in whole or in part, established his claim.

1. Attorney's fee when portion of claim established. Where the claimant by bringing suit has secured the payment of a portion of his claim and then voluntarily dismissed his action before trial, he is not liable for attorney's fees. *Fisher v Ind. Sch. Dist.*, 154-125; 134 NW 545.

2. Non-permissible allowance by court. The allowance by the court of attorney fees to a party not contemplated by the statute is manifestly erroneous. *Teget v Polk Co. Drain. Ditch*, 202-747; 210 NW 954.

10319. Unpaid claimants—judgment on bond. If, after the said retained percentage has been applied to the payment of duly filed and established claims, there remain any such claims unpaid in whole or in part, judgment shall be entered for the amount thereof against the principal and sureties on the bond. In case the said percentage has been paid over as herein provided, judgment shall be entered against the principal and sureties on all such claims.

1. **Liability of surety.** Where a surety company becomes bound by its contract to pay claims of subcontractors and materialmen, no action of the municipal corporation taken after the accruing of such claims will release the surety from liability. *Empire St. S. Co. v Des Moines*, 152-531; 131 NW 870; 132 NW 837.

2. **Liability for materials for which no claim against building.** Sureties on a contractor's bond are not liable for claims against the contractor on account of materials furnished for which the materialmen have no claim against the building. *Hunt v King*, 97-88; 66 NW 71.

3. **Release of surety.** A laborer or materialman who is protected by a bond given by the contractor to the public corporation to secure it against the claims of such persons does not release the surety on such bond by failing to pursue his remedy against the fund due the contractor in the hands of the corporation. *Read v Am. S. Co.*, 117-10; 90 NW 590; *Whitehouse v Am. S. Co.*, 117-328; 90 NW 727; *Hay v Hassett*, 174-601; 156 NW 734; *Haakinson v McPherson*, 182-476; 166 NW 60.

4. **Right of surety to indemnity.** The sureties on the contractor's bond who have become liable for the material furnished are entitled to the amount in which they have become liable, to preference over general creditors. *Des Moines B. & I. Wks. v Plane*, 163-18; 143 NW 866.

5. **Judgment against contractor.** In an action by a materialman to enforce a claim against a corporation to which the contractor is a party, the materialman is entitled to a judgment against the contractor for any indebtedness due. *Green Bay L. Co. v Ind. Sch. Dist.*, 125-227; 101 NW 84.

6. **Issue of liability.** In an action on a bond running to a subcontractor on a public improvement, and conditioned to pay whatever amount may be found due him from the principal contractor, a stipulation for judgment signed by the said contractor and subcontractor is material and competent on the issue of the proper amount due the subcontractor. *Ft. Dodge Culv. & Steel Co. v Miller*, 200-1169; 206 NW 141.

10320. Abandonment of public work—effect. When a contractor abandons the work on a public improvement or is legally excluded therefrom, the improvement shall be deemed completed for the purpose of filing claims as herein provided, from the date of the official cancellation of the contract. The only fund available for the payment of the claims of persons for labor performed or material furnished shall be the amount then due the contractor, if any, and if said amount be insufficient to satisfy said claims, the claimants shall have a right of action on the bond given for the performance of the contract.

1. **Completing abandoned building without authority.** A school district may, though not authorized so to do and though protected by a bond, complete its partially erected building when abandoned by the contractor, and may apply the unpaid payments under the contract

to the cost of such completion, even though this defeats the materialman in his attempt to establish a lien on the fund. *Ludowici Caladon Co. v Ind. Sch. Dist.*, 169-669; 149 NW 845.

2. Completing abandoned building under contract. Under a provision in the contract that on abandonment of the work by the contractor the corporation may take possession of all materials on the ground and apply them to finishing the work, the corporation is not bound to pay the materialman for materials furnished by him to the contractor and which have thus been appropriated. *Green Bay L. Co. v Ind. Sch. Dist.*, 125-227; 101 NW 84.

10321. Retention of funds in case of highway improvement. If payment for such improvement is to be made in whole or in part from the primary road fund, the county auditor shall immediately notify the state highway commission of the filing of all claims.

10322. Filing of claim—effect. The filing of any claim shall not work the withholding of any funds from the contractor except the retained percentage, as provided in this chapter.

10323. Public corporation — action on bond. Nothing in this chapter shall be construed as limiting in any manner the right of the public corporation to pursue any remedy on the bond given for the performance of the contract.

CHAPTER 480

JURORS IN GENERAL

10843. Exemption. The following persons are exempt from liability to act as jurors:

3. Acting professors or teachers of any college, school, or other institution of learning.

1. Exemption personal privilege. The exemption is a personal privilege, which may be waived, and is not a ground for challenge. (See § 11476.) *State v Adams*, 20-486; *State v Edgerton*, 100-63; 69 NW 280.

CHAPTER 486

PARTIES TO ACTIONS

10982. Public bond. When a bond or other instrument given to the state or county or other municipal or school corporation, or to any officer or person, is intended for the security of the public generally, or of particular individuals, action may be brought thereon in the name of any person intended to be thus secured, who has sustained an injury in consequence of a breach thereof, except when otherwise provided.

CHAPTER 489

MANNER OF COMMENCING ACTIONS

11076. School township or district. When the action is against a school township or independent district, service may be made on the president or secretary.

1. President of school corporation. If the notice is directed to a school district and served on the president thereof, it is sufficient to constitute notice to the district. *Haggard v Ind. Sch. Dist.*, 113-486; 85 NW 777.

2. School treasurer. Service upon the treasurer of an independent school district is a sufficient service upon the district. *Kennedy v Ind. Sch. Dist.*, 48-189.

CHAPTER 499

EXEMPTIONS

11771. Public property. Public buildings owned by the state, or any county, city, school district, or other municipal corporation, or any other public property which is necessary and proper for carrying out the general purpose for which such corporation is organized, are exempt from execution. The property of a private citizen can in no case be levied on to pay the debt of any such.

1. Levy of tax to pay judgment. See under § 11675.

2. Public buildings. Public buildings of a municipal corporation are exempt from execution. *Davenport v Peoria M. & F. Ins. Co.*, 17-276.

3. Mechanic's lien. A mechanic's lien cannot be enforced against public buildings. *Lewis v Chickasaw Co.*, 50-234; *Loring v Small*, 50-271; *Charnock v Dist. Tp.*, 51-70; 50 NW 286; *Whiting v Story Co.*, 54-81; 6 NW 137.

4. Sufficient allegation. An averment that property levied on is that of a municipal corporation, and necessary and proper for its use in carrying out its purposes, is a sufficient allegation as to its public character. *Ft. Dodge v Moore*, 37-388.

5. Lien of public bonds. The bonds of a city or school district are not liens upon the property of private individuals within such city or district. *Condit v Johnson*, 158-209; 139 NW 477.

CHAPTER 537

OFFICIAL BONDS, FINES, AND FORFEITURES

12554. Fines and forfeitures. All fines and forfeitures, after deducting therefrom court costs and fees of collection, if any, and not otherwise disposed of, shall go into the treasury of the county where the same are collected for the benefit of the school fund.

CHAPTER 551

SECURITIES AND INVESTMENTS OF TRUST FUNDS

12775-b1. Nonactive funds. The governing council or board who by law are authorized to direct the depositing of funds shall be authorized to direct the treasurer to invest any

fund not an active fund needed for current use and which is being accumulated as a sinking fund for a definite purpose, the interest of which is used for the same purpose, in the certificates provided by section 7420-b3, or in United States government bonds, or in local certificates or warrants issued by any municipality or school district within the county, or in municipal bonds which constitute a general liabiilty, and the treasurer when so directed shall so invest such fund.

CHAPTER 578

EMBEZZLEMENT

13027. Embezzlement by public officers. If any state, county, township, school, or municipal officer, or officer of any state institution, or other public officer within the state charged with the collection, safe-keeping, transfer, or disbursement of public money or property:

1. Fails or refuses to keep the same in any place of custody or deposit that may be provided by law for keeping such money or property until the same is withdrawn therefrom as authorized by law, or

2. Keeps or deposits such money or property in any other place than in such place of custody or deposit, or

3. Unlawfully converts to his own use in any way whatever, or uses by way of investment in any kind of property, or loans without the authority of law, any portion of the public money intrusted to him for collection, safekeeping, transfer, or disbursement, or

4. Converts to his own use any money or property that may come into his hands by virtue of his office—

he shall be guilty of embezzlement to the amount of so much of said money or the value of so much of said property as is thus taken, converted, invested, used, loaned, or unaccounted for.

1. Failure to account. Failure to account for public money used by an officer as his own is necessary to constitute the crime of embezzlement. *Hale v Richards*, 80-164: 45 NW 734.

2. Failure to account. Under an indictment charging embezzlement by a public officer, of money or property coming into his hands by virtue of his office, it is not necessary to allege that he has failed to account therefor upon demand. *State v Hoffman*, 134-587; 112 NW 103.

3. De facto officer. One who has acted de facto as a public officer cannot deny that he is such an officer when indicted for malfeasance. *State v Stone*, 40-547.

13028. Punishment. Such officer shall be imprisoned in the penitentiary not exceeding ten years, and fined in a sum equal to the amount of money embezzled or the value of such property converted, and shall be forever after disqualified from holding any office under the laws of the state.

13029. Funds received by virtue of office. Any such officer who shall receive any money belonging to the state, county, township, school, or municipality, or state institution of which he is an officer shall be deemed to have received the same by virtue of his office, and in case he fails or neglects to account therefor upon demand of the person entitled thereto, he shall be deemed guilty of embezzlement, and shall be punished as above provided.

CHAPTER 582

MALICIOUS MISCHIEF AND WILFUL TRESPASS

13082. Defacing buildings. If any person wilfully write, make marks, or draw characters on the walls or any other part of any church, college, academy, schoolhouse, courthouse, or other public building, or on any furniture, apparatus, or fixtures therein; or wilfully injure or deface the same, or any wall or fence inclosing the same, he shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not more than thirty days.

CHAPTER 592

OBSCENITY AND INDECENCY

13189. Obscene books or pictures—printing or distributing. If any person import, print, publish, sell, or distribute any book, pamphlet, ballad, or any printed or written paper containing obscene language or obscene prints, pictures, or descriptions, manifestly tending to corrupt the morals of youth; or introduce into any family, school or place of education, or buy, procure, receive, or have in his possession any such book, pamphlet, ballad, printed or written paper, picture, or description, either for the purpose of loan, sale, exhibition, or circulation, or with intent to introduce the same into any family, school or place of education, he shall be imprisoned in the penitentiary not more than one year, or be fined not exceeding one thousand dollars.

CHAPTER 599

PUBLIC HEALTH AND SAFETY

13245-f1. Endurance contests. It shall be unlawful for any person or persons, firm or corporation to advertise, operate, maintain, attend, promote or aid in the advertising, operating, maintaining or promoting any mental or physical endurance contest in the nature of a "marathon", "walkathon", "skatathon", or any other such endurance contest of a like or similar

character or nature, whether under that or other names. Nothing in this act [45ExGA, ch 141] shall apply to the continuance of the ordinary amateur or professional athletic events or contests, or high school, college, and intercollegiate athletic sports.

CHAPTER 602

INFRINGEMENT OF CIVIL RIGHTS

13252-f1. Religious tests. Any violation of section four, article one of the constitution of Iowa is hereby declared to be a misdemeanor.

13252-f2. Evidence. If any person, agency, bureau, corporation or association employed or maintained to obtain, or aid in obtaining, positions for others in the public schools, or positions in any other public institutions in the state of Iowa, or any individual or official connected with any public school or public institution shall ask, indicate or transmit orally or in writing the religion or religious affiliations of any person seeking employment in the public schools or any other public institutions, it shall constitute evidence of a violation of section 13252-f1.

See Art. I, sec. 3, Constitution of Iowa, constitutional prohibition against the establishment of religion; 4258, Bible in public schools; 5256, use of public money for sectarian purposes prohibited.

13252-f3. Penalty. Any person, agency, bureau, corporation or association that violates provisions of this act [45 ExGA, ch 140] shall be guilty of a misdemeanor and upon conviction be fined not less than twenty-five dollars nor more than one hundred dollars, or imprisoned not more than thirty days, or by both such fine and imprisonment.

CHAPTER 606

BRIBERY AND CORRUPTION OF PUBLIC OFFICIALS

13301. Accepting reward for public duty. If any state, county, township, city, school, or other municipal officer, not mentioned in this chapter, directly or indirectly accept any valuable consideration, gratuity, service, or benefit whatever, or the promise thereof, other than the compensation allowed him by law, conditioned upon said officer's doing or performing any official act, casting an official vote, making or procuring the appointment of any person to a place of trust or profit, or using his official influence or authority to give or procure for any person public employment, or conditioned upon said officer's refraining from doing or performing any of the foregoing acts or things, he shall be imprisoned in the penitentiary not exceeding two years, or in the county jail not exceeding one year, or fined in any sum not less than twenty nor more than three hundred dollars.

13302. Corruptly influencing officials. If any person, directly or indirectly, give, offer, or promise, or conspire with others to give, offer, or promise to any officer contemplated in this chapter any valuable consideration, gratuity, service, or benefit whatever, with a view or for the purpose of corruptly influencing said officer's official acts or votes, such person shall be imprisoned in the penitentiary not exceeding two years, or in the county jail not exceeding one year, or be fined in any sum not exceeding three hundred nor less than twenty dollars.

CHAPTER 607

MISCONDUCT OR NEGLECT IN OFFICE

13309. Officers failing to pay over fees. If any officer who by law is authorized to receive and required to pay over fees of office, or who is or may be authorized to impose or collect fines, shall fail, neglect, or refuse to pay over, as prescribed by law, all such fees and fines, he shall be guilty of a misdemeanor, besides being liable in a civil action for the amount of fines and fees illegally withheld or appropriated.

13310. Misappropriating fees—removal. Any officer who may be found guilty of the offense of appropriating to his own use fees of office or fines collected for violation of law, or of neglecting to pay over the same as prescribed by law, shall be removed from office by the court before or by whom the offense may be tried and judgment or conviction had; and every person so found guilty shall be fined not exceeding three hundred nor less than ten dollars, or imprisoned in the county jail not exceeding one year, or be both fined and imprisoned, in the discretion of the court.

13311. False entries in relation to fees. If any officer who by law is authorized or required to keep a court docket, or who is required to keep an account of fees or fines, and pay over or in any way account for the same, shall in any manner falsify such docket or account, or shall fail, neglect, or refuse to make an entry upon such docket, or account for such fees and fines as are required to be paid over, he shall be guilty of a misdemeanor.

13313. Failure to take official oath. If any officer or person wilfully fails to take the oath required by law before entering on the discharge of the duties of any office, trust, or station, or makes any contract which contemplates an expenditure in excess of the law under which he was elected or appointed, or fails to report to the proper officer, showing the expenditure of all public moneys with proper vouchers therefor, by the time required by law, he shall be fined not exceeding five thousand dollars, or imprisoned in the penitentiary

not exceeding five years, or both, at the discretion of the court.

13316-e1. Private use of public property. No public officer, deputy or employee of the state or any governmental subdivision, having charge or custody of any automobile, machinery, equipment, or other property, owned by the state or a governmental subdivision of this state, shall use or operate the same, or permit the same to be used or operated for any private purpose.

13316-e2. Labeling public-owned motor vehicles. All publicly owned motor vehicles shall bear at least two labels in a conspicuous place, one on each side of said vehicle designating the bureau, department or commission using it. This label shall be designed to cover not less than one square foot of surface. This section shall not apply to any motor vehicle which shall be specifically assigned by the head of the department or office owning or controlling it to enforcement of police regulations.

13316-e3. Punishment. A violation hereof shall be punishable as a misdemeanor.

CHAPTER 608

GRATUITIES AND TIPS

13324. State employees not to be interested in contracts. It shall be unlawful for any trustee, warden, superintendent, steward, or any other officer of any educational, penal, charitable, or reformatory institution, supported in whole or in part by the state, to be interested directly or indirectly in any contract to furnish or in furnishing provisions, material, or supplies of any kind, to or for the institution of which he is an officer; and it shall be unlawful for any such trustee, warden, superintendent, steward, or other officer of any state institution, to be directly or indirectly interested in any contract with the state to build, repair, or furnish any institution of which he may be an officer.

13325. State employees not to receive gratuities. It shall be unlawful for any such trustee, warden, superintendent, steward, or other officer, directly, or indirectly, to receive in money or any valuable thing any commisison, percentage, discount, or rebate on any provision, material, or supplies furnished for or to any institution of which he is an officer.

13326. Punishment. Any person violating the provisions of sections 13324 and 13325 shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than one thousand

dollars, in the discretion of the court, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

CHAPTER 611

DISTURBING PUBLIC ASSEMBLIES

13349. Disturbing congregations or other assemblies. If any person wilfully disturb any assembly of persons met for religious worship by profane discourse or rude and indecent behavior, or by making a noise, either within the place of worship or so near as to disturb the order and solemnity of the assembly, or if any person wilfully disturb or interrupt any school, school meeting, teachers' institute, lyceum, literary society, or other lawful assembly of persons, he shall be punished by imprisonment in the county jail not more than thirty days, or by fine not exceeding one hundred dollars.

CHAPTER 613

VAGRANCY

13374. Entering unoccupied public building. If any tramp or vagrant, without permission, enter any schoolhouse or other public building in the nighttime, when the same is not occupied by another or others having proper authority to be there, or, having entered the same in the daytime, remain in the same at night when not occupied as aforesaid, or at any time when not occupied as aforesaid, or at any time commit any nuisance, use, misuse, destroy, or partially destroy any private or public property therein, he shall be imprisoned in the penitentiary not more than three years, or be fined not exceeding one hundred dollars and imprisoned in the county jail not more than one year.

APPENDIX

FORMS

FORM 1

(Section 4298)

State of Iowa ..... County, ss

..... Plaintiff

v

School District (or Township) of ....., Defendant

} AFFIDAVIT OF APPEAL TO COUNTY SUPERINTENDENT

To ....., County Superintendent:

I, ..., first being duly sworn on oath depose and say: That I am a resident of .....school district in ..... township, ...County, state of Iowa; that on the ..... day of ....., 19....., the board of directors of said school district (or school township) rendered the following decision (or made the following order) (here set out the words of the decision or order as it appears on the secretary's record) whereby (here state facts showing the affiant's interest in the decision or order and the injury to that interest); that said board in rendering the decision (or making the order) aforesaid, committed errors as follows: (here state the errors charged); and I hereby appeal to the county superintendent from such decision (or order).

....., Plaintiff

.....P. O. Address

State of Iowa }
..... County } ss

Subscribed in my presence and sworn to before me, a notary public in and for .....County, Iowa, by the said....., to me personally known, on this.....day of....., 19.....

(Seal here)

My commission expires.....

.....

Notary Public in and for said county

FORM 2

(Section 4299)

State of Iowa, ... County, ss
....., Plaintiff

v

School District (or Township) of....., Defendant

NOTICE TO SECRETARY

To....., Secretary Board of Directors School District (or Township) of.....:

You are hereby notified that.....has filed in my office an affidavit of appeal alleging that the board of directors of the defendant district on the.....day of....., 19..... made a decision (or an order) whereby (here describe the decision or order so that the secretary may identify it), and claiming an appeal therefrom. You are therefore required within ten days after receiving this notice to file in my office a complete and certified transcript of the record and proceedings of said board in relation to said decision (or order) together with copies of all papers filed with you pertaining to said action appealed from.

.....
County Superintendent

....., 19.....

FORM 3

CERTIFICATE TO THE SECRETARY'S TRANSCRIPT
(Section 4299)

I, ..., secretary of the board of directors of the school district (or township) of.....in the county of ....., state of Iowa, hereby certify that the foregoing is a correct and complete transcript of the record of all proceedings of the board and of all papers filed relating to the case of....., Plaintiff, v ....., Defendant.

....., Secretary
.....P. O. Address
....., 19.....

FORM 4

(Section 4299)

State of Iowa, ... County, ss
....., Plaintiff

v

School District (or Township) of....., Defendant

NOTICE OF HEARING

To (here enter names of adverse parties):

You are hereby notified that there is on file in this office a certified transcript of the proceedings of the board of directors of the above school district (or township) at a meeting held on the.....day of ....., 19....., in relation to (here describe the decision or order appealed from) from which appeal has been taken; and that the said appeal will be heard before me at.....on the..... day of....., 19..... at.....o'clock .....M.

.....
County Superintendent

....., 19.....

FORM 5

(Section 4302)

State of Iowa, ... County, ss
....., Plaintiff

v

School District (or Township) of....., Defendant

AFFIDAVIT OF APPEAL TO SUPERINTENDENT OF PUBLIC INSTRUCTION

To....., Superintendent of Public Instruction:

I, ..., being duly sworn, on oath say: That on the.....day of....., 19....., ..., county superintendent of schools, ... county, state of Iowa, rendered a decision (here state the nature of the decision—that is, whether it sustained or reversed the board, dismissed, remanded, or modified the decision) whereby (here state facts showing affiant's interest in the decision and the injury to that interest); that said county superintendent in rendering the decision aforesaid committed errors as follows: (here state the errors charged); and I hereby appeal from such decision to the superintendent of public instruction.

....., Appellant

....., 19.....

.....P. O. Address

State of Iowa } ss
..... County }

Subscribed in my presence and sworn to before me, a notary public in and for.....County, Iowa, by the said....., to me personally known, on this.....day of....., 19.....

(Seal here)

My commission expires.....

.....

Notary Public in and for said county

FORM 5-a

(Section 4302)

State of Iowa, ... County, ss
....., Plaintiff

v

School District (or Township) of....., Defendant

NOTICE OF APPEAL TO ADVERSE PARTIES

To.....

(Insert name of adverse parties)

You are hereby notified that the undersigned has taken an appeal to the superintendent of public instruction from the decision of the county superintendent entered on the.....day of....., 19....., in the above entitled case. Said appeal will come on for hearing at a time to be fixed by the said superintendent of public instruction.

....., Appellant

.....P. O. Address

Dated at....., Iowa, this.....day of....., 19.....

FORM 5-b

(Section 4301)

State of Iowa, ... County, ss

....., Plaintiff

v

School District (or Township) of....., Defendant

TRANSCRIPT OF COSTS TO BE ENTERED FOR JUDGMENT

This is to certify that the costs in the case of..... v.....are..... and are hereby taxed to..... You will therefore enter said amount against said party for collection and judgment as provided by law.

.....
County Superintendent

Dated at....., Iowa, this.....day of....., 19.....

FORM 6

PROPOSALS FOR ERECTION (OR REPAIR) OF SCHOOLHOUSE

(Section 4370)

Notice is hereby given that the proposals for the erection (or repair) of a schoolhouse in the....., in the county of ....., will be received by the undersigned at his office in.....(where plans and specifications may be seen), until.....o'clock .....m., ..., 19....., at which time the contract will be awarded to the lowest responsible bidder. The board reserves the right to reject any or all bids.

....., Secretary

.....P. O. Address

FORM 7

APPLICATION FOR APPOINTMENT OF REFEREES

(Section 4364)

To....., Superintendent of.....County:

In accordance with the action of the board of directors of the....., you are hereby requested to appoint a disinterested freeholder to act as a member of a board of three appraisers to inspect, and assess the damages which the owner will sustain by appropriating for school purposes, the following described real estate:.....

.....

.....

.....

.....,

.....
President

.....
P. O. Address

....., 19.....

.....
Secretary

.....
P. O. Address

FORM 8

APPOINTMENT OF REFEREES
(Section 4365)

To....., freeholder:

You are hereby appointed and constituted a member of a board of referees, under the provisions of section 4366, to assess the damages which the owner will sustain by the appropriation for school purposes, of the following described real estate: .....

.....

.....

.....

in....., in the county of.....
state of Iowa, containing one acre of land, exclusive of highway.

Said board of referees will meet at the above described real estate on the .....day of....., 19..... at.....o'clock .....M, and assess said damages as provided by law.

.....
County Superintendent

....., 19.....

FORM 9

OATH OF REFEREES
(Section 4365)

We, ..., ... and ....., do solemnly swear that we will well and truly, and to the best of our ability perform all the duties imposed upon us by the foregoing commission.

.....

.....

.....

State of Iowa }
..... County } ss

Subscribed in my presence and sworn to before me, a notary public in and for.....County, Iowa, by the said....., and....., each to me personally known, on this.....day of....., 19.....

(Seal here)

My commission expires.....

.....
Notary Public in and for said county

FORM 10

NOTICE TO OWNER OF REAL ESTATE
(Section 4366)

To....., ...County:

You are hereby notified that a board of referees has been appointed to assess the damages which you the owner will sustain by the appropriation for school purposes of the following described real estate:

.....

.....

.....

.....

Said referees will meet at the above described real estate on the..... day of....., 19....., at.....o'clock.....M., and assess said damages as provided by law.

.....
County Superintendent

....., 19.....

FORM 11

REPORT OF REFEREES
(Section 4367)

To....., Superintendent of.....County:

We, the undersigned, appointed to assess the damages which the owner will sustain by the appropriation for school purposes, of the following described real estate:.....

.....

.....

do hereby report that we have on this.....day of....., 19.....
carefully examined said described real estate and have assessed the damages as.....Dollars.

.....

.....

.....

State of Iowa }
..... County } ss

Subscribed in my presence and sworn to before me, a notary public in and for.....County, Iowa, by the said....., ..., and....., each to me personally known, on this.....day of....., 19.....

(Seal here)

My commission expires.....

.....
Notary Public in and for said county

FORM 12

NOTICE OF ASSESSMENT OF DAMAGES
(Section 4368)

To....., ...
.....County:

You are hereby notified that referees were appointed to assess the damages which the owner would sustain by the appropriation for school purposes of the following described real estate: .....

.....

.....

.....

and that said referees met at said premises on the.....day of....., 19....., and assessed said damages at.....Dollars, as shown by their report on file in my office.

.....
County Superintendent

....., 19.....

FORM 13

Petition for County Uniformity of Textbooks
(Section 4456)

To....., County Superintendent:

We, the undersigned, holding the office of school director, ask for the adoption of a uniform series of textbooks in the schools of this county, and that you take steps to submit the question to the electors of the county, at the regular school election in March, as provided by law.

Names	District Name	Township

....., 19.....

FORM 14

Proposition and Ballot for County Uniformity of Textbooks
(Section 4456)

BALLOT

(Notice to voters. For an affirmative vote upon the question submitted on this ballot make a cross (X) mark in the square after the word "Yes". For a negative vote make a similar mark in the square following the word "No".)

Shall there be a uniform series of school textbooks in ..... county? Yes ☐ No ☐

FORM 15

Permit to Drive a School Bus
(Section 4863)

The Board of Directors in and for the Consolidated School District of.....hereby grant permission to .....to drive a school bus within the said school district for the school year ending June 30, 19....., as provided in section 4863, School Laws, 1929.

.....
President of Board

.....
P. O. Address

.....
Secretary of Board

.....
P. O. Address

Dated at.....this.....day of....., 19.....

FORM 16

Bus Driver's Contract
(Section 4182)

The School Board of any consolidated independent school corporation shall contract for transportation of children of school age. Sec. 4179-4183.

THIS AGREEMENT, made and entered into by and between....., President of the Board of Directors of the Consolidated Independent School District of..... in.....Township, ... County, Iowa, and.....of..... Township, ...County, Iowa. Said..... .....covenants and agrees to transport the children of Route No.....to and from school in the said Consolidated School District each day that school is in session during the school year beginning..... Said..... further agrees to comply with the following conditions:

1. Unless the school district provides a school bus, he will furnish a safe, strong vehicle with comfortable seats, a door in front and back, both under control of the driver, and well lighted on both sides and both ends, and so arranged that the driver will be seated with the pupils, and a placard "SCHOOL BUS" on front and rear as provided by law.

2. If the bus is not heated he will furnish comfortable blankets and robes, sufficient for the best protection of the pupils while on the road.

3. He will collect the pupils by driving over the route each morning, as directed by the board, in time to convey the pupils to school so as to arrive at the school building not earlier than.....o'clock a. m., nor later than.....o'clock a. m., waiting not longer than.....minutes and blowing a whistle at each house.

4. He will return the pupils to their homes, leaving the schoolhouse at.....p. m., or later as the board may determine.

5. He will personally drive and manage the vehicle, or provide a suitable driver satisfactory to the board who will comply with all the conditions of this contract.

6. He will refrain from the use of profane language in the presence of the pupils.

7. He will not use tobacco nor alcoholic liquor in any form during the time he is conveying the pupils to and from school.

8. He will avoid fast driving and racing with other vehicles, and stop before crossing railroads or arterial highways and be sure that no train or motor vehicle is coming, and that it is safe and clear before attempting to cross.

9. He will keep order among the pupils and report any improper conduct to the Superintendent, work under the direction of the Superintendent, and make regular reports to him.

10. He will not allow the school vehicle to be used for any other purpose, and shall report any damage to the Superintendent.

11. Should a driver frequently arrive at the school late in the morning or be late to start to return the pupils to their homes unless for unavoidable reasons, he shall forfeit the sum of $.....for each failure.

12. .....

.....

In consideration of the said services, the said..... President of the board in behalf of the Consolidated Independent School District of.....hereby agrees to pay the said .....the sum of.....Dollars per month, at the end of each school month, excepting it is herein agreed that the board may retain.....of the first month's wages until the close of the term of service of..... to insure the faithful performance of the terms of this contract. The

board of directors reserves the right to terminate this contract at any time for sufficient cause.

The board reserves the right to change the route when they consider it necessary for the best interests of the patrons. In case of change $.....per month will be added for each additional mile added to the route. When the route is shortened $.....per month will be deducted for each mile taken from the route.

IN TESTIMONY WHEREOF, we have hereunto subscribed our names this.....day of....., 19.....

.....	.....
President	Driver
.....	.....
P. O. Address	P. O. Address

FORM 17

Petition for Kindergarten
(Section 4266)

To the Board of Directors of the Independent School District of....., Township of....., County of....., State of Iowa.

Gentlemen:

We, the undersigned parents and guardians of the number of children of kindergarten age set opposite our names, hereby certify that we, and each of us, are residents of the section or neighborhood served by the.....building. We herewith respectfully petition your honorable body to establish and maintain a kindergarten in said building as provided for in Section 4266, Code 1935.

Names of Parents and Guardians	*No. of Children Kindergarten Age*	*Place of Residence*
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

I, a qualified elector of the above named school district, hereby certify that the signers hereof are residents as claimed and that the signatures hereto are genuine.

.....

State of Iowa }
..... County } ss

Subscribed in my presence and sworn to before me, a notary public in and for.....County, Iowa, by the said..... to me personally known, on this.....day of....., 19.....

(Seal here)

My commission expires.....

.....

Notary Public in and for said county

FORM 18

Nomination of Director or Treasurer
(Section 4216-c4)

To the Secretary of the Board of the School District of....., Township of....., County of....., State of Iowa:

We, the undersigned, qualified electors of the school district of....., Township of....., County of....., State of Iowa, hereby nominate....., a qualified voter of said school district, as a candidate for the office of.....for the term ending....., 19..... to be voted for at the regular school election to be held on the second Monday in March, 19.....

Name	*Residence*	*Date*

I, ..., a qualified elector of the above named school district, hereby certify that the signers hereof are qualified electors of said district and that the signatures hereto are genuine.

.....

State of Iowa }
..... County } ss

Subscribed in my presence and sworn to before me, a notary public in and for.....County, Iowa, by the said..... to me personally known, on this.....day of....., 19.....

(Seal here)

My commission expires.....

.....

Notary Public in and for said county

DECISIONS OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION

S. L. Curry v. District Township of Franklin

Appeal from Decatur County

County Superintendent. Has no jurisdiction of an appeal until an affidavit is filed in his office. The appeal must be taken by affidavit.
Affidavit. An affidavit is a statement in writing of the errors complained of, signed and made upon oath before an authorized magistrate.
Jurisdiction. An application for an appeal filed within thirty days from the act complained of will not give the county superintendent jurisdiction of the case.
Notice. The county superintendent should not issue notice of final hearing until the transcript of the district secretary has been filed.
Testimony. Unless obviously immaterial, testimony offered should be admitted and given such weight as it merits.
Discretionary Acts. Should not be disturbed except upon evidence of unjust exercise of discretion.

December 16, 1867, at a special meeting of the board, a vote to change the boundaries of subdistricts so as to form a new subdistrict in accordance with the prayer of petitioners, resulted in a tie. From this virtual refusal to act, S. L. Curry appealed to the county superintendent, who on the thirty-first of the same month formed a new subdistrict. Appellant alleges in his affidavit that the county superintendent assumed jurisdiction of this case without warrant of law, that there never was "at any time an affidavit or any other statement in said appeal case filed in the office" of the superintendent, hence the want of jurisdiction.

The "act to provide for appeals," section two, provides that "The basis of proceeding shall be an affidavit, filed by the party aggrieved, with the county superintendent within the time allowed for taking the appeal." An affidavit is a statement in writing, signed and made upon oath before an authorized magistrate. A county superintendent can have no proper jurisdiction of an appeal case until such affidavit has been filed. A notice of intention to file an affidavit, a verbal complaint, or a petition, is not sufficient to give the county superintendent jurisdiction in appeal cases. The affidavit setting forth "the errors complained of in a plain and concise manner," must be in his hands before he is justified in commencing proceedings. The decision of the superintendent recites that the affidavit was filed December 21st, which might be taken as conclusive, if it was not contradicted by the record. The transcript shows that said affidavit was not subscribed and sworn to until December 28th, hence we do not clearly see how it could have been filed on the 21st.

December 24th, four days before the affidavit was made, and which appellant alleges was never filed with the superintendent, said superintendent gave notice to the parties that the hearing would take place on

the 30th. This proceeding, as an appeal case, was entirely unauthorized by law, and as he commenced proceedings in disregard of the plain provisions of the law and without legal jurisdiction, his decision is annulled. It may be said, and not without authority, that as both parties responded to the notice, and came before the superintendent, he thereby acquired jurisdiction, but we feel unwilling to sanction disregard of the law by approving such great irregularities.

Without touching the real merits of the questions at issue, the formation of a new subdistrict, which we are willing to leave to the local authorities, we refer briefly to three points of law raised by appellants.

The county superintendent should not issue notice of final hearing until both the affidavit and the transcript of the secretary have been filed in his office.

Though the change of subdistrict boundaries by the board is a discretionary act, it may be reviewed by the county superintendent, on appeal, but the decision of the board should not be disturbed unless said discretionary power has been abused or exercised unjustly.

The county superintendent should have received the remonstrances offered on trial in evidence, and exercised his judgment as to their weight and value.

REVERSED

D. FRANKLIN WELLS
Superintendent of Public Instruction

March 26, 1868

ELIAS SIPPLE v. DISTRICT TOWNSHIP OF LESTER

Appeal from Black Hawk County

TESTIMONY. At the hearing of an appeal, it is competent for the county superintendent, upon his own motion, to call additional witnesses to give testimony.

RECORDS. In the absence of the allegation of fraud, testimony to contradict or impeach the records of the district cannot be received.

RECORDS. The board may at any time amend the record of the district, when necessary to correct mistakes or supply omissions. And it may upon proper showing be compelled by mandamus to make such corrections.

AFFIDAVIT. The affidavit answers its leading purpose if it sets forth the errors complained of with such clearness that the proper transcript may be secured.

At the regular meeting of the board held September 16, 1867, attended by four of the seven members, motions were made and seconded for the creation of two new subdistricts whose boundaries were described in the motions. In regard to the action on these motions the record of the secretary contains merely the word "carried." At a special meeting, held February 15, 1868, the action of the board in September in relation to the formation of new subdistricts was "reconsidered" and "rescinded." From the February action Elias Sipple appealed to the county superintendent. During the progress of the hearing, which took place March 20, 1868, the county superintendent called upon one of the four members that attended the September meeting, who testified that he did not vote for the motion to create a new subdistrict. As it thus appeared

that the new subdistricts were not established by a vote of a majority of all the members of the board, as required by law, and as said September action was rescinded at a full meeting of the board in February, the county superintendent, considering the formation of the subdistricts illegal and void, dismissed the appeal. From this decision Barney Wheeler appeals.

Appellant alleges substantially that the county superintendent erred as follows: In himself calling a witness to give testimony; in receiving testimony to impeach the district record, which is claimed to be valid and binding after thirty days; in dismissing the appeal; in not establishing the subdistricts.

The law requires the county superintendent to give a "just and equitable" decision, and as the calling of additional witnesses may sometimes enable him to discharge this duty more faithfully, his action in this respect is sustained.

The second error assigned really includes two distinct points, which will be considered separately; and first, in regard to the impeachment of the district record. The law provides for an annual meeting of the electors of the district township, and for semi-annual and special meetings of the board of directors; also that "the secretary shall record all the proceedings of the board and district meetings in separate books kept for that purpose." It is a general principle of law that "oral evidence cannot be substituted for any instrument which the law requires to be in writing, such as records, public documents," etc. 1 Greenleaf's Evidence, § 86. "It is a well-settled rule that, where the law requires the evidence of a transaction to be in writing, oral evidence cannot be substituted for that, so long as the writing exists and can be produced; and this rule applies as well to the transactions of public bodies and officers as to those of individuals." *The People v. Zeyst*, 23 N. Y., 142. In the case of *Taylor v. Henry*, 2 Pick., 397, the supreme court of Massachusetts held that an omission in the records of a town meeting could not be supplied by parol evidence. Chief Justice Shaw in discussing the case, said that it would be dangerous to admit such proof. Mr. Starkie, in his valuable treatise on evidence, says: "Where written instruments are appointed either by the immediate authority of the law or by the compact of the parties, to be the permanent repositories and testimony of truth, it is a matter both of principle and policy to exclude any inferior evidence from being used either as a substitute for such instruments or to contradict or alter them; of principle, because such instruments are, in their own nature and origin, entitled to a much higher degree of credit than that which appertains to parol evidence; of policy, because it would be attended with great mischief and inconvenience, if those instruments upon which men's rights depend were liable to be impeached and controverted by loose collateral evidence." Starkie, part IV, page 995, volume III, 3d Am. Ed.

The reason of the rule upon which the courts agree with such entire unanimity applies with force in the case now under consideration. The records of the district and board meetings contain a statement of the regulations adopted, and the acts done in the exercise of the powers with which the respective bodies are invested by the law. They present

to all the citizens of the district township, in a permanent form, certain and definite information which could be obtained, with equal certainty, in no other way. Memory is defective, but the secretary records the transactions as they occur. The actors change from year to year, but the record is permanent. And though the admission of oral testimony to alter a record or supply an omission therein might sometimes promote the attainment of justice, the prevalence of such a practice would result in more evil than good. It is held, therefore, that in the absence of alleged fraud the county superintendent errs, in admitting parol evidence to contradict or impeach the record of the September meeting of the board.

In regard to the other part of the second point a few words will suffice. The counsel for appellant urges that though the record of the September meeting was imperfect, the lapse of thirty days made the record valid and binding upon the district. It is true that the right to take an appeal to the county superintendent expires after thirty days, but I am unable to see how the lapse of time will validate what was before invalid. The secretary is the proper custodian of the records of the school district, and before the record of the proceedings of the board has been approved or adopted by the board, the secretary may amend them by supplying omissions, or otherwise correcting them. After they have been approved they may be amended and corrected by direction of the board, even after the lapse of thirty days. In Massachusetts a town clerk is permitted to amend the record in order to supply defects, even after a suit involving a question respecting them has been commenced. I am of the opinion that if the secretary or board of directors decline to make necessary corrections to the record, that a party interested may proceed by mandamus to compel the correction. If the record is to be impeached, it must be, in the absence of fraud, by a direct proceeding instituted for that purpose and not by a collateral or indirect method. *The People v. Zeyst*, 23 N. Y., 147-8.

The district record in this case is not as full as it might with propriety be. The law provides that the boundaries of subdistricts shall not be changed except by the vote of a majority of the members of the board. The record fails to show that this requirement of the law was complied with at the September meeting. The secretary says that the motion to redistrict "carried." This is his opinion, but he fails to give the fact upon which it is based. Four of the seven members were present, but he does not say who, or how many voted for the change. Properly this should have been stated. When, however, the district record indicates that a motion was "carried," the law will presume that it was carried in accordance with the requirements of the statute; though there is reason to believe that the presumption in this instance is a violent one. It follows that there was no legal evidence that the subdistricts were not established in accordance with law; hence, the conclusion is inevitable that the county superintendent erred in dismissing the appeal for the cause assigned.

At the commencement of the trial and again during its progress, the defendant moved the county superintendent to dismiss the case on account of the insufficiency of the affidavit. The affidavit of Mr. Sipple

is not as full as it is usual to make affidavits in such cases, yet it "set forth the errors complained of" with such plainness and conciseness as enabled the county superintendent to obtain the necessary transcripts, and this is all the law really requires. It has not been customary heretofore to force any particular form of affidavit, and the superintendent's ruling refusing to dismiss on defendant's motion is sustained.

As the testimony appears not to have been all in when the case was dismissed by the county superintendent, no opinion can be given in regard to the propriety or necessity of establishing the proposed new subdistricts. The case is therefore returned to the county superintendent, who will proceed with the hearing, first allowing a reasonable time for the correction of the district record or for the enforcement of its correction should such correction be deemed necessary by either of the interested parties. Should the district record be amended so as to show conclusively that the said subdistricts were not legally formed at the said meeting in September, it will follow that the said subdistricts never had a legal existence, and that the plaintiff could not be aggrieved by the action of the February meeting, hence the county superintendent will determine the case in favor of the appellee. Should said record not be amended, or should it be amended so as to show clearly that said subdistricts were established in all respects in conformity with law, the question of establishing the new subdistricts, or more properly retaining their organization, will be determined upon its merits. REVERSED

D. FRANKLIN WELLS
Superintendent of Public Instruction

July 23, 1868

N. R. HOOK v. INDEPENDENT DISTRICT OF FREMONT

Appeal from Mahaska County

SCHOOL PRIVILEGES. Are not acquired by temporary removal into a district for the purpose of attending school.

At a meeting of the board an order was made excluding one George Check from school. From this order Dr. N. R. Hook, with whom the boy was at the time living, appealed to the county superintendent, who affirmed the order of the board, and Hook again appealed.

The ground upon which the boy was debarred from school was that he was not a *bona fide* resident of the district, and this is fully sustained by the circumstances of the case as shown by the weight of the evidence as adduced before the county superintendent. The apparent primary purpose of George Check in going to live with Dr. Hook was that he might attend the school at Fremont, and after the term of school should expire his further continuance at Hook's would be uncertain. He did not go there with the intention of remaining, but the intention to return to his father's house seems to have been manifested in the contract or agreement made with Hook.

Counsel for appellant argues that the law should not be technically construed, but that it should receive a liberal construction, and in this he is correct. It should receive such a construction as that all the youth of the state, without regard to race or condition in life, can with equal facility participate in the benefits of our free schools. There is evidence

that the schools in Fremont are so crowded that many of the youth of the district are unable to gain admission, and the law gives to them the prior claim. The board should see that the children of the district are first accommodated, and then, if not detrimental to the interests of the school, it may admit, in its discretion, those from outside districts upon such terms as it may agree.

Believing that the county superintendent properly sustained the board of directors, his decision is hereby affirmed. AFFIRMED

A. S. KISSELL

May 1, 1870 *Superintendent of Public Instruction*

W. P. DAVIS v. DISTRICT TOWNSHIP OF MADISON

Appeal from Fremont County

CONTRACTS. Made by a committee, require the approval of the board in session.

SCHOOL FUNDS. The treasurer is the proper custodian of all funds, and may legally pay them out only upon orders specifying the fund upon which they are drawn and the specific use to which they are applied.

SUBDIRECTOR. The subdirector may expend money in his subdistrict only in the manner authorized by the board.

CLAIMS. Just claims against the district can be enforced only in the courts.

MANDAMUS. Is a remedy if the board refuses to carry out a vote of the electors.

SUBDISTRICT. A subdistrict is not a corporate body, and has no control of any public fund.

The electors on the eleventh day of March, 1871, voted a tax of two and one-half mills on the taxable property of the district township for schoolhouse purposes, and directed that three hundred dollars of the amount thus raised should be used for the erection of a schoolhouse in subdistrict number nine.

March 20, 1871, W. P. Davis, subdirector of subdistrict number nine, was appointed a committee to build a schoolhouse in said subdistrict. The house having been completed, at a special meeting of the board held June 1, 1872, it was moved that the report of the committee and the schoolhouse be accepted; also, that the secretary be instructed to draw an order on the treasurer for three hundred dollars for subdistrict number nine. Both motions were lost, from which action the said W. P. Davis appealed to the county superintendent, who on the ninth day of August, 1872, reversed the action of the board. The district township, through its president, W. H. Gandy, appeals.

The history of this case very fully illustrates the loose and irregular manner in which school officers too frequently transact official business. Section 15 of the School Laws provides that the board "shall make all contracts, purchases, payments, and sales necessary to carry out any vote of the district, but before erecting any schoolhouse they shall consult with the county superintendent as to the most approved plan of such building."

If the contract is made by a subdirector or committee of the board,

it should in all cases be approved by the board before work is commenced.

A misapprehension often exists as to the manner in which school funds should be disbursed. The treasurer is the proper custodian of all funds belonging to the district township and the law provides that he "shall pay no order which does not specify the fund on which it is drawn, and the specific use to which it is applied," that is, for work done, material furnished, or the like.

The board is also required to "audit and allow all just claims against the district, and no order shall be drawn on the district treasury until the claim for which it is drawn has been so audited and allowed." This rules applies equally where funds are voted by the district township for the purpose of building schoolhouses in particular subdistricts, also where taxes have been raised on the property of subdistricts, in accordance with the proviso of section 28. Such funds, or so much of them as may be required to carry out the vote of the electors, should be devoted to the specific object for which they were voted, but the disbursement should in all cases, be under the direction and authority of the board. Boards have no authority to give subdirectors money to use in their subdistricts for building schoolhouses or any other purpose, nor subdirectors to use money so received. A subdistrict is not a corporate body and has no control of any public fund.

If Mr. Davis has a just claim against the district township of Madison which the board refuses to allow, or if the board refuses to apply the amount voted by the electors to the specific object for which it was designed, the erection of a schoolhouse in subdistrict number nine, the civil courts, only, can furnish a means of redress. REVERSED

ALONZO ABERNETHY
Superintendent of Public Instruction

October 30, 1872

J. W. RANDALL v. DISTRICT TOWNSHIP OF VIENNA

Appeal from Marshall County

SCHOOLHOUSE. The board may legally remove a schoolhouse from one subdistrict to another only by vote of the electors.

SCHOOLHOUSE. When the electors have voted to remove a schoolhouse from one subdistrict to another the board must execute such vote, and from its action in so doing no appeal can be taken.

INJUNCTION. The execution of a fraudulent vote of the electors may be prevented by a writ from a court of law.

At the district township meeting held the second Monday in March, 1873, it was voted to remove the schoolhouse situated in subdistrict number four into subdistrict number three. On the seventeenth day of March, the board ordered the removal of the schoolhouse, in accordance with said vote of the electors. From this action, appeal was taken to the county superintendent, who reversed the action of the board. The district township, through its president, appeals.

Section seven, School Laws of 1872, provided that the electors shall have the power "to direct the sale, or other disposition to be made of any schoolhouse"; also "to vote such tax, not exceeding ten mills on the

dollar in any one year, on the taxable property of the district township, as the meeting shall deem sufficient for the purchase of grounds and the construction of necessary schoolhouses for the use of the respective subdistricts." Section fifteen provides that the board "shall make all contracts, purchases, payments and sales necessary to carry out any vote of the district." Section sixteen provides that the board "shall fix the site for each schoolhouse."

From the law as above quoted, we understand that the electors may vote a tax for the erection of a schoolhouse in any particular subdistrict, or may direct the removal of one already built, from a subdistrict, and that the board determines the site within a subdistrict, but has no authority to remove a school house from a subdistrict without affirmative action of the electors, such action, however, being taken, the board must execute their vote, if in accordance with the law. From the action of the board in thus executing the vote of the electors no appeal can be taken. If the vote of the electors is contrary to law, its execution may be prevented by injunction; if unwise, the electors, themselves, must bear the consequences.

REVERSED

ALONZO ABERNETHY
Superintendent of Public Instruction

July 11, 1873

D. K. TAYLOR v. INDEPENDENT DISTRICT OF ELDON

Appeal from Wapello County

APPEAL. Appeal may not be taken from an action or order complying with the terms of a contract previously made, nor from an action authorizing the issuance of an order in payment of a debt contracted by previous action of the board.

APPEAL. A case whose main purpose is to determine the validity of an order on the district treasury, or the equity of a claim, cannot be entertained on appeal to the county superintendent.

SCHOOL FUNDS. The courts of law alone can furnish an adequate remedy, if the law has been violated and the money of the district has been misappropriated.

From the transcript, it appears that on the third day of December, 1873, the board passed an order authorizing the payment of five per cent commission for negotiating the district bonds, and on the same day another authorizing D. P. Stubbs to negotiate said bonds. On the third day of February, 1874, the board passed an order instructing the president and secretary to draw an order for ninety dollars on the district treasury in favor of said D. P. Stubbs, for services rendered in negotiating said bonds, in accordance with the previous action of the board on December 3, 1873. From the action of the board in issuing said order of ninety dollars, this appeal was taken. The county superintendent dismissed the case, on the grounds that it was an action authorizing the payment of money, and a decision thereon would be equivalent to rendering a judgment for money, which is prohibited by the provisions of section 1836. D. K. Taylor again appeals.

Appeal may be taken from any action of the board which authorizes the making of a contract, but not from a subsequent action or order

complying with the terms of a contract previously made, nor from an action authorizing the issuance of an order in payment of a debt contracted by a previous action.

The order appealed from in this case is not a new action of the board, but a necessary result of the order of December 3, 1873. If the first action was legal and proper, the last is both proper and necessary, the services having been performed. Any interested party might have appealed at the proper time, from the action of December 3, 1873, authorizing the payment of five per cent commission for negotiating bonds or authorizing the appointment of an agent therefor. But the time for an appeal, thirty days, having expired, appeal cannot now be taken from the subsequent action, which is simply carrying out its previous action, and the terms of the contract made thereunder.

To determine the validity of an order on the district treasury, or the equity of a claim, is equivalent to the rendition of a judgment for money, and a case whose sole purpose is to determine this question cannot be entertained on appeal. The courts of law alone can furnish an adequate remedy, if the law has been violated, or the interests of the district have suffered by the making of contracts or the issuing of orders for money on the treasury.

AFFIRMED

ALONZO ABERNETHY
Superintendent of Public Instruction

May 5, 1874

E. WATSON v. DISTRICT TOWNSHIP OF EXIRA

Appeal from Audubon County

PUNISHMENT. The punishment of a pupil with undue severity, or with an improper instrument, is unwarrantable, and may serve in some degree to indicate the animus of the teacher.

PUNISHMENT. In applying correction, the teacher must exercise sound discretion and judgment and should choose a kind of punishment adapted not only to the offense, but to the offender.

Charges were preferred against E. E. Watson for harsh and unreasonable punishment of a pupil, and upon investigation the teacher was discharged. From this action of the board he appealed to the county superintendent, who reversed its action, and the district appeals.

From the evidence, it appears that the pupil upon whom the punishment was inflicted was a boy thirteen years of age, and that the offense was such that punishment was deserved. The instrument selected was a hickory stick, three-fourths of an inch in diameter at one end, and one-half inch at the other, and fifteen or eighteen inches long. The punishment was inflicted by striking upon the palm of the hand from eight to twelve strokes. It appears that the boy's hand was thereby disabled for some days.

It is alleged by the teacher that the punishment was inflicted for the good of the school, and that it was without malice on his part. We consider the selection of such an instrument for the punishment of a pupil injudicious, unwarrantable, and dangerous, and that the conse-

quences might be fraught with the gravest results, and that such selection may serve in some degree, to indicate the animus of the teacher.

REVERSED

ALONZO ABERNETHY
Superintendent of Public Instruction

June 6, 1874

SANFORD HARWOOD v. INDEPENDENT DISTRICT OF CHARLES CITY

Appeal from Floyd County

PUNISHMENT. The right of the parent to restrain and coerce obedience in children applies equally to the teacher or to anyone who acts in *loco parentis.*

RULES AND REGULATIONS. Boards of directors and their agents, the teachers, may establish reasonable rules for the government of their schools.

RULES AND REGULATIONS. The teacher has the right to require a pupil to answer questions which tend to elicit facts concerning his conduct in school.

RULES AND REGULATIONS. The pupil is answerable for acts which tend to produce merriment in the school or to degrade the teacher.

RULES AND REGULATIONS. Open violation of the rules cannot be shielded from investigation under the plea that it invades the rights of conscience.

BOARD OF DIRECTORS. The board shall be sustained in all legitimate and reasonable measures to maintain order and discipline, to uphold the rightful authority of the teacher, and to prevent or suppress insubordination in the school.

This case involves the right of a teacher to require a pupil to answer questions concerning his conduct in school, or to testify against himself.

Burritt Harwood, a member of the high school department, having broken certain rules of the school, was suspended by the superintendent for refusing to answer a question relating thereto. The pupil's father petitioned the board to restore the pupil. The board, having investigated the facts, adopted the following: "Resolved, That the school board sustain Prof. Shepard in his suspension of Burritt Harwood; provided, Burritt Harwood be reinstated if he answer the question, for the refusal to answer which he was suspended, subject to such further action as may be taken by the principal or school board for making and circulating the caricature." The president and four other members voted for, and one against the resolution. From this action of the board, S. Harwood appealed to the county superintendent, who reversed its action. The board appeals.

The power of the parent to restrain and coerce obedience in children cannot be doubted, and it has seldom or never been denied. This principle applies equally to the teacher or to any one who acts in *loco parentis.* Boards of directors, and their agents, the teachers, may establish all reasonable and proper rules for the government of schools, and to control the conduct of pupils attending the same. "Any rule of the school not subversive of the rights of the children or parents or in conflict with humanity and the precepts of divine law, which tends to

advance the object of the law in establishing public schools, must be considered reasonable and proper." *Burdick v. Babcock*, 31 Iowa, 562.

The superintendent had occasion to leave the high school in charge of his assistant while he should attend to official duties elsewhere. On his return, about 4 p. m., the assistant reported that there had been much disorder on the part of some of the pupils, and that she required several of the pupils to remain and report their misdemeanors to the superintendent. Burritt Harwood, being called upon, said in substance: "I have two misdemeanors to report: I threw snow in the lower hall during recess, and I passed a piece of paper across the aisle to my brother's desk." Both are recognized as violations of the rules of the school. The nature and magnitude of the first are readily discernible, and need no further investigation; not so of the second; much depends upon the character of the "piece of paper," whether simply blank paper or containing writing or other marks. Being asked to state the nature of the paper, he at first answered evasively. Being further questioned, replied that it was "pictorial," that it was a "burlesque or caricature," that "it represented the schoolhouse and some person or persons," that "the person or persons represented were connected with the school." The question, "whom he had intended to burlesque," after some hesitation he declined to answer. For this act of disobedience he was suspended.

The question which he refused to answer appears to differ in no essential feature from those previously answered. By it the teacher simply sought to discover an additional fact in connection with the case. If he had a right to ask the former, he had the latter. If there is any reason why the pupil had the right or should claim the privilege of declining to answer the last, he should have stated it. Certainly no good reason appears from the nature of the offense, and the degree of punishment which it merited depended upon the information which the teacher sought to obtain by this and the previous question. If the paper contained simply the solution of a problem or something connected with his lesson, it merited one degree of punishment; if its purpose was to create merriment among the pupils, thus diverting their attention from their studies, it required another degree; but if by it the pupil sought to bring ridicule upon a teacher, to the prejudice of good order and government of a school, still another; each would be a violation of the rules, but not each equally punishable. The claim of appellee that it was an attempt to pry into the secrets of the heart, and was a violation of the right of conscience, is scarcely sustained by the facts. The question, "whom did you intend to represent?" is essentially equivalent to "whom did you represent." Its purpose evidently was not to find out the thought or intent, but the act of the pupil. The question was simply what was the character of the picture drawn and circulated to the disturbance of the school. It does not appear how the rights of conscience would be violated in answering the question. It may be true that the picture itself, if produced, would furnish the best evidence, but the teacher clearly had the right, in its absence, and knowing nothing of its nature beyond what the pupil had already revealed, to seek this information directly and immediately by proper questions. Nor can the pupil shield himself under the provisions of the law that a prisoner at the bar cannot be

compelled to answer questions which will tend to render him criminally liable or expose him to public ignominy. He is, in no proper sense, accused of crime before a court of law, authorized to sit in judgment under a criminal code.

The picture, which was afterward produced, reveals anything but a right spirit in the pupil. Probably no one who has seen it doubts that it is a coarse caricature of the superintendent and his assistant. His refusal to answer was evidently not that he could not conscientiously do so, nor that it would tend to criminate himself, but was a deliberate act of insubordination. All the attendant circumstances, the evasive and studied replies to the superintendent's questions, the caricature itself, and its circulation through the school during the absence of the superintendent, together with a previous malicious caricature of the same nature, all reveal a disregard for the regulations of the school, the respectful conduct due from a pupil, and an animus toward the teacher anything but proper.

In our opinion, unnecessary stress was laid, in the trial before the superintendent, upon the technical ground of suspension by the superintendent. The board having had the whole subject under investigation, including statements of the offenses from both the superintendent and the pupil, sustained the superintendent, or in other words, suspended the pupil conditionally from the school, as it probably had a right to do for any one of the offenses named. This being a discretionary act, due weight must be given to such action by an appellate tribunal, especially should the board be sustained in all legitimate and reasonable measures to maintain order and discipline, to uphold the rightful authority of the teacher, and to prevent or suppress insubordination in the school.

REVERSED

ALONZO ABERNETHY
Superintendent of Public Instruction

June 8, 1874

J. W. HUBBARD v. DISTRICT TOWNSHIP OF LIME CREEK

Appeal from Cerro Gordo County

APPEAL. The execution by the board of the vote of the electors upon matters within their control is mandatory; from such action of the board no appeal can be taken. If such action is tainted with fraud, an application to a court of law is the proper remedy.

BOARD OF DIRECTORS. The board, though not bound by a vote of the electors directing the precise location of a schoolhouse site, is required to so locate it as to accommodate the people for whom it is designed.

BOARD OF DIRECTORS. If in the selection of a site the board violates law or abuses its discretionary power, its action may be reversed on appeal.

CERTIORARI. A fraudulent or illegal action may be corrected by application to a court for a writ of certiorari.

The electors of the district township voted a tax to build a schoolhouse on what is known as the Simons road, near where it crosses the Central railroad. On a separate motion, the board was instructed to sell the schoolhouse known as number three. In accordance with the first mentioned action, the board located a schoolhouse site on said road, fifty

feet from said crossing. From this action appeal was taken, the appellant claiming it to be a relocation of the site known as number three, and that such action was with the express intention of selling the schoolhouse and abandoning the site thereof. The county superintendent reversed the action of the board and the district township appeals.

The district township coincides with a congressional township in boundaries and extent, and is comprised in one subdistrict. It is claimed that the action of the district township meeting did not represent the wishes of the people; that there are ninety-five voters in the district, and but twenty-seven were present at such meeting; also that in the location of the site the board did not consult the convenience of the people.

Section 1717 provides that the electors, when legally assembled at the district township meeting, shall have power "to direct the sale or other disposition to be made of any schoolhouse, or site thereof, and of such other property, personal and real, as may belong to the district." Section 1723 provides that the board "shall make all contracts, purchases, payments, and sales necessary to carry out any vote of the district." Section 1724 provides that the board "shall fix the site for each schoolhouse, taking into consideration the geographical position and convenience of the people of each portion of the subdistrict."

The execution of the vote of electors by the board is mandatory; from its action in so doing, no appeal can be taken. In case such action is in any manner tainted with fraud, an application to a court of law is the proper remedy.

The power to locate schoolhouse sites is vested originally in the board. Although the board has authority to locate schoolhouse sites, yet money legally voted by the electors for a specific purpose, must be expended in accordance with such vote; if voted to erect a schoolhouse in a certain subdistrict, it cannot legally be used to build a schoolhouse in another. While any directions of the voters attempting to locate precisely a schoolhouse site, are void, yet the board is bound so to locate it as to accommodate the people for whom designed; in the absence of such instruction, the board may exercise more widely its discretion in fixing schoolhouse sites. If in the performance of this duty it violates law, acts with manifest injustice, or in any manner shows as abuse of discretionary power, its action may properly be reversed by the county superintendent. In this case we do not discover that the board has in any manner failed in the proper performance of its duty. REVERSED

ALONZO ABERNETHY
Superintendent of Public Instruction

July 7, 1875

E. GOSTING v. DISTRICT TOWNSHIP OF LINCOLN

Appeal from Plymouth County

SCHOOLHOUSE SITE. The action of a committee appointed by the board to locate a site is of no force until officially adopted by the board while in session.

SCHOOLHOUSE SITE. Subdistrict boundaries cannot be changed in appeal relating solely to locating a site, nor can a site be located with the

expectation that boundaries will be changed, unless such intention of the board is shown.

JURISDICTION. The county superintendent has jurisdiction only of the matter to which the appeal relates.

APPEAL. The right of appeal is confined to persons injuriously affected by the decision or order complained of. Ordinarily a person living in one subdistrict cannot appeal from an action of the board locating a site in another.

A committee appointed to locate a schoolhouse site for the accommodation of the residents of subdistricts number seven and nine, reported that it had selected the northwest corner of section ten, and afterward that it had chosen instead, a site about eighty rods east of the northwest corner of section eleven.

There is no record showing that any action was taken in relation to these reports.

Subdistrict number nine consists of the east one-half of congressional township number 90, range 45. The appellant resides in subdistrict number seven, which comprises the west one-half of the same congressional township. The decision of the county superintendent is as follows: "After considering the evidence and the plat introduced, I sustain the committee in its first location at the northwest corner of section ten of said township." D. M. Relyea appeals.

The power to locate schoolhouse sites is vested in the board of directors. The action of a committee appointed by the board to locate a schoolhouse site is of no force until its report is officially adopted by the board while in session.

Section 1725 provides that the board "shall determine where pupils may attend school; and for this purpose may divide their district into such subdistricts as may by them be deemed necessary." The object of dividing a district township into subdistricts is to determine where pupils shall attend school. While it is frequently the case that pupils may more conveniently attend school in an adjoining subdistrict, it would obviously be improper to locate a schoolhouse site expressly for the accommodation of such pupils, unless with the intention of subsequently making a redivision of the district township. The county superintendent has jurisdiction only of the matter to which the appeal relates. He cannot properly, upon an appeal relating to the location of a schoolhouse site, change subdistrict boundaries, nor can he locate a schoolhouse site with the expectation that such boundaries will ultimately be changed, unless such is shown to be the intention of the board.

The right to appeal from actions of the board is confined to persons injuriously affected by the decision or order of which complaint is made. Ordinarily, a person living in one subdistrict cannot properly appeal from an action of the board locating a schoolhouse site in another.

The decision of the county superintendent is set aside, and the location of the schoolhouse site is left to the discretion of the board.

REVERSED

ALONZO ABERNETHY
Superintendent of Public Instruction

September 7, 1875

J. E. Brown v. District Township of Van Meter

Appeal from Dallas County

Appeal. The adoption of the committee's report in favor of retaining the old schoolhouse site is an action from which appeal may be taken.

Board of Directors. The action of the board cannot be reversed upon the allegations of appellant without proof, or by reason of failure to make defense.

Board of Directors. The acts of the board are presumed to be regular, legal and just and should be affirmed unless proof is brought to show the contrary.

Subdistrict Boundaries. The acts of a board changing subdistrict boundaries and locating schoolhouses are so far discretionary that they should be affirmed on appeal, unless it is shown beyond a doubt that there has been an abuse of discretion.

County Superintendent. The weight that properly attaches to the discretionary actions of a tribunal vested with original jurisdiction does not apply to the decisions of an inferior appellate tribunal.

The county superintendent reversed the action of the board in selecting the old site in subdistrict number two, upon which to erect a schoolhouse, and located the site about eighty rods westward of the old one. From this decision the district township appeals, claiming in substance that the county superintendent erred as follows: That there was no action of the board relative to the selection of a schoolhouse site in subdistrict number two from which an appeal would lie; that the board failed, by reason of a misunderstanding, to appear and defend, and that it was unjustly refused a rehearing; that the old site was suitable, convenient and at the center of population, both present and prospective, and that the reversal of the action of the board was without sufficient cause, there being no evidence that it abused its discretionary power or acted with injustice.

From the transcript, it appears that a committee was appointed to select a site for the erection of a schoolhouse in subdistrict number two; that it reported in favor of the old site, and that its report was adopted by the board. The law provides that an appeal may be taken by any party aggrieved, from any order or decision of the board.

That there was an action of the board, and that the subject-matter to which such action relates is the location of a schoolhouse site in subdistrict number two, there can be no reasonable doubt, hence the action of the board was subject to appeal, and such appeal gave to the county superintendent jurisdiction in the matter of location of said schoolhouse site.

It is the duty of the county superintendent to give due notice to all parties directly interested in an appeal from the board, and to afford full opportunity for the presentation of evidence, but the action of the board cannot properly be reversed upon the allegations of the appellant without proof, or by reason of the failure of the board to be present and make defense. The acts of the board are presumed to be regular, legal and just, and should be affirmed by the county superintendent, unless proof is brought to show the contrary. In this case, however, the board appears to have had due notice and ample opportunity to

defend the case. It is not claimed that any additional evidence could be produced that would materially affect the issue; but that the board, understanding through popular report that the case was withdrawn, failed to be present at the trial, and upon this ground asks for a rehearing, which was very properly refused.

The site selected by the county superintendent is nearly central, being eighty rods west of that chosen by the board. Both appear to be suitable. The eastern part of the subdistrict is mostly prairie land, while the western portion is, to a considerable extent, timber land.

The evidence as to which site will better serve the interests and convenience of the residents of the subdistrict is conflicting. The board is entitled to the benefit of any doubt upon this point. Unless it is clearly proven that it has violated the law, abused its discretionary power, or has acted with manifest injustice, its action should be affirmed.

It is urged by the appellee that the same weight attaches to actions of an inferior appellate tribunal, upon appeal, that is given to tribunals having original jurisdiction. It is held that the action of the board in matters of which it has original jurisdiction, is alone entitled to this consideration by any superior tribunal upon appeal. REVERSED

ALONZO ABERNETHY

September 17, 1875 *Superintendent of Public Instruction*

MARY M. THOMPSON v. DISTRICT TOWNSHIP OF JASPER

Appeal from Adams County

TEACHER. When a teacher is dismissed in violation of his contract an action in the courts of law will afford him a speedy and adequate remedy; when discharged for incompetency, dereliction of duty, or other cause affecting his qualifications as a teacher, he has the right to appeal. TEACHER. The teacher is entitled to the counsel and co-operation of the subdirector and board in all matters pertaining to the conduct and welfare of the school.

The board discharged the teacher in one of the public schools of the district for dereliction of duty. She applied to the county superintendent, who reversed its decision; from this action, the board, through its president, appeals.

At the hearing before the county superintendent, the board filed a motion to dismiss the case for want of jurisdiction, insisting that the teacher having been dismissed in accordance with the provisions of section 1734, her proper remedy was an action at law for damages.

When a teacher is dismissed in violation of his contract, an action in the courts of law, on the contract, will afford him a speedy and adequate remedy. When discharged for incompetency, dereliction of duty, or other cause affecting his qualifications as a teacher, he has the right to appeal to the county superintendent, who is the proper officer to review questions of this character, and to determine whether the board has in the exercise of its authority violated the law or abused its discretionary power. Questions concerning the validity of contracts, the right to recover for services performed, and the interpretation of law, belong especially to judicial tribunals. Questions concerning the character and qualifications of the teacher, and his management of the school, are by

appeal within the jurisdiction of the county superintendent. The motion to dismiss was properly overruled.

The charges of dereliction were want of promptness in commencing school in the morning, and an occasional refusal to hear the recital of one or more of her pupils. For this dereliction there appears to have been some extenuating circumstances. Under the contract, it was the subdirector's duty to have fires built. The boy employed to do this work often failed to have the schoolhouse in comfortable condition at nine o'clock. The teacher usually made up lost time by teaching after four o'clock, and there is no evidence that the subdirector or board ever advised her with regard to the performance of her duties. The board convened at the schoolhouse without previous notice to the teacher, and after taking the testimony of pupils, unanimously voted to discharge her.

AFFIRMED

ALONZO ABERNETHY
Superintendent of Public Instruction

May 8, 1876

S. W. WOODS *et al* v. DISTRICT TOWNSHIP OF BRIGHTON
Appeal from Cass County

BOARD OF DIRECTORS. The acts of the board must be presumed to be regular, and should be affirmed unless positive proof is brought to show the contrary.

SCHOOLHOUSE SITE. The prospective wants of a subdistrict may properly have weight in determining the selection of a site, when such selection becomes necessary, but not in securing the removal of a schoolhouse now conveniently located.

SCHOOLHOUSE SITE. To make a distinction between the children of freeholders and those of tenants in determining the proper location for a schoolhouse, is contrary to the spirit and intent of our laws.

The board by a vote of five to two rejected a petition asking the removal of the schoolhouse in subdistrict number eight. On appeal, the county superintendent reversed the action of the board, and ordered the removal of the schoolhouse to the place named in the petition. Wm. F. Altig appeals.

Subdistrict number eight contains sections 27, 28, 33, 34 and sixty acres lying in section 32, and has a good commodious schoolhouse, erected three years ago, one-half mile west of the center, on a public road passing east and west through the center of the subdistrict. There are about thirty children of school age in the subdistrict, twenty-two of whom reside in the western half, and nineteen west of the present site. All those residing east of the present site, except one child, are within one and a half miles of the schoolhouse, while by the proposed removal, a large number would be at a greater distance.

The action of the board in refusing to remove a schoolhouse should not be interfered with on appeal, except upon evidence of violation of law, or abuse of discretionary power. In this case there is no evidence of such abuse. The prospective wants of a subdistrict may properly have weight in determining the selection of a site upon which to build a schoolhouse, when such selection becomes necessary, but not in deter-

mining the removal of a house, located conveniently for the present wants of the subdistrict.

It appears that a considerable portion of the school population consists of the children of tenants, and much stress is laid upon the assumed distinction that should be made between the children of tenants and those of freeholders in determining the proper location of the schoolhouse. Distinctions based upon the ownership of property or permanence of residence are not made in the law, would not well comport with the fundamental principles upon which our public school system is based, and should not have weight in determining the location of schoolhouse sites. It is the duty of the board to provide equal school facilities for the youth of the district as far as practicable, regardless of considerations relating to permanence of residence. The schoolhouse may properly be removed whenever the conditions of the subdistrict require it, but unnecessary expense should not be incurred in such removal in anticipation of possible, or even probable changes of this character.

REVERSED

ALONZO ABERNETHY
Superintendent of Public Instruction

July 31, 1876

J. N. ARTHUR *et al* v. INDEPENDENT DISTRICT OF FAIRWAY

Appeal from Adams County

SCHOOLHOUSE SITES. The necessity of the present must be observed in locating schoolhouse sites, in preference to the probabilities of the future.

TESTIMONY. New testimony can be introduced only when the facts materially affecting the case could not have been known before the trial.

REMANDING OF CASES. When the evidence discloses that the action of the board was unwarranted, and the facts are not sufficiently shown to determine what should be done, the case should be remanded to the board.

In this case the board made an order relocating the schoolhouse site; from this order J. N. Arthur and others, residents of the district, appealed to the county superintendent and upon his affirming the action of the board, to the superintendent of public instruction.

The district consists of sections one, two, eleven, twelve, thirteen and fourteen, and the old schoolhouse stands near the southwest corner of the southeast quarter of section one. The proposed new site is in the northwest corner of the southwest quarter of the northwest quarter of section twelve, on a public highway and one-quarter of a mile north of the geographical center of said district.

The grounds of objection by the appellants to the removal are substantially, that the new site is on low bottom lands and subject to overflow, not accessible at all times of the year, and that it is not as near the center of the school population as the old site. They also suggest that a location at the cross roads one-half mile east of the new site is better ground and more convenient to the people. In fixing the schoolhouse site, the geographical position and the convenience of the people of each portion of the district should be considered.

From the large amount of testimony, it is evident that the new site chosen is in a low place, and an affidavit sent to this office, and signed

by a number of residents, proves beyond question that the site has been overflowed for several days of the last month. By a close comparison it is found that the number of residents who will have their distance to school increased by choosing the new site, is greater than those who will have their distance diminished. By locating the schoolhouse at the cross roads, one-half mile east of the proposed new site which location is claimed to be higher, and therefore less liable to overflow, three-fourths of the residents will have their distance diminished by forty to one hundred and sixty rods.

Although it may be true, as affirmed in the testimony, that the western part of the district is as capable of settlement as the eastern part, the necessities of the present must be observed in locating schoolhouse sites, in preference to the probabilities of the future. While it is the rule of this department to sustain discretionary acts of the board, it seems that in this case the true interest of all concerned, and justice to a large portion of the people, demands that the schoolhouse should not be moved to the new site chosen.

To what extent the high waters of last month did affect the other locations under consideration, is not known to this department; it is therefore best to let the matter come up anew before the county superintendent for a rehearing. The decision of the county superintendent is therefore reversed, and the case remanded for a rehearing, with the direction from this department that the proposed new site is an unsuitable one for school purposes

REVERSED

C. W. VON COELLN
Superintendent of Public Instruction

October 31, 1876

WM. DONALD V. DISTRICT TOWNSHIP OF SOUTH FORK

Appeal from Wayne County

SALARY OF TEACHERS. The salary of teachers should be in proportion to their ability and responsibility, and not equal when these differ materially.

SALARY OF TEACHERS. The control of salaries is wholly within the power of the board and cannot be determined by an appeal, because it is not within the jurisdiction of county or state superintendent to order the payment of money.

EXPLANATORY NOTES. Notes to the school law, while proper aids to school officers, have not the binding force of law, and a non-compliance with them is not necessarily a violation of law.

SCHOOLS. The wealthier portions of the community should aid their neighbors in sustaining good schools.

On the eighteenth day of March, 1878, the board made an order fixing the salaries of teachers for the summer schools at the uniform price of twenty dollars per month. From this action William Donald appealed to the county superintendent, who affirmed the action of the board. From this decision William Donald appeals.

It is alleged by the appellant that the county superintendent erred in deciding that the board did not violate law in voting that the same amount of salary should be paid to the teacher in each subdistrict. It

is claimed that the board should have provided for a higher salary in some schools of the township.

The difficulty with appellant's counsel is that he believes the note to be a part of the law. My predecessor gave his own views of the employment of teachers and I most fully agree with him in his view. The law leaves the whole matter to the board and presumes that it will deal equitably. Unfortunately, selfishness is a nearly universal characteristic of human kind, and too often the majority, representing weak subdistricts, weak both in numbers and in property, demands an equal distribution of the money on hand for teachers' pay.

The law organizing the rural independent districts, passed in 1872, arose from the feeling that this selfishness was working injustice to little towns and wealthy and populous subdistricts. The creation of these independent districts works an injustice to the weaker districts, for it is proper and desirable that the wealthier districts should aid their weaker neighbors to sustain fair schools.

With regard to this case, we do not see wherein the board violated law. The idea of prejudice is slightly apparent from the testimony, but not sufficiently to reverse the action of the board. That equity has not been observed seems very evident, for it must be presumed that a larger school population requires a better teacher, and if a better and more experienced teacher is needed, a better salary ought to be paid. There are other considerations. Usually the expense of living is greater in the town than in the country. It is also the probability that a larger tax is paid by the town than by the country.

We are not able at this distance to determine whether twenty dollars is a sufficient compensation for the teacher of subdistrict number four of South Fork. But if twenty dollars is only sufficient compensation for the country-subdistricts, it is our belief that a higher salary should be given the teacher in the town.

It is out of our jurisdiction to give advice to the board what to do in this case, after determining that we have no power to reverse its action, but we suggest that equity would be served if it should pay the five dollars per month assumed by Mr. Anderson. After giving our views thus in full, we must agree with the county superintendent, and his decision is therefore affirmed. AFFIRMED.

C. W. VON COELLN
Superintendent of Public Instruction

June 29, 1878

JAMES JACOBY *et al* v. INDEPENDENT DISTRICT OF NODAWAY

Appeal from Adams County

SCHOOLHOUSE SITE. A schoolhouse site fixed by county or state superintendent affirming the discretionary act of the board, allows the board to exercise its discretion again, especially if material changes have occurred.

DISCRETIONARY ACTS. Suggestions from the electors upon matters entirely within the control of the board will in no manner prevent the fullest exercise of the discretion vested in the board by the law.

SCHOOLHOUSE SITE. The endeavor to show regard for the expressed

wishes of the electors in the choice of a site will be an added reason in support of the action of the board.

In the summer of 1877, the board located a schoolhouse site, selecting one not desired by a large majority of the electors, as expressed at an informal meeting called by the board. An appeal was taken to the county superintendent, who reversed the action of the board, and in turn to the superintendent of public instruction, who reversed the decision of the county superintendent, thereby sustaining the action of the board, on the ground that the abuse of the discretion given by the law to the board, as charged, was not proved.

Since the decision above referred to was rendered, a dwelling has been erected within twenty rods of the site chosen. Also, a material addition has been made to the district on its east side of a strip of land three miles in length and one-half mile in width.

At a meeting of the board held April 22, 1878, it relocated the schoolhouse site, choosing the old site in place of the one selected by it last year. From its action, James Jacoby and others appealed to the county superintendent, who affirmed the order of the board. D. Shipley and Ed. Kennedy appeal.

This case was before us last year and we affirmed the action of the board in selecting the new site, sustaining the discretionary act of the board. Hence, the principle that a site selected by the county or state superintendent cannot be changed unless there have been material changes in the district, does not apply. There have been changes by the addition of new territory and a dwelling being erected within less than forty rods of the proposed site. The choice of the old site is in conformity with the wish of a majority of the electors, and does not prove any abuse of discretion, much less a violation of law. The action of the board is sustained, and the decision of the superintendent affirmed.

AFFIRMED

C. W. VON COELLN
Superintendent of Public Instruction

August 26, 1878

L. E. CORMACK v. DISTRICT TOWNSHIP OF LINCOLN

Appeal from Adams County

JURISDICTION. An appeal will not lie to enforce a contract.

JANITORIAL SERVICES. If a teacher serves as janitor in sweeping the room and building fires, he should be paid from the contingent fund for such services.

Mr. Vandyke, a subdirector, contracted with Mrs. L. E. Cormack as teacher for the winter term of school. The terms of the contract included that the teacher was to receive twenty-five dollars per month for teaching and one dollar and twenty-five cents a month for building the fires and sweeping the schoolhouse. The board refused to audit the full account, which would give the teacher pay for janitor's work, claiming that the said subdirector exceeded his authority in so contracting. Mrs. Cormack appealed to the county superintendent, who reversed the action of the board. W. C. Potter, president of the board appeals.

This case has evidently for its object the securing of money on contract, and as section 1836 prevents county and state superintendents

from rendering a judgment for money, it has been the common custom to refuse to entertain any appeal in which a contract is to be decided by such appeal; for this reason the county superintendent should have dismissed the case for want of jurisdiction.

It may not be out of place here to state that unless a contract with the teacher provides that building fires and sweeping the house is included, the board can not require such service of the teacher. The payment of such services should come from the contingent fund and should be specifically mentioned. The teachers' fund is not to be used for paying for janitorial services.

Without deciding any question at issue, we are of the opinion that the subdirector did not exceed his authority given him by section 153 when he agreed to pay a reasonable sum for janitorial services besides the twenty-five dollars paid under instruction from the board for teacher's services. But since we do not consider the case within jurisdiction, the decision of the county superintendent is reversed and the case dismissed.

DISMISSED

C. W. VON COELLN
Superintendent of Public Instruction

March 1, 1879

W. F. RANKIN v. DISTRICT TOWNSHIP OF LODOMILLO

Appeal from Clayton County

RECORDS. The record of the secretary shall be considered as evidence, and cannot be invalidated by parol evidence unless there is proof of fraud or falsehood.

TERRITORY. Where territory is to be transferred by concurrent action of two boards to the district to which it geographically belongs, a majority of the members-elect is not necessary, as required for the change of subdistrict boundaries.

APPEAL. The action of two boards upon a subject over which they have divided control constitutes a concurrent action, and appeal may be taken only from the order of the board taking action last.

This appeal relates to the transfer of territory in the civil township of Cass, which has belonged to the district township of Lodomillo since 1856, to the township to which it geographically belongs.

The board of the district township of Cass appointed a committee to meet a committee chosen by the Lodomillo board, to agree upon terms of transfer. The district township of Lodomillo also appointed a committee. The joint committee agreed upon a report, which the board of Cass adopted September 16, 1878. On the twelfth day of October, 1878, the Lodomillo board, by a vote of four to six members present of a board of ten, also adopted the report and accepted the proposition agreed to by the board of Cass.

From the action of the Lodomillo board W. F. Rankin appealed to the county superintendent, who dismissed the case for want of jurisdiction, and stated that the action of the board was plainly in violation of the law, since section 1738 requires a majority of the board to change the boundaries of subdistricts. From this decision W. F. Rankin appeals.

The secretary's transcript of the transactions of the meeting of the board of Lodomillo, held October 12, 1878, does not show any irregu-

larity in the transaction, does not show the number of members present nor the number of votes cast by which the motion was carried.

According to a well established principle of law, the records of any public or private corporation must be considered regular, and cannot be set aside by parol evidence, except under an allegation of fraud. Based upon the evidence of the transcript, the whole transaction was carried on in conformity with law, and we can see no reason to interfere with the action of the board. If we admitted the testimony of M. E. Axtel, showing that only six members of a board of ten were present, and that four of these six voted for the transfer, we would still hold that said transfer was legally made. The action of the board was not a change of boundaries or subdistricts, but a transfer under section 1798. The territory transferred, being part of the districts organized before the law of 1858 took effect, could be transferred by concurrent action of the boards to the district to which it geographically belongs, and the limitation of section 1738, requiring a majority of the board to change subdistrict boundaries, is not applicable to this case.

The appeal is brought from the action of the board which concurred, and is therefore taken in a proper manner. For the reasons set forth, the action of the board is sustained and the decision of the superintendent is reversed.

REVERSED

C. W. VON COELLN
Superintendent of Public Instruction

May 28, 1879

L. B. COLBURN *et al* v. DISTRICT TOWNSHIP OF SILVER LAKE

Appeal from Palo Alto County

EVIDENCE. To establish malice or prejudice on the part of the board, positive testimony must be introduced, and the evidence must be conclusive.

COUNTY SUPERINTENDENT. A county superintendent should not ask the state superintendent to decide a case on appeal for him, but may ask for an interpretation of law, either by the state superintendent, or through him, by the attorney general.

On the twenty-fifth day of August, 1879, the board fixed the location of a schoolhouse on the old site. From this order L. B. Colburn and others appealed to the county superintendent, who affirmed the action of the board, and from this decision the same parties appeal.

Among the errors enumerated, the appellants urge that the county superintendent erred in holding that the board was not actuated by passion or prejudice. We fail to find any evidence establishing the existence of such malice or prejudice on the part of the board. Appellants also claim that the county superintendent erred in basing his decision on the verbal opinion of the state superintendent, given prior to the hearing of the case.

This affords an opportunity of censuring a practice quite common among county superintendents to ask the superintendent of public instruction for his opinion in an appeal which is pending. We have made it a universal practice to refuse answers upon the questions involved in the particular case, and have given only general principles which should govern county superintendents in determining cases of appeal. These

general principles are so well established that an intelligent county superintendent ought to be familiar with them.

We advised the county superintendent in this case not to measure the respective distances of the different locations from the geographical center, before the trial of the appeal.

It is proper for the county superintendent to ascertain the interpretation of points of law, by securing an opinion from this department, or from the attorney general through this department.

Without fully determining the merits of the respective locations, we must hold that the board did not abuse its discretion sufficiently to warrant interference. The appellants failing to prove malice or prejudice on the part of the board, its order should stand, and the decision of the county superintendent affirming its action is affirmed.

AFFIRMED

C. W. VON COELLN

March 30, 1880 *Superintendent of Public Instruction*

APPLETON PARK V. INDEPENDENT DISTRICT OF PLEASANT GROVE

Appeal from Des Moines County

RECORDS. The official record is its own best evidence. Testimony intended to contradict the record should not be admitted.

RECORDS. Records not made and certified to by the proper officers as required by law are defective and may be impeached by collateral evidence.

TEACHER. The law provides that a teacher shall have a fair and impartial trial, with sufficient notice to enable him to rebut the charges of his accusers.

CHARGES. Must be clearly sustained by the evidence.

Appleton Park was duly engaged and contracted with. He began teaching on the fourth day of September, 1882; after some ten or eleven days had expired, during which time he had taught the school, he was waited upon by the entire board, called to the door and informed that certain rumors were being circulated, to the effect that he had been guilty of using obscene and vulgar language in the presence of his pupils, and during regular school hours. The board called at the schoolhouse again about the hour for closing the school in the afternoon, and the school having been dismissed, it proceeded to examine three of the boys as to the truth of the charges above referred to. The result of this action was that the teacher left the school and the board employed another teacher. Mr. Park appealed to the county superintendent, who reversed the action of the board, whereupon D. L. Portlock, president of the board, appeals.

The principal difficulty presented in this case seems to be to determine just what that action or order of the board was from which the appeal was taken. The transcript filed by the secretary of the board, is as follows: "Complaint being made by some of the scholars to the school board, in regard to the teacher, Appleton Park, using indecent, rough and insulting language during school time, the board met at the schoolhouse to make an investigation. The board stated the above charges to the teacher, Appleton Park, who after reflecting upon the matter, proposed

his resignation to the board. The board, after due consideration, accepted the same. The question being settled in the above way, and no other business before the board, the board then adjourned."

The parol evidence of Appleton Park was admitted to offset and impeach the record. This was clearly in violation of well established law, if the record was really what it purported to be, a true and authenticated copy of the proceedings of the meeting of the board referred to.

Starkie on Evidence says: "Where written instruments are appointed, either by the immediate authority of law, or by compact of the parties, to be the permanent repositories and testimony of truth, it is a matter both of principle and of policy, to exclude any inferior evidence from being used, either as a substitute for such instruments, or to contradict or alter them; of principle, because such instruments are in their own nature and origin entitled to a much higher degree of credit than that which appertains to parol evidence; of policy, because it would be attended with great mischief and inconvenience if those instruments upon which men's rights depend were liable to be impeached and controverted by loose collateral evidence." Starkie, part IV, p. 995, Vol. III, 3d Amer. Ed.

The fact that the transcript referred to is not certified to by the secretary, and the further fact that he was not present at the board meeting in question, and wrote the minutes as dictated from memory by the president of the board, three days after the meeting, fully justified the superintendent in ruling it out and in admitting parol evidence.

We come now to consider whether the trial before the board was such a proceeding as is required by section 1734. The board called in the morning and informed the teacher of the charges preferred against him, whereupon he offered to resign. It instructed him to proceed with his school and stated that it would return in the evening. During the day the board worked up its case against the teacher, while he was so employed as to prevent him from giving thought or attention to the charges, or to the preparation of any adequate defense.

We must sustain the superintendent in finding that the trial and opportunity to defend was not what the law intends every teacher shall have. Every teacher is entitled to the sympathy and support of the school board, and where there is any reasonable doubt as to the truth of stories circulated by school children, the teacher should have the benefit of such doubt. We believe that had the board been in sympathy with the teacher in this instance, it would have decided that the charges were not sustained by the evidence, at least by any evidence which appears of record. That the teacher offered to resign in the evening does not appear from the evidence offered in behalf of the board, while it does appear that at least one member of the board told him "he had better quit."

We are compelled to hold that the teacher was dismissed, and that in doing so for no sufficient reason the board erred and the decision of the county superintendent is therefore affirmed.

AFFIRMED

J. W. AKERS

Superintendent of Public Instruction

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February 16, 1883

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*Note—Our supreme court rendered a decision regarding the measure of damages resulting from the wrongful discharge of this teacher. The opinion is found in 65 Iowa, 209.

J. B. B. Baker v. Independent District of Waukon

Appeal from Allamakee County

Rules and Regulations. In establishing and enforcing regulations for the government of scholars the board has a large discretion.

On the seventh day of June, 1886, Maud Baker was suspended for repeated violation of a rule of the board, known as rule five, which reads as follows: "Any scholar who shall be absent five half-days in four consecutive weeks, without any excuse from parent or guardian satisfactory to the teacher that the absence was caused by said pupil's sickness, or by sickness in the family, or in the primary grades, by severity of the weather, shall forthwith be suspended. No pupil so suspended shall be reinstated without a permit from the principal."

Rule twelve provides that the principal of the school may suspend pupils temporarily, and that he shall immediately notify the parent or guardian of a suspended child of such suspension, the notice to be in writing, and furthermore, that he shall immediately inform the board of his action.

Maud Baker was absent without excuse, and when called to account for her absence stated that she had gone on a fishing excursion, and expected to go the week following. Having failed to render a satisfactory excuse, she was suspended, as above stated. Notice in writing was sent to parent, as required by rule five, and the board informed of the suspension. The board approved the action of the principal. J. B. B. Baker appealed to the county superintendent, who reversed the action of the board. D. W. Reed appeals.

The facts in this case are not controverted. It appears in evidence that the suspension of Maud Baker was reported to the board, and that a special meeting of the board was held for the consideration of the act of the principal. Maud Baker was present at this meeting of the board, and the president testifies that he read to her the rule under which she had been suspended, and asked her to give the board some promise of amendment in the future, as a condition of reinstatement, and she replied that she would not make any promise for the future, and expected to go fishing the following week.

The county superintendent finds that the suspension was made in compliance with the rules of the board for the government and regulation of the schools, and that the act of the principal in suspending, and of the board in approving his action, was without prejudice or malice. The board was reversed on the ground that the law does not confer upon the principal, or the board, power to suspend for the cause for which Maud Baker was suspended.

The case turns, therefore, from the power of the board to establish and enforce a rule providing for the suspension of pupils, who are absent a given number of days, or half-days, without a satisfactory excuse. The point has been fully discussed and settled by our supreme court in the case of *Burdick v. Babcock*, 31 Iowa, 562, and need not be considered here. *Murphy v. Independent District of Marengo* has been cited, but does not apply, as in that case it is stated that the offense for which the pupil was dismissed was not in violation of any rule or regulation.

We are compelled to overrule the decision of the county superintendent, and to sustain the action of the board.

REVERSED

J. W. AKERS

October 23, 1886 *Superintendent of Public Instruction*

N. R. JOHNSTON v. DISTRICT TOWNSHIP OF UTICA

Appeal from Chickasaw County

MANDAMUS. To compel the performance of an official duty, appeal sometimes consumes valuable time. Mandamus is often more speedy and better remedy.

DISCRETIONARY ACTS. Action by the board unduly delaying the final consideration of an important matter, may be regarded as an evidence of prejudice.

The issues involved in this case were the formation of a new subdistrict to be known as number twelve, and the providing for a school during the winter of 1887-8, pending the election of subdirector for the new subdistrict. The case came in due order to the county superintendent on appeal, and from his decision the board appeals.

At its meeting on the nineteenth of September, 1887, the board had before it a petition signed by Caleb Boylan and others, to redistrict number two, and to form a new subdistrict. After various motions it was voted to adjourn to the second Saturday in February, 1888, to consider said petition. Appeal was taken to the county superintendent.

At the trial before that officer October 27, 1887, and adjourned to October 31, a motion was made to dismiss the case, on the ground that the matter was still pending before the board, as no final action had been taken by that body. The motion to dismiss was overruled, and the county superintendent proceeded to hear the case. Did the county superintendent commit an error? We think not.

Without impinging in any way the motives of the board, its action in adjourning to a date as late as the second Saturday in February, was calculated to delay and defeat the prayer of the petitioners. The aggrieved parties had an undoubted right to appeal, but we regret that they did not avail themselves of the more speedy remedy of resorting to the courts. A writ of mandamus would undoubtedly issue in such a case, compelling the board to perform its enjoined duty.

A motion to dismiss on the ground that there was no evidence to show that the board acted with passion, prejudice, or injustice, was also very properly overruled. The action of the board delaying the whole matter until the second Saturday of February, 1888, was in our opinion an act of manifest injustice, which the superintendent very properly took into account in making his decision.

The county superintendent reversed the action of the township board and ordered the new subdistrict, number twelve, to be formed, with an extra school for the winter of 1887-8, in accordance with the prayer of the petitioners. Ought his decision to be sustained?

A careful review of the evidence in the case, including the plat "exhibit A," shows that the township of Utica is divided into eleven subdistricts, some of them very large and irregular in shape. A better division than that proposed by the formation of the new subdistrict,

number twelve, can possibly be made. The county superintendent, however, provides for this, as his decision does not prevent any changing of the boundaries of subdistrict lines, if necessary to facilitate the school privileges of the township.

A new subdistrict is needed to furnish reasonable school facilities for the children in that neighborhood, and so far as ordering the new subdistrict to be known as number twelve, is concerned, the decision of the county superintendent is affirmed. AFFIRMED

HENRY SABIN

March 15, 1888 *Superintendent of Public Instruction*

JACOB DECK *et al v.* DISTRICT TOWNSHIP OF EDEN

Appeal from Decatur County

SUBDISTRICT BOUNDARIES. A case involving a change of subdistrict boundaries, having been adjudicated by the county superintendent reversing the action of the board, and being affirmed by the superintendent of public instruction, can not again be brought upon appeal, unless it can be shown that some change materially affecting the conditions of the case has taken place since the date of the former decision.

SUBDISTRICT BOUNDARIES. In changing subdistrict boundaries, both the present and the future welfare of the district township should be considered.

SUBDISTRICT BOUNDARIES. A subdistrict long established, embracing a territory having a sufficient number of scholars to maintain a good school, should not be abolished, unless the general school facilities of the township will be improved thereby.

On the nineteenth day of September, 1887, the board voted to abolish subdistrict number eight. Jacob Deck and others appealed to the county superintendent, who on the fifth day of December rendered a decision reversing the action of the township board, and the board appeals.

The counsel for the directors urged in their written argument that the county superintendent should be required to send up to this department all the testimony taken in the trial before her. It was certainly the duty of the county superintendent to send up all the testimony upon which she based her decision. In the absence of any proof to the contrary, the presumption is that the transcript furnished by her contains all the testimony on file in her office. There is no proof offered that she has not complied with the law in all respects.

On the twenty-sixth day of December, 1885, the county superintendent rendered a decision reversing the action of the board in abolishing subdistrict number eight. As no material changes have taken place since then, in the condition of the township, does that former decision act as a bar to any further proceedings in this case? We think not.

The principle enunciated here is undoubtedly correct. A case involving a change of subdistrict boundaries, having been adjudicated by the county superintendent reversing the action of the board, and being affirmed by the superintendent of public instruction can not again be brought upon appeal, unless it can be shown that some change materially affecting the conditions of the case has taken place since the date of the former decision. In this case, however, the decision of the county super-

intendent can not act as a bar to further proceedings, because the district board did not take an appeal. Such proceedings can not be considered as final in such a sense until they have been affirmed by the superintendent of public instruction.

It is urged that the county superintendent erred in taking into consideration the distance which many of the pupils must travel in order to reach their school, if the action of the township board, abolishing subdistrict number eight, is affirmed. The law does not contemplate that one and one-half miles is in all cases an unreasonable distance. It depends largely upon the age of the pupil and upon the condition of the roads. In the case before us a natural obstacle, the Little Turkey river, must be taken into consideration. The opening of additional roads and the construction of a bridge would simplify matters somewhat, but no steps have been taken to accomplish this. Until this is done, to abolish the school in number eight would impose an undue hardship upon a large number of pupils.

What are the conditions of the school as at present constituted? The report of the secretary put in evidence, shows that the school in number eight will average with other subdistricts in the number of pupils enrolled; it is above the average in daily attendance, and below the average in cost of tuition. The board fails to show that reduced numbers render it expedient to abolish this subdistrict, nor does it show that the township is excessively taxed to support its schools.

This department has already ruled that subdistrict lines, which have been long established, embracing a territory having a sufficient number of pupils to maintain a good school, should not be disturbed, unless it can be proved that the general school facilities of the township will be improved by the change.

The board does not show that there is any general benefit to be expected from the proposed change of boundaries, nor does it prove that any existing necessity makes it desirable. The board undoubtedly intended to act fairly toward all, but we think it failed to properly consider all the circumstances involved in its action. The decision of the county superintendent is therefore affirmed.

AFFIRMED

HENRY SABIN

March 16, 1888 *Superintendent of Public Instruction*

J. S. FOLSOM *et al v.* DISTRICT TOWNSHIP OF CENTER

Appeal from Cedar County

REHEARING. To warrant a rehearing, some valid reason must be urged.

TESTIMONY. Sufficient latitude should be allowed in the introduction of testimony to permit a full presentation of the issues involved, even if irrelevant testimony is occasionally admitted.

SCHOOLHOUSE SITE. Every dwelling-house must be taken into account, as someone entitled to school advantages may hereafter reside there.

SCHOOLHOUSE SITE. When it is the evident intention of the board to relocate the site as near as possible in the center of the subdistrict, in order to furnish equal school facilities to all the residents, its action should not be materially interfered with.

The transcript in this case shows that on the twenty-first day of

March, 1887, at a meeting of the board, a committee was appointed to investigate the needs of subdistrict number two and report at the meeting in September. It further shows that on the nineteenth day of September, 1887, such committee reported, recommending that the new house be built for said subdistrict, to be located in the center of the district. The report was received and the committee discharged. The report was also, upon motion, laid upon the table.

On the nineteenth day of March, 1888, at a meeting of the directors, the above report was finally adopted and a building committee was appointed to confer with the county superintendent in regard to plans and specifications. From this decision of the board *Folsom et al*, appealed to the county superintendent, and the case was heard at Tipton on the ninth day of April, 1888. The records in the county superintendent's office show that the appellee consented to the filing of an amendment to the affidavit by appellant, and that the appellee filed a motion to modify the decision of the board, and the trial then proceeded. On the eleventh day of April the county superintendent filed a decision reversing the action of the board. On the seventeenth day of April, 1888, a motion was filed for a rehearing, within the time given by the county superintendent. On the nineteenth day of April, 1888, the motion for a rehearing was argued before the county superintendent and overruled. From the decision of the county superintendent the board appealed to the superintendent of public instruction, and the whole case came up on a hearing before him on the fifth day of June, 1888.

The first question to be decided is: Did the county superintendent err in overruling the motion for a rehearing? A rehearing of such a case can be granted only when it can be shown that some injustice has been done, or some mistake has been made which can be corrected by a new trial; or when some additional evidence has been discovered which is in favor of the party applying, but which could not have been presented before by reasonable diligence. The affidavit upon which the motion for a rehearing was based failed to show any such reasons. All the main points alleged therein had already been ruled upon by the county superintendent and we think she did not commit any error in overruling the motion. This also disposes of all the testimony sent up in support of the motion for a rehearing; these affidavits will not be taken into account in the final decision.

It is not necessary here to determine the legal residence of William Busier. His own testimony is that the distance from his residence to the site selected by the board is one and one-fourth miles. The fact that Mrs. Morgan does not desire to send to school is not material. It is not the individual but the residence that is to be considered. Some other person living at the same place may hereafter desire school privileges.

We are now free to approach the main question upon which issue is joined. The testimony shows that the directors desired to relocate the schoolhouse in subdistrict number two in a more central location; no other reason is assigned for the contemplated removal. There is nothing to show that the present site is unsuitable, except that it does not well accommodate the pupils from the northern part of the district. In this

determination to relocate the site near the center, there is no evidence of any abuse of discretion on the part of the board and we think this action should not be interfered with.

There is, however, evidence which shows that the exact acre which the committee staked out is not a desirable site for a building. The board itself acknowledges this in its amended order by which the site is removed ten rods north.

The county superintendent, in her decision, locates the site upon a piece of ground known as the "grave-yard site." It is urged that the county superintendent has only appellate jurisdiction, and must therefore confine her decision to the two sites upon which the parties joined issue. She seems to have entertained some such idea, as she sustained a motion to rule out all testimony in regard to the unsuitableness of the grave-yard site when such evidence was offered in the original trial. We think that such evidence should have been admitted.

In April, 1866, the Hon. O. Faville, then superintendent of public instruction, obtained this opinion from Hon. F. E. Bissell, then attorney-general: "The case does not come before him (the county superintendent) merely to correct an error of the board of directors, but to hear and decide the same matter that the board has decided. The county superintendent is not limited to an affirmance or reversal of the action of the board, but he determines the same question that the board determined." See also *John Clark v. District Township of Wayne*, page 47, School Law Decisions of 1876.

To this opinion the decisions of this department have always conformed. The county superintendent, therefore, did not go beyond her jurisdiction in selecting a site different from any which had been considered by the board.

We cannot see, however, that the grave-yard site has any advantage over the old site. It is irregular in shape, and is about as far north of the center of the subdistrict as the present site is south. In fact, its selection as a site for the new building defeats the very end which the board had in view in its action locating the site in the center of the subdistrict.

The case is remanded to the board with instructions not to build upon the site selected by the committee, but to select the best site possible within a distance not more than forty rods from the center of the site staked out by the committee; the south corner of said site, however, to be at least fifteen rods north of the south corner of the committee's site; said site also to contain not less than an acre, and to be as nearly square in form as the circumstances will admit. The decision of the county superintendent is reversed.

REVERSED

HENRY SABIN
Superintendent of Public Instruction

June 7, 1888

P. O'CONNOR, JR., v. DISTRICT TOWNSHIP OF BADGER
Appeal from Webster County

JURISDICTION. In most matters with which boards have to do under the law, their authority and responsibility are absolute, and their jurisdiction is complete and exclusive.

JURISDICTION. A former order of the board, or a decision of the county superintendent on appeal, will not operate to prevent the board from exercising its discretion anew, when good reasons exist for such action.
REHEARING. To obtain a rehearing the necessity must be clearly shown.
DISCRETIONARY ACTS. In the exercise of discretion, the benefit of every reasonable doubt must be given in favor of the correctness of official acts.
APPEAL. The hearing is not to be conducted by a rigid adherence to the technical forms and customs which prevail in the courts.

At a special meeting of the board held February 10, 1888, it was voted to remove the schoolhouse in subdistrict number seven, forty rods north from its present site. P. O'Connor, Jr., appealed to the county superintendent, who heard the case on the twenty-third day of April and affirmed the action of the board. P. O'Connor, Jr., appeals.

The proceedings in this case are regular and the facts admitted by both parties. The only point in dispute is this: On the tenth day of November, 1887, the county superintendent heard the same case and rendered his decision reversing the action of the board. As the board did not see fit to appeal, and as no material changes have taken place in the subdistrict, it is claimed that the decision of the county superintendent rendered November 10, 1887, must be considered as final, and that no further proceedings can be had in the case. If this allegation is true, then the county superintendent committed error in not dismissing the case.

Let us examine it a moment, that we may arrive at the intent of the law. It is plain that the law reposes great confidence in the discretionary acts of a board of directors. The instructions from the department of public instruction to county superintendents have always been that such discretionary acts are to be affirmed unless it can be very clearly shown that the board has in some way abused its powers; if there is a doubt, even, the board is to have the benefit of it. It has become a well established principle that the conduct of the schools and the location of schoolhouses should be left with those officers who have the closest relation to the people for whose benefit the schools are maintained. With this principle this department is not willing to interfere.

Is it right, then, that in this present case because the county superintendent reversed the board in November, 1887, it should be left without further remedy? We think not. After its former action was reversed, the board had its choice of three courses of action; it was bound to take the one which it believed to be for the best interest of the subdistrict.

It could ask for a rehearing, but to obtain that it must be able to show that same very grave mistake had been made, or that it had discovered some additional evidence which could not have been presented before by using reasonable diligence.

It could appeal to the superintendent of public instruction, but in that event it must base its case wholly upon the evidence as presented before the county superintendent, as this department has no right to hear additional testimony.

It could begin the case *de novo*, amend its record if it was faulty, supply omissions, introduce new testimony, and perfect its proceedings in such ways as to obtain a possible different decision from the county

superintendent, or so as to make a stronger case before the superintendent of public instruction if either party found it necessary to appeal to him.

In this case the board chose the last remedy, and we think it was wise in doing so, as the most ready manner of obtaining a final adjudication of the whole matter.

After careful study of the authorities cited by counsel, we can only reach this conclusion. If the aggrieved party fails to appeal within the thirty days allowed by law, the decision of the county superintendent becomes final as far as that particular case is concerned; but we find nothing in the law to warrant the conclusion that a reversal by the county superintendent acts as a bar to any further proceedings because the district board did not then and there take an appeal to the superintendent of public instruction. Such a conclusion would defeat the ends aimed at by the law in placing the management of the schools in the hands of the school officers as chosen by the people. The county superintendent and the superintendent of public instruction, in hearing these appeal cases have the jurisdiction, somewhat of a court of equity and are not bound by a rigid adherence to the technical forms and customs which prevail in the courts of justice.

In reaching this conclusion we are supported by the case of *Morgan v. Wilfley et al*, 70 Iowa, 338. "The power to redistrict and change subdistricts is conferred upon the board by the statute, and action in that direction, for sufficient cause, can not be considered as unauthorized." The power to change or fix the schoolhouse site is conferred in the same manner. Further: "The board of directors can not be so fettered by its prior action, or by legal proceedings that it may not, at any time, for sufficient cause, redistrict the township, as in its best judgment may be demanded by the interest of all the children of the district." The principle here enunciated is so broad that it applies to all the actions of the board, and it is not necessary to dwell upon it.

In regard to the merits of the case, there is nothing to be said. There is no evidence to show that the board abused its authority, and consequently no reason for setting its order aside. The decision of the superintendent is affirmed.

AFFIRMED

HENRY SABIN

July 9, 1888 *Superintendent of Public Instruction*

G. W. DAVIS *et al* v. DISTRICT TOWNSHIP OF LINN

Appeal from Linn County

APPEAL. Will not lie to control the action of a board or of the county superintendent, where concurrence is provided for.

TUITION. To enable the districts in which the children reside to collect tuition, all the requirements of the law must first be fulfilled.

At its regular meeting on the eighteenth of March, 1889, the board passed a resolution excluding from the privileges of the school, in subdistrict number seven, children from the independent district of Laurel Hill, in Jones county, who had from time to time for many years, been allowed to attend the school in said subdistrict number seven. On the thirteenth of April the board considered a petition of parties in the

adjoining district of Laurel Hill desiring to send to the school in Linn township, and passed an order refusing to admit their scholars. From this action, G. W. Davis and others appealed to the county superintendent, who heard the case on the ninth of May, affirming the order of the board. From his decision G. W. Davis appeals.

The attendance of scholars living in an adjoining district is governed by section 1793. By the portion of the section to which this appeal relates, children may attend in another district on such terms as may be agreed upon by the respective boards. In the history of this case, it is not shown that any action was taken by the board of Laurel Hill as to agreement regarding terms of attendance. The board of the district township of Linn refused to admit the scholars in question. It is from this order, an initial action, that appeal was taken.

At the trial before the county superintendent a statement of facts was submitted and was agreed to by both parties to the appeal, as a basis upon which the appeal should be heard. At this point the board by its attorney filed a demurrer, urging that the county superintendent could not acquire jurisdiction; that the action of the board complained of was not subject to revision upon appeal and asking the county superintendent to dismiss the case for want of jurisdiction. The demurrer was overruled, the case was tried on the agreed statement of facts, and the order of the board affirmed. Did the county superintendent err in overruling the motion to dismiss the case for want of jurisdiction? We think he did.

If the boards fail to agree upon terms of attendance, certain conditions regarding distance from the respective schools being fulfilled, as they are in this case, section 1793 itself provides the next step to be taken. The county superintendent of the county in which the children reside may give his consent with that of the board of the district where the children desire to attend, admitting them. But from the refusal of the board to admit the children it is held and has been uniformly held in opinions by this department, that appeal will not lie. It has always been conceded to be the intention of the lawmakers to leave with the board of the district in which the school is maintained, the matter of determining finally and conclusively, if it chooses, that scholars shall not be admitted under the provisions of section 1793. If its consent is withheld, neither the courts of law nor any appellate tribunal may set aside its order of refusal, and compel it to admit outsiders and accept as compensation for their instruction the amounts fixed by section 1793. We have referred to this matter at such length, because the counsel for the appellant urges the claim that the case should be remanded for a new trial.

We are compelled to find that there are but two methods in law, by which attendance in subdistrict number seven may be secured for their children by the appellants. The two boards may agree as to the terms of attendance. Or after they have refused to agree the concurrent consent of the county superintendent of Jones county and the board of the district township of Linn, will entitle the children to attendance and bind their home district for the expenses of their instruction in the man-

ner provided by section 1793. But appeal will not lie to control the action of either board or of the county superintendent.

REVERSED AND DISMISSED
HENRY SABIN
August 6, 1889 *Superintendent of Public Instruction*

ISHAM WATKINS v. INDEPENDENT DISTRICT OF EMPIRE

Appeal from Marion County

APPEAL. An appeal will not lie from an order of the board initiating a change in boundaries, where the concurrence of the board of an adjoining district is necessary to effect the change.

APPEAL. Where changes are effected in district boundaries by the concurrent action of two boards, appeal may be taken from the order of the board concurring or refusing to concur, but not from the order of the board taking action first.

JURISDICTION. The jurisdiction of an appellate tribunal is not greater than that of the board from whose action the appeal is taken.

On the sixteenth of September, 1889, the board of the independent district of Highland determined to notify Isham Watkins of Empire district, that his children could no longer attend the school in Highland district. The records show that it was willing that he should be attached to Highland district. This was taken as an initiatory movement. Isham Watkins petitioned the board of the Empire district to set off the north half of northeast quarter of sections 25, 75, 21, to the independent district of Highland. The petition was rejected; in effect the Empire board refused to concur. An appeal was taken to the county superintendent, who ordered that the northeast quarter of northeast quarter of section 25 be detached from the independent district of Empire and attached to the independent district of Highland.

Of the several questions involved in this case it is necessary to discuss only one. Did the county superintendent exceed his jurisdiction? The board of Highland initiated an action. The board of Empire district must either concur or non-concur, and from its action an appeal could be taken. If it did not choose to accede to the proposition of the Highland district, then action in that particular ended with its vote to non-concur. If it had a different proposition to make, as for instance granting forty acres, it could only initiate a movement to that effect and leave it for Highland district to act, and from the action of the latter board an appeal could then be taken.

In this case the county superintendent initiates a new action, and leaves it for Highland district to act. Now, if this action is allowed to stand, anyone aggrieved may take an appeal from the action of the board of the Highland district. He would then have an appeal brought before the county superintendent from an action which he himself initiated. It might be further agreed that if the county superintendent has original jurisdiction, then this appeal cannot lie, as an appeal can be taken only from the order of the board completing the action. The precedents established have been followed closely by this department and we can see no reason for breaking away from them.

It is held that in cases requiring the concurrent action of two boards,

the board completing the action can only concur or non-concur. Any action involving a new proposition initiates a new case, which must be passed upon by the other board concerned in the matter, and from which an appeal can be taken. It is further held that the county superintendent upon appeals is limited to reversing or affirming the action of the board completing the action, and that he cannot assume original jurisdiction and do what the board appealed from could not do.

It seems apparent that Mr. Watkins has not reasonably good school facilities, and we regret that we are compelled to set aside the decision of the county superintendent. He was actuated by laudable motives and was looking for the best interests of the children in this case. We are, however, forced to the conclusion that the county superintendent erred in assuming original jurisdiction.

REVERSED AND DISMISSED

HENRY SABIN

March 18, 1890 *Superintendent of Public Instruction*

ROBERT MAXWELL v. DISTRICT TOWNSHIP OF LINCOLN

Appeal from Union County

PROCEEDINGS. The regularity of all the proceedings will be presumed upon. This is true in an especial sense when the records are more than usually complete.

TEACHER. In the trial of a teacher the board is bound carefully to protect the interests of the district and to seek the welfare of the school, as well as to regard the rights guaranteed to the teacher.

NOTICE. Appearance at the trial is a complete waiver of notice.

RECORDS. The record of the secretary must be considered as evidence, unless there is proof of fraud or falsehood.

On the ninth day of December, 1889, the secretary, acting upon a petition signed by five residents, called a meeting of the board for December 14th, to examine the teacher of subdistrict number eight. A notice was also served upon the teacher the same date, signed by the secretary, both the call and the notice being spread upon the records in due form. The meeting was held on December 14th. The records show that the appellant was present and objected to the consideration of the charges, as the proceedings were not in accordance with section 1734. At the same time he demanded a copy of the charges and that one week be given him in which to prepare his defense, which demand was complied with and the board adjourned to December 21st.

If the appellant had moved to dismiss the case it would not have been an error to sustain the motion, but he submitted to the jurisdiction of the board and obtained a continuance of the case until December 21st. It must be held that by this action he waived any defect or irregularity in the jurisdiction of the board in this case. The purpose and object of the process, as pointed out in section 1734, was fully accomplished. See *Wilgus et al v. Gettings et al*, 19 Iowa, page 82. At the meeting held December 21st the board voted to discharge the teacher. An appeal was taken to the county superintendent, who affirmed the board. The appellant appeals to the superintendent of public instruction.

The only question before the county superintendent was whether the conditions as prescribed in section 1734 were fully complied with. It

is alleged that while the teacher was present he was not allowed to make his defense. The secretary's transcript furnishes the only means of determining this. The records show that he was allowed to cross-examine witnesses, and they do not show that he was barred from offering evidence had he chosen to do so. There can be no question of the power of the board under the law to discharge the teacher. It is held in the case of *Kirkpatrick v. Independent District of Liberty*, 53 Iowa, 585, that the board does not act as a court, in any strict sense, and is not bound by the rules applicable to a court. The intent of the statute is evidently, while it guards carefully the rights of the teacher, to enable the board to discharge a teacher who, after a careful investigation, is determined to be unfit for the position. It is termed "a simple and inexpensive way of determining rights." It is claimed by the counsel for the appellant that when a certain mode is prescribed in determining a case not in the usual course of the common law, such mode must be followed, and reference is made to the case of *Cooper v Sunderland*, 3 Iowa, 114. But it is held in the same case that when sufficient evidence appears on the face of the records to give it jurisdiction under the law conferring the power, then the presumption attaches in favor of the remainder of the proceedings of the court. If the action of the appellant in appearing for trial gave the board jurisdiction, then all the proceedings must be held to be regular. The discharge of a teacher is largely within the discretionary power of the board. It is to guard the rights of the district and the interests of the school, as well as the rights of the teacher. After a full and fair investigation it is its duty to act as it deems best, under all the conditions and circumstances of the case. See *Smith v Township of Knox*, 42 Iowa, 522. This being the case, it is the duty of the county superintendent not to interfere with the action of the board unless he is convinced that it in some way abused its discretion. He is right in sustaining the board even though as an individual he would have preferred some other action on its part.

Our conclusion is, after a careful consideration of the matter and after reading the transcript with unusual care, that the defendant had a fair and impartial trial, and that the terms of the law were substantially complied with. The decision of the county superintendent is affirmed.

AFFIRMED.

HENRY SABIN
Superintendent of Public Instruction

June 12, 1890

ELISHA AND ELDA TANNER v. INDEPENDENT DISTRICT OF CLARENCE
Appeal from Cedar County

AFFIDAVIT. A technical error in the affidavit not prejudicial to either party will not defeat the appeal.

AFFIDAVIT. The affidavit may be amended when such action is not prejudicial to the rights of any one interested.

SCHOOL PRIVILEGES. The law is to be construed in the interest of the child. The actual residence of the scholar at the time will establish the right to attend school free of tuition.

The board excluded Elda Tanner from school until such time as her tuition is paid, on the ground that she is a non-resident pupil. The

county superintendent, on appeal, reversed the action of the board and appeal was taken to the superintendent of public instruction. It was claimed before the county superintendent that inasmuch as the affidavit upon which the appeal was based was without the seal of the notary public, that there were no grounds upon which the appeal could be legally based. While it is true that the notarial seal is necessary to constitute an affidavit, in this case the notary public was present at the time of trial and under oath testified that the omission of the seal was only an oversight on his part, and that the persons therein designated did make oath to the paper and affix their signatures to it in his presence, then he also there affixed the notarial seal. It is held that since no interests were prejudiced by the error which at the best was only technical, the county superintendent did not commit an error in overruling the motion to dismiss the case.

The allegations of facts made by Elda Turner are that she is sixteen years of age, that her father and mother have parted, and that for ten years or more she made her home in the family of Mrs. McCartney in Massilon township. Before she came to Clarence she had an understanding with her father that she was to care for herself thereafter. She also claims that being thus emancipated from her father's control, she chose to become a resident of Clarence, and as an actual resident of that school district is entitled to the privileges of school under the provisions of section 1794.

It is of interest to ascertain how far such an agreement constitutes emancipation of a minor child. It is held in 1 Iowa, 356, that in the absence of statutory requirements such emancipation need not be evidenced by any formal or record act, but may be proved like any other fact. The evidence of Elda Tanner in this case is corroborated by that of her father, and of Mrs. McCartney, who was present during the conversation. We are disposed to hold that Elda Tanner under the facts as sworn to before the county superintendent was at liberty to choose such a place of residence as seemed to her most fitting. The evident and beneficent intent of the law is that no child shall be deprived of school privileges. The father of a family may move into the district from an adjoining state, and although certain time must elapse before he is entitled to vote he may place his children in school the very day he arrives. In the same spirit it has been held that children living in families in which their work compensates for their board, are actual residents and are entitled to school privileges. The law is to be construed in their interests. The district is entitled to have such children enumerated, if they are thus actual residents at the time the school census is taken. We do not undertake to decide that parents or guardians can transfer children from one district to another for school purposes alone, but only that those who are actual residents under the provisions of the law may attend school without the payment of tuition. While it is true in general that the residence of a child is the same as that of the parents or guardian, the law evidently contemplates exceptions to this general rule and leaves the right to attend school to be established by the actual residence of the child. Any other construction

would not be in accordance with the spirit of the law, and would deprive many children of the right to attend the public schools.

In this case the question of residence is largely one of intent. The testimony of Elda Tanner is to the effect that she was at the time of attendance an actual resident of Clarence, and had no other residence. It was competent for the board to disprove this, but we do not find the evidence to that effect conclusive.

It is held that the board erred in excluding Elda Tanner from school and the decision of the county superintendent is affirmed. AFFIRMED

HENRY SABIN

April 24, 1891 *Superintendent of Public Instruction*

J. C. REED *et al* v. DISTRICT TOWNSHIP OF EAGLE

Appeal from Sioux County

SUBDISTRICTS. The board should be encouraged in forecasting a general plan looking toward an ultimate regularity in the form of subdistricts.
SCHOOLHOUSE. There is no limitation in law as to the number of scholars to be accommodated, in order that the board may provide a schoolhouse.
SUBDISTRICTS. Should be, if possible, compact and regular in form. In well populated district townships two miles square is considered a desirable area for each subdistrict.
SUBDISTRICTS. It is very important that subdistricts should be regular in form, and that where it is possible schoolhouses should be located at or near geographical centers.
BOUNDARIES. In the determination of district and subdistrict boundaries, temporary expenditures and individual convenience should be subordinated to the more important considerations relating to simplicity of outline, compactness of shape, uniformity of size, and permanence of sites and boundaries.

The above named district township coincides with a congressional township and consists of a single subdistrict. Portions of the district are yet sparsely settled. The board seems to have projected a plan to so locate schoolhouses when they must be supplied, that ultimately the township shall have nine subdistricts, each of four sections.

On the sixteenth of March the board ordered a schoolhouse built at the center of the square of four sections in the southeastern corner of the township. From this action J. C. Reed appealed to the county superintendent, who affirmed the order of the board. From this decision Mr. Reed appeals.

It was urged before the county superintendent that the board was prevented by the law from building a schoolhouse for the accommodation of a less number than fifteen of school age. The question now to be determined is whether the county superintendent erred in affirming the order of the board.

The board seemed to have outlined a policy of regarding each four sections as a separate division, to be provided with school advantages by itself. So far as forecasting the probable form of subdistricts to be created in the future, we think the board might be guided in the location of schoolhouses at the present time by such policy, in order that

ultimately each subdistrict will have the form desired and each schoolhouse will be located so as best to accommodate all patrons.

But while matters are in this progressive condition, we think the law does not confer power upon the board to apply the limitations of section 1725, and decide that until fifteen of school age are to be accommodated by the schoolhouse to be built no house can be erected. In this case for instance there is but one single district. The board may create other subdistricts provided fifteen of school age are included within the boundaries of each one so formed. But the board is not prevented from building more than one schoolhouse in any subdistrict. See 69 Iowa, 533. In the absence of specific instructions in connection with the voting of the taxes by the electors, the board is empowered to locate sites where in its judgment, a schoolhouse seems to be most demanded.

We are unable to find from the evidence any reason to disturb the finding of the county superintendent and his decision is therefore affirmed.

AFFIRMED

HENRY SABIN

July 3, 1891 *Superintendent of Public Instruction*

E. A. SHEAFE v. INDEPENDENT DISTRICT OF CENTER

Appeal from Wapello County

TEACHER. As an employee of the district the teacher may justify claim and expect to receive the official assistance and advice of the board.
TEACHER. The law insures the teacher a fair and impartial trial before he may be discharged.

The history of this case presents nothing unusual. The board voted to discharge the teacher upon certain preferred charges. The teacher appealed to the superintendent, who reversed the action of the board. The board appeals.

Section 1757 sets forth plainly the nature of the contract which is the evidence of agreement between the board acting for the district as one party, and the teacher as the other party. Section 1734 prescribes the only method by which the board may terminate the contract in advance or discharge the teacher. Both parties are equally bound by this contract, and as the board is a continuous body, the election of an entire new board does not change the relations of the contracting parties. But inasmuch as the directors also act as judges whose duty it is to decide whether the contract shall be terminated, being themselves parties to the contract, it becomes them to weigh the evidence in the case with the greatest care and to give the teacher the benefit of any reasonable doubt. In the present case the forms of the law were complied with, and the teacher was permitted to be present and make his defense.

The transcript sent up by the county superintendent shows that one of the complaints upon which the teacher was tried was signed by Jacob Ream, who also is one of the directors and acted as one of the judges in the case. This is strong presumptive evidence of prejudice on the part of one of the judges at least, and this evidence is strengthened by the fact that Jacob Ream is the father of John Ream, whose punishment is made a matter of complaint. It is further strengthened by the fact brought out in evidence, that the present board was elected for the pur-

pose and with the intent of displacing the teacher. The law is very careful to guard the rights of the teacher and to insure him a fair trial. That certainly cannot be considered a fair trial in the eyes of the law, in which one of the judges who is to give his vote for acquittal or conviction is a complainant in the case and is as ready to pronounce the verdict before he hears the testimony as afterward.

The board invited the teacher to resign at its first meeting, and upon his refusal it proceeded at once to take steps to discharge him. Under certain circumstances this might be right, when necessary to relieve the school from a teacher proved to be incompetent or immoral. But general dissatisfaction as alleged in the petition or the desire to hire a lady teacher for the summer term, or to lessen the expenses of the district, cannot be held to form any reason for discharging the teacher. The alleged punishment of the two boys is not proved in either case to have been unreasonably severe, to have been inflicted in passion, or to have resulted in any permanent injury. These punishments happened some weeks before and any complaint should have been made to the old board.

It does not appear necessary to enter any further into the merits of this case. It is held that no error was committed in reversing the action of the board and the decision of the county superintendent is therefore affirmed.

AFFIRMED

HENRY SABIN

October 20, 1891 *Superintendent of Public Instruction*

C. A. WEBSTER v. INDEPENDENT DISTRICT NUMBER SEVEN

Appeal from Winneshiek County

DISCRETIONARY ACTS. To warrant interference with a discretionary act, abuse of discretion must be proved beyond a reasonable doubt.

DISCRETIONARY ACTS. It is not the province of an appeal to discover and to correct a slight mistake. The board alone must bear any blame that may attach to a choice deemed by appellant somewhat undesirable, but not an unwise selection to such a degree as to indicate an abuse of the discretion ordinarily exercised.

DISCRETIONARY ACTS. In the absence of proof that the board has abused the authority given it by the law, its orders will not be set aside, although another decision might to many seem preferable.

JURISDICTION. When its order is affirmed, the board is left free to take another action, if thought best.

On the third day of October, 1891, the board relocated the schoolhouse site in independent district number seven, Burr Oak township. Appeal was taken to the county superintendent, who reversed the action of the board which ordered the house removed to the new location. From this decision John Knox, president of the board, appeals.

The proceedings in this case are entirely regular. It is not claimed that there was any direct violation of law, nor that prejudice or improper motives in the least influenced the action of the board. The very common complaint that the discretion vested in the board by the law had been abused was virtually the only error urged.

The only question for us to determine is the single one as to whether

the county superintendent was warranted in setting aside the order of the board. Unless the evidence clearly sustains his conclusions we shall be compelled to reverse this decision. But if the evidence shows plainly a gross abuse of discretion on the part of the board, then we must affirm.

Where an abuse of the large discretion vested in the board is urged, to warrant interference by an appellate tribunal, such abuse must be proved conclusively. The testimony must disclose so fully the nature of the unwarranted action as to leave no reasonable doubt. The acts of a board must be presumed to be correct, and they are entitled to the benefit of every doubt. Unless it is fully apparent that the discretionary power of the board has been abused to such an extent as to render interference necessary, it is the duty of the county superintendent to allow the act of the board to stand, although he may differ from the board very strongly as to the desirability of the order in question. In this connection, attention is called to appeal decisions found on pages 35, 82, 90, 100 and 135, School Law Decisions of 1888.

In this case while the testimony shows that the removal of the site selected will bring the schoolhouse quite a distance south of the center of the district, it is not in evidence that a suitable site might have been found nearer the center. It must be presumed that the board carefully weighed all the reasons in favor of and against the site chosen, and also that it endeavored to find the best site. The evidence is by no means conclusive that it did not select the best site obtainable. If in the opinion of the people an error has been made, it rests with the electors to choose a board favoring another location.

It is with reluctance that we reverse the decision of the county superintendent. There can be no question that he intended to seek substantial justice for the people of the district. This decision does not prevent the board, if thought desirable to do so, from reconsidering the action by which the new site was chosen and selecting a different site. But we cannot find that the evidence supports the county superintendent in overruling the order made by the board and his decision is therefore reversed.

REVERSED

J. B. KNOEPFLER
Superintendent of Public Instruction

February 26, 1892

R. G. W. FORSYTHE v. INDEPENDENT DISTRICT OF KIRKVILLE

Appeal from Wapello County

APPEAL. Where the changes are effected in district boundaries by the concurrent action of two boards, appeal may be taken from the order of the board concurring or refusing to concur, but not from the order of the board taking action first.

TERRITORY. All territory must be contiguous to the district to which it belongs.

JURISDICTION. In change of boundaries by two boards, an appellate tribunal acquires only the same power possessed by the board from whose action appeal is taken, and may do no more than affirm the order, or to reverse and do what the board refused to do.

PETITION. A petition may be used to bring to the attention of the board

the kind of action desired by the petitioners, but a board may act with equal directness without such request.

The board of the above named district refused to concur in the action of the board of the district township of Richland, offering to transfer certain territory to the independent district. Mr. Forsythe, desiring the transfer, appealed to the county superintendent, who reversed the action of the board and ordered the transfer of the territory under consideration by the two boards, with the exception of the northwest quarter of the southwest quarter of section eighteen, which the county superintendent directed should remain a part of the district township of Richland, and also ordered the transfer of the northwest quarter of section eighteen, which would otherwise be cut off from the district township to which it belongs. From this decision L. Jones, president of the board of the independent district of Kirkville appeals.

This case turns on the power of the county superintendent to modify the order appealed from in the manner done by him. It is true that even if the board of the independent district of Kirkville had concurred in the transfer of the territory released by the other board, such order would not have been in conformity with the spirit of the law, because forty acres would then be left belonging to the district township of Richland and not contiguous to the remainder of the district. The county superintendent was led to conclude that the forty acres in question should be transferred, if any change of boundaries was made. But could the county superintendent so determine in this appeal? We think not. The board of the independent district might concur or refuse to concur. They might refuse to concur, and initiate a new proposition which the board of the district township could act upon, when appeal would then lie from the last action. But an attempt to change the order originally made would render it necessary to have such new action considered by the other board, before becoming effective, or even in order that the action could be brought within the power of the county superintendent to consider on appeal. For in a case of this kind no matter can come into the case on appeal, unless the second board, the one last acting, concurs or refuses to concur in the order initiated or proposed by the board first taking action.

It follows then that the county superintendent having only appellate jurisdiction, could not assume original jurisdiction and do what the board from whose action the appeal was taken could not have done. Therefore we are compelled to hold that the county superintendent did not have the power to decide that the northwest quarter of the northwest quarter of section eighteen should be transferred.

A careful investigation of the transcript leads us to believe that perhaps such a change of the boundaries as would transfer the residence of Mr. Forsythe to the independent district, might be desirable. Of course such transfer would include entire forties of land, and no territory could be separated from the district to which it should belong. Whether any change is best, must be determined by the boards interested, the action of the board last acting being subject to correction on appeal. In order that the matter may come again without prejudice to the attention of the boards, the decision of the county superintendent

is reversed and the case remanded to him to be reopened and heard again. We think he will be compelled by necessity to affirm the decision of the board of the independent district of Kirkville, in refusing to concur in the transfer proposed by the district township. This will leave all matters as nearly as possible in the same condition they were before any action was taken. It will then be in order for either board at any time to initiate such a change of boundaries as may seem demanded. There is no absolute necessity for a petition or request. A petition may be used to bring to the attention of the board the kind of action desired by the petitioners, but a board may act with equal directness without such request.

REVERSED AND REMANDED

J. B. KNOEPFLER

April 6, 1892 *Superintendent of Public Instruction*

OLE THOMPSON *et al* v. DISTRICT TOWNSHIP OF BELMOND

Appeal from Wright County

TESTIMONY. Opinions unsupported by facts do not become satisfactory evidence.

DISCRETIONARY ACTS. The order complained of is reviewed not to discover the desirability of the action, but to determine whether sound reason and wise discretion were followed.

DISCRETIONARY ACTS. The fact that some other action would have been desirable or preferable does not establish that the board abused its discretion.

BOARD OF DIRECTORS. Its action is presumed to be correct and for the interest of the district, until proved to be otherwise.

DISCRETIONARY ACTS. In the determination of appeals, the weight which properly attached to the discretionary actions of a tribunal vested with original jurisdiction should not be overlooked.

This case comes before the superintendent of public instruction on appeal taken by John L. McAlpine from the decision of the county superintendent reversing the action of the board in refusing to create certain additional subdistricts as prayed for in a petition.

The point at issue is a simple one, being merely a question of discretion on the part of the board as to whether it was best to take or not to take a certain action. The decision of the county superintendent compels the board to do what it did not deem wise or necessary. Doubtless there are instances when such a ruling on the part of the appellant tribunal is needed. But does the evidence warrant such a decision in the present case? The affidavit bringing the case before the county superintendent does not allege violation of law, or prejudice. Neither does such appear in the testimony. The law gives boards very wide latitude in the exercise of their discretionary powers. Not infrequently cases arise in which an appellate tribunal would sustain their discretionary action whether they granted or refused to grant a given petition, there being no manifest abuse of such discretion in either action. In any event, the action of a board is presumed to be correct and for the interest of the district until proved to be otherwise. Mere opinions of witnesses that a different action would have been preferable cannot be accepted as evidence. Statements of facts and existing conditions

must be given. Even then the fact that some other action would have been desirable or preferable does not establish that the board abused its discretion. It must be shown that the action complained of is an injury to the district or does gross and needless injustice to the patrons thereof. The Decisions in this line by our predecessors are numerous and pointed, and we fully concur in the position taken.

In the present case the evidence does not show that any one is made to suffer injustice by the board's action. Ample provision has been made to accommodate all of the pupils of the territory in question with school privileges. It is not in evidence that the formation of three subdistricts out of the one would improve these facilities, since the subdistrict now has three schoolhouses located for the convenience of the respective portions of said subdistrict.

For the county superintendent, or the state superintendent, to render a decision invariably as he would have voted had he been a member of the board, is not what the law intends when clothing these officers with authority to try and decide appeals. Malice, prejudice, violation of law, is the board guilty of any of these? Or has it gone beyond sound reason and wise discretion in taking or refusing to take a given action? These are the questions for both tribunals to inquire into.

While we believe the county superintendent endeavored conscientiously to hear and decide the present case fairly, yet in the light of the foregoing reasoning we do not find the evidence discloses grounds sufficient for refusing to affirm the board, and the decision of the superintendent is therefore reversed.

REVERSED

J. B. KNOEPFLER
Superintendent of Public Instruction

March 11, 1893

J. O. SEVEREID AND JOHN STENBERG v. INDEPENDENT DISTRICT OF FIELDBERG

Appeal from Story County

SCHOOL PRIVILEGES. Are not guaranteed children elsewhere than in the district of their residence.

SCHOOL PRIVILEGES. To the fullest extent possible, the board should equalize the distance to be traveled to school.

SCHOOL PRIVILEGES. Attendance in another district depends upon the board of that district, and must therefore be regarded as a contingency.

The transcript in this case shows that on March 20, 1893, the board in answer to a petition relocated the school site and made an order to move the schoolhouse on the site selected, the latter being more than three-fourths of a mile north of the present site. John O. Severeid and John Stenberg appealed to the county superintendent, who affirmed the order of the board. The same parties now appeal to the superintendent of public instruction. The essence of affidavit filed by appellants is abuse of discretion by the board because several families will be compelled to go two miles or more to reach the schoolhouse on the new site.

The district consists of four sections in the southwest corner of Palestine township. The schoolhouse as now located is in the geographical center of the district and within a distance of one and three-fourths miles from the most remote patrons. In the northern part of the district,

in fact, on the extreme northern boundary, lies the village of Huxley. It is in the edge of this village, and therefore almost in the limits of the district, that the new site has been selected, two of the directors residing in said village and being the two who voted for the new location. The district has a school enumerating sixty-eight of whom about forty live in Huxley. These pupils have been going to the center of the district, where the schoolhouse now is, a fraction over one and one-fourth miles. For the better accommodation of these pupils the removal was ordered. While some attempt is made to show that the site chosen is unfit, that the cost of moving will be excessive, and that there was undue prejudice, we do not find that any of these charges are sustained. We may therefore consider merely the element of distance to the new site. It is in evidence that some of the school patrons will have to travel two and one-fourth miles to reach the new site, while there are five families with nine children whose distance will be over two miles, also that about twenty-nine children at present will be unfavorably affected and about thirty-seven favorably. While the new site will accommodate a majority of the pupils, still it is considerably north of the center of population. The board and the petitioners seemed to realize clearly that the contemplated site would leave several families at a great disadvantage as to school privileges, since they state that these families can be accommodated in other districts. They realized that an injustice would be done if these families should be compelled to travel to the new site for school conveniences. But there is nothing offered in evidence to show how said patrons can be accommodated elsewhere. It is not shown that they will be as near even another school as to their own, provided they might attend such a school. For aught that appears in the evidence, they may be three or more miles from any other school. Even if there be one nearer, there is no positive evidence that the board has made arrangements for the schooling of said pupils in another school, or even that it can make such arrangements. Witnesses say that they think said pupils could attend in some other district, but this belief merely cannot be received as satisfactory evidence on this point. What are the probabilities that such provisions can be made for the children of the five families under consideration? The territory on which these families reside cannot be set off to another district for the reason that territory cannot be detached to districts in a different township, as would be necessary in this case. Neither is it legal to reduce independent districts to less than four sections except in special cases. See chapter 133, laws of 1878, as amended by chapter 131, laws of 1880, page 84, S. L. 1892.

The board is not sure of securing school privileges for said pupils elsewhere without such transfer of territory, because it will require the concurrence of another board which may absolutely refuse. In any event the board of Fieldberg independent district is not able to guarantee school privileges to these families elsewhere than in their own district, since the matter does not rest wholly in its own power. While the law does not, as many suppose, prescribe a maximum distance for school travel, yet by permitting provisions to be made under given conditions for children to attend other schools than their own when they

live more than one and one-half miles from the latter, it is evident that the legislature regarded this distance about as far as a child should travel to reach school.

It is the duty of the board to furnish reasonable facilities in its own district for all the children thereof. Even a minority of only five families has rights and claims which may not be ignored. To give a majority of the district located in a village convenient school privileges by practically cutting off others entirely from any privileges of education, we believe after long and careful study to be an abuse of discretion sufficient to warrant reversing a board taking such action. The distance these families will be compelled to travel to school will be such as largely to deprive them of their just rights in the matter of enjoying school accommodations.

We are aware that this department has ever stood for sustaining the discretionary acts of a board. In this case, however, we believe that abuse of discretion has been fairly proven by the appellants. Doubtless the board had not fully considered the fact that rights of appellant could not be so ignored in the effort to improve the school conveniences of other parts of the district, or did not consider that providing school privileges for appellants in some other district is hedged about with such complications and uncertainties. The case is different from what it would be had theirs been a district township instead of an independent district. In the former case the matter would be much more in its own hands. It could rearrange boundaries to accommodate those at too great a distance from the new site, a matter which the board in the present case cannot do. If it was satisfactorily established that said families had been or could and would be permanently provided with better school facilities elsewhere, such accommodations being annually dependent upon conditions in the district in which they might desire to attend, especially in the disposition of each new board, it would have been a comparatively clear case for affirming the action of both board and county superintendent. Because the distance of five families is to our mind needlessly increased and their school privileges nearly cut off, and because there is no proof that another school is nearer, with provisions that they could attend such school, if there is one, and it seeming quite doubtful whether such provisions can be made at all, we feel that the interests of said families should be protected. We have no reason to question the intentions of any parties connected herewith. We simply state that in our opinion the board did not consider the difficulties in the matter of providing school facilities for the five most distant families.

The decision of the superintendent is reversed. REVERSED

J. B. KNOEPFLER
Superintendent of Public Instruction

August 14, 1893

BRADFORD INGRAHAM v. DISTRICT TOWNSHIP OF HARTFORD

Appeal from Iowa County

SCHOOLHOUSE SITE. It is not the province of an appeal to determine which of two sites is the better.

TESTIMONY. If selfish or other improper motives are complained of, the testimony must show such facts conclusively.

The history of this case is brief. March 20, 1893, the new township board having then just organized, on motion appointed a committee of three to relocate the site of schoolhouse in subdistrict number eight, said site to be near the geographical center of said subdistrict. On the twentieth of May, at a special called meeting, it was moved to reconsider the motion to relocate the schoolhouse in subdistrict number eight, which motion was carried. By another motion the committee appointed at the former meeting was discharged. It is from this action of the board on May 20th that Bradford Ingraham appealed to the county superintendent, and from the latter's decision affirming the action of the board to the superintendent of public instruction.

In his affidavit, Mr. Ingraham alleges that the board was influenced by selfish motives and further alleges in effect that the board abused its discretionary powers. The abuse of discretion, if such it is, consisted in the unequal distance of travel from the different parts of the subdistrict to the schoolhouse. A careful reading of the case as filed in the transcript fails to disclose any selfish or improper motives on the part of the board, and we dismiss this charge without further comment.

Counsel for appellant discusses at some length the effect of a vote to reconsider, and then not reconsidering, not voting on the former motion. It is claimed that the board merely voted to reconsider former motion to relocate, and that no further action being then taken, the motion to relocate remained before the board until it should be acted upon one way or the other, or that not being taken up within a month, it was terminated, leaving the previous action thereon in force. Counsel for appellees claims if the first be true, then the case should have been dismissed, as no action had been taken from which to appeal.

Technically the vote to reconsider the former motion placed said motion before the board again, as if it had not been voted on, and left it ready for debate and adoption or rejection. But it is clear that the board intended to rescind its former action and evidently understood the word reconsider in the sense of rescinding. It is quite a common misapplication of the word. That this was the intention is the more conclusive when we note the subsequent vote of the board in discharging its committee.

In providing for appeals before the county and state superintendent, it was the manifest purpose of the lawmakers to afford a speedy, inexpensive remedy, stripped of undue technicalities, for certain classes of grievance. Holding this view, we must recognize the intent of the board, rather than what it did under a technical construction of language. Apparently the board itself made the relocation, and appointed a committee chiefly to arrange the details and see to the removal of the schoolhouse. At the May meeting no action was taken by the board on the report or statement made by the committee. The resolution of the board at the March meeting located the site about eighty rods east of the old site. The rescinding of this amounted to a new location or to undoing the former action, a thing they clearly had a right to do. Members of the board had changed their views.

No evidence is introduced to show that either site is in itself unsuit-

able. It is merely a question of distance. It is a question of moving the schoolhouse away from some and nearer to others. Neither site would seriously discommode any one according to the plat sent up with the transcript. It is in evidence that only one more pupil would be better accommodated at the new site than at the old. It is not the province of this department, nor of the county superintendent, to determine which of the two sites is the better. An appellate tribunal in such cases may determine only whether the board has chosen a grossly unsuitable or unjust and unfair site. If so, the board should be reversed. If not, it should be sustained, even though a better site could be found.

In the present instance no gross injustice is done, no manifest error committed. In fact, both sites are good, and we should be compelled to sustain the board on appeal in the selection of either the present or new site. We hold that the county superintendent committed no error in affirming the action of the board when it practically rescinded its former motion for relocation and chose to keep the old site. His decision is therefore affirmed.

AFFIRMED

J. B. KNOEPFLER

Superintendent of Public Instruction

December 21, 1893

W. S. KENWORTHY *et al* v. INDEPENDENT DISTRICT OF OSKALOOSA

Appeal from Mahaska County

DISCRETIONARY ACTS. The order of a board should be reversed only upon the plain showing that the law has been violated or discretion grossly abused.

BOARD OF DIRECTORS. Has full power to provide and enforce a course of study.

RULES AND REGULATIONS. The burden of proof is with the appellant to show that a rule in unreasonable.

The history of the case is this. The board has a regulation that all pupils shall provide themselves with text-books suitable to their grade, and that failing to do this they shall be suspended until they comply with the rule.

The children of the appellants were under this rule suspended from school for not being provided with the music books in use in said schools. The parents appealed from the ruling of the board to the county superintendent, who reversed the action of the board, and the board appeals.

It is an established rule that the action of a school board should be reversed only upon the showing that it has abused its discretion or violated the law. In this case the county superintendent avers that it violated the law in that it did not advertise for bids as required by section 5 of chapter 24, Laws of 1890, before the music books were adopted.

There is nothing in the transcript to show that it was acting under the provisions of this chapter, which it could not do unless so instructed by the electors of the district. See section 12 of said chapter. So much of the county superintendent's decision as refers to this may then be dismissed from the case.

It is further claimed that it abused its discretion by adopting an unreasonable rule. This is the real question at issue.

With their power to establish and maintain graded schools, all boards are invested with the authority to prescribe a course of study in the different branches to be taught. It is not our province to determine what the courts might hold in this case. They have held that in case a pupil refuses to conform to a course of study as prescribed by the board the proper remedy is suspension, and not corporal punishment. See 50 Iowa, 145. They have also held that a rule suspending a pupil for a certain number of absences or tardiness is reasonable, and may be enforced. See 31 Iowa, 562. It is true that they also have held that a pupil may be suspended only for gross immorality or persistent violation of reasonable rules. See 56 Iowa, 476.

In this case it is nowhere shown that the children would in any way be injured by the study of music, or that their health or well being demanded that they should be excused from the study in question.

There is fair ground for considering the refusal to purchase the books as a failure to comply with a reasonable regulation of the board. The rule of the board was made so as to bear with equal force upon all the pupils in the school. And in order to make it as little oppressive as possible it offered the books at the least expense possible, and that none might be deprived of the benefits of the study the board authorized the teachers to loan the text-book in music without charge to children whose parents were in indigent circumstances.

The law has invested boards with very large discretionary powers, under which they may grade the schools and establish such regulations as may seem to them best for the interest of the entire school. The burden of proof in this case was with the appellants to show that the rule is unreasonable, or that in obeying it their children would suffer some hardship. This we think they have failed to do, and the decision of the county superintendent is therefore reversed. REVERSED

HENRY SABIN

February 12, 1894 *Superintendent of Public Instruction*

ELLA BENSON AND BELLE ROBERTSON v. DISTRICT TOWNSHIP OF SILVER LAKE

Appeal from Dickinson County

CONTRACT. It is the province of the courts of law to decide as to the validity of a contract.

COUNTY SUPERINTENDENT. Does not have the power to interpret the legal value of a contract.

This case turns upon the construction to be given to a contract. The validity of the contracts in the sense claimed by the appellants is questioned and denied by the board. The teachers assert that said contracts are of full force for the nine school months named in the contracts, and the board contends that no authority was granted by it to any one to contract for more than six months, and that therefore the contracts can have no force beyond the term of six months. It is the province of the courts of law to decide as to the validity of a contract. In the trial of an appeal as soon as it becomes clearly apparent that the principal issue is of a kind intended by our statutes to be heard and determined only by the courts of law, the appeal should be dismissed. As the real

matter to be decided in this case is what the contracts actually are and what force must be given to their essential conditions, it follows that the county superintendent did not err in dismissing the appeal for want of jurisdiction.

This case is not parallel with *Kirkpatrick v The Independent District, etc.*, 53 Iowa, 585, in which it is held that the remedy of a teacher wrongfully discharged is appeal, and not an action at once in the courts to recover compensation. In the present case the board did not make an order discharging these two teachers, but it is clearly apparent that the county superintendent could not review that order of the board without proceeding upon the assumption that the contracts had force and validity, and he did not have the power to interpret the legal value of the contract. We are compelled to find that the only remedy of the appellants is an action in a court of law. The decision of the county superintendent is affirmed and the case dismissed. DISMISSED

HENRY SABIN
Superintendent of Public Instruction

August 11, 1894

SAMUEL FALLON V. INDEPENDENT DISTRICT OF FORT DODGE

Appeal from Webster County

ATTENDANCE. An actual resident may not be denied equal school advantages with other residents.

BOARD OF DIRECTORS. May adopt its own course to decide the question of actual residence.

TUITION. Failing to substantiate a claim to residence, a non-resident may attend school only upon such terms as the board deems just and equitable.

In this case the two sons of the appellant, aged nineteen and sixteen years, were refused admission to the schools unless they would pay tuition. They claimed to be residents of the district and that they were entitled to the same privileges as other residents. Being denied admission they appealed to the county superintendent, who affirmed the order of the board.

The entire case turns upon the fact of the residence of the children. If a board concludes that a child is an actual resident, it cannot deny him equal school advantages with other residents. But if it cannot be satisfied that an applicant is an actual resident, then it is its duty to make the same requirements that are demanded of other scholars who may be sojourning temporarily in the district.

It will be of interest to inquire as to who may decide definitely the question of residence, and as to the manner in which the matter should be considered. In view of the fact that the matter has given a great deal of trouble in a number of districts, this department has had occasion frequently to submit questions involving some phases of the subject to the attorney general for his official opinion. In one of these opinions he uses the following language, which we think is quite applicable in this present case:

"It may be said that it is nowhere provided in the law what course the board of directors shall pursue in determining whether a pupil is a resident of the district, nor is the board directed as to the kind of evidence that shall be produced, nor as to the manner of producing it

in determining such question. In the absence of such a provision directing the board as to its course of proceeding in such cases I think that body may adopt any course it sees fit, and take any kind of evidence it chooses in deciding this question of residence. I think it may make such decision from its own knowledge of facts; from the observations of the members; from the statements, sworn or unsworn, of parties who have knowledge of the facts, or from any other fair and impartial method of obtaining information bearing upon the point at issue. I do not think the board has power to compel the attendance of witnesses, or to administer oaths to them; but in gathering its information and in deciding the question it must act in entire good faith and with a view to getting the exact truth and making its decision according to the very right of the matter."

It is in evidence that the board in this case acted with deliberation, and it is not claimed that it failed to receive any testimony or statements that would tend to make final determination of the matter by it any more clear or conclusive. In reviewing its decision on appeal the county superintendent was unable to find that it had abused its discretion, had acted without the fullest information within its reach, or had arrived at any other than an equitable conclusion.

This department has continuously held, in interpreting section 1794, that the board is to be satisfied that the residence of the scholar is actual. The burden of proof rests upon the child who has recently come into the district, to establish the fact of residence before he can be admitted to school privileges free of tuition. Failing to convince the board and to substantiate his claim of residence, he can attend only upon such terms as the board may deem just and equitable.

In this case we do not find that the county superintendent erred in affirming the order of the board requiring the children of Mr. Fallon to pay tuition as an essential condition to attendance. His decision is therefore affirmed.

AFFIRMED

HENRY SABIN

September 1, 1894 *Superintendent of Public Instruction*

G. O. ROGNESS v. DISTRICT TOWNSHIP OF GLENWOOD

Appeal from Winneshiek County

APPEAL. Will lie from an action of the board which is made a matter of record.

APPEAL. May be taken from the action of the board in laying the subject-matter of a petition on the table.

It appears that at a meeting of the board, held September 17, 1894, George O. Rogness presented a petition asking that the board redistrict said township, and also that an extra school be kept for four months in a certain school building, situated on the farm of E. Bolson. By vote of the board said petition was laid on the table. An appeal was taken to the county superintendent, who dismissed the same on the ground that no action was taken by the board which could furnish the basis of an appeal. The case comes now on appeal before the superintendent of public instruction.

The only point to be decided is whether an appeal may be taken from

a vote to lay on the table. The words of the law in section 1829 are that any person aggrieved by any order or decision of the board may appeal. The transcript sent up by the secretary in this case reads: "Moved and carried that the bill (petition) of G. Rogness be laid on the table." It must be held that this constitutes an action on the part of the board. The motion to lay on the table was made, was voted upon, was declared carried, and is so recorded upon the secretary's book. The above conclusion is in accord with the unvarying opinion of this department for a long number of years.

It is to be noted that in the case cited by counsel for the side of the district, in 71 Iowa, page 634, the supreme court does not attempt to decide what constitutes an action. It refers to cases in which the board purposely intend, by neglect or refusal, to avoid taking an action or making an order or decision. In the case we are now deciding the board made an order, which the secretary recorded in the minutes, "that the petition be laid upon the table." The decision of Superintendent Abernethy (see S. L. Dec. 1892, page 62), that the motion to lay on the table "furnishes a convenient method of disposing of the matter," appears to be to the point. The right of the board to make such a disposition of a case cannot be questioned, but it must be regarded as an action subject, like any other action, to appeal.

After studying up carefully the precedents as established by the rulings of this department, and reading with equal care the cases cited by counsel, we can arrive at no other conclusion. The case is reversed with the suggestion to the superintendent that he remand the case, in order that the board may take such further action as may seem fair and just to all concerned.

REVERSED

HENRY SABIN

Superintendent of Public Instruction

January 11, 1895.

E. E. AMSDEN v. INDEPENDENT DISTRICT OF MACEDONIA

Appeal from Pottawattamie County

AFFIDAVIT. The affidavit may be amended when such action is not prejudicial to the rights of any one interested.

AFFIDAVIT. Must be accepted, if sufficient to give the appellant a standing.

APPEAL. Mere technical objections should not prevent the fullest presentation of the merits of the case in the trial of an appeal.

TESTIMONY. Sufficient latitude should be allowed in the introduction of testimony to permit a full presentation of the issues involved, even if irrelevant testimony is occasionally admitted.

There are certain facts in this case concerning which there is no disagreement. The board of directors contracted on the twenty-sixth day of March, 1895, with E. E. Amsden to teach upon terms clearly set forth in the contract as signed by both parties. Concerning the validity of this contract there is no doubt expressed.

Upon the fifth day of July the said Amsden had a hearing before the board upon definite and well specified charges. He was duly notified of these charges, was present both himself and by counsel at the time of trial, and was allowed to make his defense. The board took time for

deliberation, and finally on the eighth day of July made an order annulling the contract, and in effect discharging the teacher. From this decision Mr. Amsden appealed to the county superintendent, who on the third day of September rendered a decision dismissing the case on account of the legal insufficiency of the affidavit.

There are only two questions involved. Was the original affidavit sufficient to enable the county superintendent to assume jurisdiction of the case? And could the affidavit be amended at the time of trial?

It must be held that the lapse of thirty days from the making the order sought to be appealed from does not affect in any way the right of the appellant to amend his original affidavit. If he offered his amendment at the time of trial he complied with the usual practice. Whether the amendment should be admitted depends upon its nature. If it set up a new and distinct issue, one not involved in any way in the original affidavit, then the county superintendent should refuse to allow the amendment to be made. See case on page 141 in S. L. Dec. 1884. An amendment is, however, admissible when it tends to correct mistakes or to make clearer or more explicit the charges contained in the original affidavit. See case on page 25, S. L. Dec. 1892. In the case at bar the amended affidavit introduces no new issue and does not in any way prejudice the rights of any person. We think the county superintendent committed error in refusing to admit the amendment.

Now as to the original affidavit. We do not understand what is meant by the term *legal insufficiency*. It is to be remembered that no very definite rules have been or can be adopted for the trial of cases before the county superintendent. This department has always held that the system of appeals was intended as a speedy and inexpensive method of adjusting school difficulties. See case on page 25, S. L. Dec. 1892. The supreme court has held that it "is abundantly manifest that the legislature designed to afford an inexpensive and summary way of disposing of these cases." See 68 Iowa, 161. Mere technicalities cannot be allowed to intervene to defeat the ends for which the system of appeals was instituted.

The appellant sets forth in his affidavit that the board acted through passion and prejudice, and that he did not have the fair and impartial trial guaranteed to him by section 1734. On these as well as on other grievances set forth in the affidavit the appellant has the right to be heard before the county superintendent, to introduce testimony, and to be heard, by himself or his counsel.

The law makes it obligatory upon the county superintendent to hear such a case, to weigh carefully and without prejudice the evidence and the arguments, and to render his decision in accordance with his judgment. This is the more important in such cases, because the teacher has no other remedy in law of which he can avail himself. Through some informality which does not in any way affect the issues in the case he should not be deprived of his right of appeal.

We say nothing of the merits of this case. We know nothing of them. We believe the affidavit of appeal was sufficient to give the appellant a standing before the county superintendent, and that is the only point upon which we are called to pass.

The case is remanded to the county superintendent, with directions to fix a time of hearing the same within fifteen days from the date of this decision, and to notify all concerned, that they may be present.

REVERSED AND REMANDED

HENRY SABIN

November 21, 1895 *Superintendent of Public Instruction*

D. C. McKEE v. DISTRICT TOWNSHIP OF GROVE

Appeal from Humboldt County

SUBDISTRICT BOUNDARIES. When an action has been reversed by the county superintendent, and that decision affirmed by the superintendent of public instruction, the board cannot act again until a material change has taken place.

SCHOOLHOUSE SITE. At time of purchase need not necessarily be upon a highway.

DISCRETIONARY ACTS. An appellate tribunal is not to decide mainly whether the action complained of was wise, or the best that might have been taken, but simply whether a reversal is required by the evidence.

In this case the board on September 16, 1895, made two orders. By the first of these it divided subdistrict number seven in said township into two subdistricts, to be known as number seven and number nine, and established the boundary line between them. By the second action it ordered the removal of the schoolhouse, now located on section 34, township 92 north, range 28 west, removed and located on section 33, township 92 north, range 28 west, on the Sherman and Dakota road, and authorized the president to draw an order for the payment of the same on report of the committee.

From these two actions D. C. McKee appealed to the county superintendent, who reversed both actions of the board and relocated the schoolhouse on the old site. From the order removing the schoolhouse D. C. McKee takes an appeal to the superintendent of public instruction. The former action of the board dividing the subdistrict and reversed by the county superintendent is not in the case. This simplifies the matter and leaves as the only point to be considered the discretionary act of the board in ordering the removal of the building to the new site.

The district as at present constituted is four and one-half miles from east to west in extreme length. The two schoolhouses stand within a mile of each other.

There are several points brought in by the county superintendent and in the arguments of the attorneys which need but a brief notice. It appears that at a previous meeting of the board it took action removing the schoolhouse to a site near the present new site, which action was reversed by the county superintendent, and that there has been no material change in the district since that. This does not act as a bar in any sense to the present proceedings. For a full discussion of this point see *P. O'Connor, Jr., v. District Township of Badger*, page 108, S. L. Dec. 1892.

The only case in which the board cannot act again without a material change is when a former action has been reversed by the county superintendent, and on appeal to the superintendent of public instruction has

been affirmed. In the case at bar the county superintendent reversed the action of the board, but appeal was not taken to the superintendent of public instruction.

Much stress has also been laid upon the question whether the road upon which the new site is located is a highway in the sense intended by the law. Section 1826 has reference to a case in which the board condemns a piece of land for schoolhouse purposes. But when said site is purchased by the board the provisions of sections 1825-1826 do not apply. See, also, for a full discussion of this point, case of *H. D. Fisher v. District Township of Tipton*, page 86, S. L. Dec. 1892.

If the site selected and purchased should be inaccessible it might be a case warranting the reversing of the board, but in the case at bar the site purchased by the board is on a highway, which both parties acknowledge has been traveled more or less for at least nine years.

This leaves the only point for consideration whether the board abused its discretion in ordering the removing of the schoolhouse. The location of the schoolhouse is a matter entirely within the discretionary power of the board. Its action ought not to be reversed by the county superintendent without the clearest proof that it has acted through passion or prejudice, or from some improper motive. There is nothing in the case whatever to show that the board was not endeavoring to do what it believed to be for the best interests of all the people of the subdistrict. The vote in the board stood four in favor of removal and one opposed.

We cannot discover that there are any reasonable grounds for reversing its action. We are not called upon to decide whether it acted wisely or unwisely, but simply and solely whether there is sufficient evidence to warrant the county superintendent in reversing its action on the grounds of abuse of discretion. We regret very much that we are obliged to reverse the action of the county superintendent, and do not doubt that he acted according to his best judgment. We are, however, compelled to decide that the board did not in any way so abuse its discretion as to warrant an interference.

REVERSED

HENRY SABIN

February 8, 1896 *Superintendent of Public Instruction*

HUGH MCMILLAN V. DISTRICT TOWNSHIP OF WAVELAND

Appeal from Pottawattamie County

BOARD OF DIRECTORS. It is the first duty of a board to co-operate with and assist the teacher in the conduct of the school.

TEACHER. A teacher may justly claim and expect to receive the assistance and advice of the board, and especially the help of his own subdirector, in the proper conduct of his school.

BOARD OF DIRECTORS. In exercising its power in a semi-judicial capacity the board should be able to show the very best reasons for its conclusions.

TEACHER. It is alike due to the dignity of the board and the rights of the teacher that no one should be discharged except after thorough investigation and the clearest proof. If possible, the teacher should be shielded from the stigma of discharge.

After a trial, conducted in accordance with law, the board, by a vote of three to two in a board of nine members, discharged the teacher for

incompetency, in accordance with the provisions of section 1734. Hugh McMillan appealed to the county superintendent, who reversed the order of the board. John W. Rush, president of the board, appeals here.

The proceedings of the board in this case were entirely regular, and it is not claimed that the law was violated by it in any particular, as to its manner of proceeding. The question to be determined by us is, was the county superintendent warranted in finding that the board abused its discretion to that extent to require a reversal of its action in discharging the teacher.

The testimony discloses a very undesirable condition in the school in question, as to the matter of discipline and behavior of the scholars. The testimony discloses the fact that many of the older scholars, instead of being an assistance to the teacher, and a credit to themselves and their parents, were insubordinate, disobedient and disrespectful to the teacher. The testimony also discloses that the subdirector, instead of assisting the teacher in maintaining discipline and good order in the school withheld that support so much needed by any teacher under such circumstances. It is not shown nor is it claimed that any of the board had visited the school for the purpose of aiding the teacher in enforcing rules for its government, as it is required to do by the first part of section 1734. Nor did the subdirector visit his school, as he is required to do by the latter part of section 1756.

The testimony in the case is to the effect that after the incorrigible scholars were dismissed the teacher was much more successful in his work. We cannot find from the testimony that the teacher failed in any important particular to attempt to do his full duty by his school, and to regard equally the rights of every scholar. Under all circumstances, we think it is the first duty of any board to co-operate with and assist the teacher in the conduct of his school. This is the duty of the local subdirector in a peculiar sense, as he is in close relation to his own school and his teacher. A teacher may justly claim and expect to receive the assistance and advice of the board, and especially the help of his own subdirector, in the proper conduct of his school. See case on page 135, S. L. Dec. 1892. It is often the case that a little timely assistance, offered at the right time and in the proper spirit, will aid a teacher very materially in maintaining good order and discipline in his school, and in preventing many difficulties from arising which might, under a different course, almost certainly tend to injure the efficiency of the school.

In this case, two of the five members present at the trial voted to discharge the teacher, two voted in the negative, leaving the casting vote with the subdirector of the school, who, as we have seen, was out of sympathy with the teacher, and had failed to afford his assistance to a successful management of the school. While it is true that in general the discretionary acts of a board are entitled to great weight, yet it is also true that in exercising its power in a semi-judicial capacity, the board should be able to show the very best reasons for its conclusions. Except upon the clearest proof, and the most convincing reasons apparent to the board that the good of the school demands the discharge of the teacher, a teacher should be shielded from the stigma of discharge,

and the authority of the board and the respect due the board and its teachers, should be maintained, by a decision on the part of the board to assist and support the teacher in bringing his school to a conclusion as nearly as possible satisfactory to the board and creditable to himself. The decision of the county superintendent is affirmed. AFFIRMED

HENRY SABIN
Superintendent of Public Instruction

May 20, 1896

S. B. HEATH v. DISTRICT TOWNSHIP OF IOWA

Appeal from Wright County

COUNTY SUPERINTENDENT. On appeal may do no more than the board might have done.

INDEPENDENT DISTRICT. The boundaries outside the town plat depending upon the petition of the electors, such boundaries may not be fixed until petitioned for.

This is a case arising under the amendment to section 1800 made by the Twenty-fifth General Assembly. It is the effect of this amendment that when a town or village has less than two hundred inhabitants and not less than one hundred inhabitants, the territory contiguous to such town plat may not be included in the proposed independent town district except on a written petition of a majority of the electors residing upon such territory outside the town plat.

In this case the board refused to fix the boundaries of a contemplated independent town district. From its order appeal was taken to the county superintendent, who reversed the order of the board and fixed the boundaries of a contemplated independent district, but different from the boundaries asked for in the petition presented to the board from the electors residing outside the town.

Without considering any of the other merits of the case it becomes necessary to inquire whether the county superintendent might in reversing the order of the board, fix different boundaries than those petitioned for by the majority of the electors residing upon the outside territory. We find that the territory included in the contemplated district by order of the county superintendent excludes at least four and one-half sections that were before included. Did the county superintendent have power to fix different boundaries for the outside territory from those petitioned for when application was made to the board, without first himself having a written petition from a majority of the resident electors upon the territory outside the town which said county superintendent included within the contemplated independent district? We think he did not. If our view is correct it is decisive of the case and we will be compelled to reverse the county superintendent's decision.

Not many cases have arisen under the amendment to section 1800, found in chapter 38, Laws of 1894. But it seems to us that there can be no doubt as to the intention of the general assembly to require that before territory outside a town or village of over one hundred and of less than two hundred inhabitants may be included within a contemplated independent town district, a majority of the electors must consent that such boundaries may be fixed. Any other conclusion would seem to defeat the purpose of the amendment. It is not reasonable to urge

that the county superintendent would have greater power on appeal than the board would have.

It will be noticed that this decision has no reference whatever to the merits of the case as to the boundaries which should be fixed for a town independent district. That matter is still within the discretion of the board under the limitation of the law.

REVERSED

HENRY SABIN
Superintendent of Public Instruction

August 3, 1896

LETHA JACKSON V. INDEPENDENT DISTRICT OF STEAMBOAT ROCK

Appeal from Hardin County

TEACHER. Full opportunity must be afforded the teacher to make defense against charges.

BOARD OF DIRECTORS. Is required by the law to visit the school and to aid and sustain the teacher in maintaining order and discipline.

TEACHER. Should not employ unsuitable and unusual methods of punishment.

On the twenty-eighth day of November, 1896, the board voted to discharge from its employ Miss Letha Jackson, the teacher in the intermediate room of its school. The reason, as spread upon the record, is that she inflicted inhuman and cruel punishment upon her pupils, especially upon Minnie Platts. An appeal was taken to the county superintendent, who reversed the order of the board. Appeal was taken to the superintendent of public instruction.

There is no doubt from the testimony sent up with the transcript that Minnie Platts was insolent and disobedient, and also that the teacher failed to control herself, and that they engaged in an unseemly squabble in the presence of the school. It is also evident that the teacher was accustomed to use methods of punishment which are, at the best, not customary in well disciplined schools. Much of the testimony is conflicting, and that part of it relating to matters which occurred under a previous contract cannot be allowed to have any weight in determining this case.

The contract, as placed in evidence, specifies that the teacher shall not make use of any cruel or unusual punishment in the discipline of the school. Whether she violated the contract in this respect is a matter to be determined by the board, and in doing so it may avail itself of any sources of reliable information within its power. The notice sent to the teacher, November 23, 1896, charges as follows: "For inhuman and unjustifiable punishment of pupils by pinching, pulling their ears, pulling their hair, and pounding their heads and faces with your fists, and pounding their heads on the wall, floor, and seats of the schoolroom with your fists." November 28th she was notified by the secretary that she was dismissed from the school. At a meeting of the board held November 27th, the president appointed the entire board an investigating committee. It appears that it carried on its investigation by questioning the pupils in Miss Jackson's room, and that its vote to dismiss her was based entirely upon information obtained in this way, as appears in the records of November 27th. This method placed the teacher at an

immense disadvantage. It would at least have been just to have examined these pupils in her presence, and that she should have been allowed to correct their misstatements, if any, and to give the investigating committee her own account of the matter. We cannot consider this an impartial method of conducting an investigation against a teacher. Justice would seem to demand that she should have been furnished a copy of the findings of this committee, and should have been given a reasonable time in which to prepare her defense. The board places on file the unanimous report of this investigating committee recommending that the teacher be discharged. It, in effect, finds her guilty and asks her to show cause why sentence should not be pronounced.

Now, as to Miss Jackson's failure to appear before the board. Her physician sent a certificate to be read at the first meeting, stating that she was not able to attend on account of sickness. At the same meeting her attorney, Mr. Albrook, in a letter, asks that the board appoint Monday afternoon as a time for hearing the case. It appears to have been a reasonable request and should have been granted in justice to all parties. That Miss Jackson sent her statement denying the charges and averring that she, by her conduct, had given the board no occasion to investigate, furnishes an additional reason and a very strong one why she should have been given the opportunity to be heard by counsel of her own choosing. We do not think that the board intended by an early adjournment to shut her counsel out Saturday night, but it ought to have shown an anxiety to have him present if possible, in order that it might ascertain the very right and justice of all parties in the case. Miss Jackson could very justly plead that her presence would avail nothing after the board had before it a report signed by every member of that tribunal, saying that she ought to be dismissed from her school. The board seems also to have forgotten that the law makes it its duty to visit the school and to aid and sustain the teacher in her efforts to maintain order and discipline. It has duties on the side of the teacher as well as on that of the pupils or the community at large.

We do not wish to be understood as upholding a teacher in the methods of punishment which appear in this case. To pull the hair or the ears of pupils, or to strike them with the fists, are relics of another age of school government, and cannot be justified today. We only reach the conclusion that the teacher did not have that fair and impartial trial before the board that is contemplated in the law. Therefore the decision of the county superintendent is affirmed. AFFIRMED

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HENRY SABIN

April 7, 1897 *Superintendent of Public Instruction*

*The teacher's right to recover for wrongful dismissal in this case was sustained in 110 Iowa, 313.

R. ODENDAHL *et al* v. DISTRICT TOWNSHIP OF GRANT

Appeal from Carroll County

APPEAL. Will not lie from joint action of boards making settlement of assets and liabilities.

COUNTY SUPERINTENDENT. Should dismiss an appeal as soon as it be-

comes certain that the leading issue may be heard and decided only by a court of law.

JURISDICTION. It is very undesirable to bring matters involving a money consideration before the county superintendent on appeal.

Certain territory in the civil township of Grant and part of the independent district of Carroll was restored to the district township of Grant. A settlement of assets and liabilities between the two districts necessarily followed. Robert Odendahl and others were aggrieved with the conclusions reached by the two boards, and took an appeal to the county superintendent, who reviewed the questions presented to him, finding in effect as to the time when the territory did actually become a part of the district township of Grant, as to the disposition of taxes during a period when the control of such territory was in controversy, and also whether the agreement entered into by the board should be changed by him.

The first question we are required to consider is whether the county superintendent had jurisdiction to hear the case. If we find that he did not have jurisdiction, it will of course be impossible for us to review the questions he determined, and we shall be compelled to dismiss the case for want of jurisdiction.

It has been the uniform opinion of this department that appeal will not lie from the joint action of boards in making the settlement of assets and liabilities required by section 1715, but that the only remedy, if the law affords relief, would be an action in court to protect the rights of the persons complaining. In order that the matter might be more authoritatively determined, so that this case may be a guide to school officers, we submitted an inquiry to the attorney general, and quote briefly from his reply:

"Your favor came duly to hand, requesting my opinion upon the following question:

"When the two boards have made a division of assets and liabilities, under section 1715 of the code, will a person claiming the settlement to be inequitable and insufficient as to the amount agreed upon have the right to appeal to the county superintendent from such agreement, that is, from such joint action of the boards taken as provided in section 1715, will an appeal lie?

"The section in question provides that the respective boards shall make an equitable division of the then existing assets and liabilities between the old and the new districts; it also provides that in case of the failure to agree the matter may be decided by arbitrators chosen by the parties in interest. It has been held by our supreme court that under this section the boards of directors become a special tribunal for the determination of the respective rights of the parties. And it is held that this tribunal thus constituted has exclusive jurisdiction. The action of the special tribunal, consisting of the several boards of directors, is not the action or order of a board of directors, but an order of a special court for the determination of the rights of the several new districts with reference to the assets and liabilities of the old district of which they formed a part. The statute does not give an appeal from such tribunal. My conclusion is that a right of appeal does not exist and a

person claiming the settlement to be inequitable has no right to appeal to the county superintendent."

The opinion of the attorney general is decisive of the case. We think there are many added reasons why questions of this kind should not be heard on appeal before the county superintendent. That officer should not be compelled to review matters involving the jurisdiction over territory, the disposition of taxes, or the right and justice of finding of boards upon a settlement of assets and liabilities. But these a court may very properly do, as its jurisdiction for such purposes is not questioned, and the precedents for the control of the courts over this class of cases are well established. It is very undesirable to attempt to bring matters involving a money consideration before the county superintendent on appeal. As soon as it becomes clearly apparent that the principal issue is of a kind intended by our statutes to be heard and determined only by the courts of law, the appeal should be dismissed. In this case it was the duty of the boards interested to make a proper settlement. If fraud or other irregularity was urged, perhaps a court would afford relief to a complainant, but an appeal to the county superintendent would not become a remedy.

We are compelled to remand this case to the county superintendent with instructions to dismiss the case for lack of jurisdiction.

DISMISSED

HENRY SABIN

June 16, 1897 *Superintendent of Public Instruction*

C. M. BAXTER v. SCHOOL TOWNSHIP OF BEAR GROVE

Appeal from Cass County

PUBLIC ROAD TO SCHOOLHOUSE. The board is bound to carry out the vote of the electors in the matter of opening roads to schoolhouses.
ABUSE OF DISCRETION. The board may not substitute its own discretion for the clearly expressed instruction of the electors.

At their regular meeting, on the second Monday in March, 1897, the electors voted a schoolhouse tax of $200 and instructed the board to open an east and west road to intersect a north and south road which would give Mr. Baxter access by the public road to his schoolhouse. Instead of carrying into effect the vote of the electors, the board took steps to secure a different road, and from their action in so doing appeal was taken to the county superintendent, who reversed the order of the board, finding that the board should have attempted in good faith to carry out the expressed wish of the electors. The board appeals here.

It is shown in the testimony, and is not denied, that the board thought best to attempt to secure the cheapest road possible, in order to provide a way by which Mr. Baxter could reach the schoolhouse. The real question in this case, and the one which the county superintendent was compelled to determine, was whether the board committed error in its discretion. From a careful examination of the entire case we must conclude that the county superintendent made no mistake in determining that it is the duty of the board to make a strenuous effort to fulfill the intention of the electors. We think it was the duty of the board to carry into execution the vote of the electors, if possible to do so, and if

not possible, the attempt should have been made, and the matter then referred back to the electors for further instructions. See first part of section 2778 and first division of syllabus in appeal case on page 17 S. L. Decisions 1897. We think it was not within the power of the board to substitute its own discretion for the clearly expressed instruction by the electors.

It is clear that the electors intended to provide relief for Mr. Baxter. This could be done only by providing him with a public highway upon which his children could reach school. This matter is of such importance to Mr. Baxter, and the vote of the electors providing the means by which the road was to be secured was so definite, that we feel compelled to suggest to the electors that at their annual meeting on next Monday, the fourteenth day of this month, they indicate still more clearly their desires in the matter, and that they instruct the board what further steps shall be taken by the board. As indicated, we can see no reason to interfere with the finding of the county superintendent and his decision is therefore affirmed.

AFFIRMED

RICHARD C. BARRETT
Superintendent of Public Instruction

Des Moines, March 9, 1898

JOHN MARTIN V. SCHOOL TOWNSHIP OF BAKER

Appeal from Guthrie County

NOTICE OF APPEAL. The superintendent of public instruction may not entertain an appeal unless thirty days' notice of such appeal has been served upon the adverse party.

COSTS. Before an appeal from the order of the county superintendent taxing costs can be entertained by the superintendent of public instruction, a motion to retax such costs should be filed with the county superintendent.

The question involved in this case is the taxing of costs. In 1897 John Martin petitioned the board of directors of the school township of Baker for a school for the accommodation of his ten children. The board refused to grant the request of the petitioner. Appeal was taken to the county superintendent, who affirmed the action of the board. In rendering his opinion, the county superintendent taxed the costs, amounting to $30.75, to appellant Martin. From the action of the county superintendent Martin appeals to this department.

Counsel for appellee moves the dismissal of the appeal for the following reasons. First, that notice of appeal was not given as is required by section 2820 of the code of Iowa. Second, that all of the record in the case was not certified to this department by the county superintendent, and for that reason the department should refuse to consider or entertain the appeal. Third, that the record nowhere discloses that the county superintendent, before whom the appeal was tried, ever had opportunity or occasion to pass upon the question of taxation of costs, that no motion or request was made for him to retax. Fourth, that said appeal from decision of county superintendent was taken too late.

The question to be determined is whether this department has jurisdiction to hear the case. Section 2820 provides that "thirty days' *notice*

of the appeal shall be given by the appellant to the county superintendent and also to the adverse party."

There is nothing in the transcript to show that this notice was served either on the county superintendent or the adverse party. For many years it has been the holding of the supreme court of the state of Iowa, that appeal can only be taken by serving a written notice upon the adverse party or his attorney, and the clerk. In the 74th Iowa the court rules that service of notice of appeal is essential to give a court jurisdiction of the case and that fact must be shown by the record. A recent general assembly makes similar provisions applicable in cases of appeal to this department.

While it is true that only a partial record is presented, we are of the opinion that the transcript is sufficiently complete to enable us to pass upon the question raised. By this we would not be understood as favoring the certification of only a part of the transcript, in case of appeal. In regard to the taxation of costs, the code of 1897 provides that in all matters triable before him the county superintendent "shall have power to issue subpoenas for witnesses which may be served by any peace officer, compel the attendance of those thus served, and the giving of evidence by them, in the same manner and to the same extent as the district court may do, and such witnesses and officers may be allowed the same compensation as is paid for like attendance or service in such court, which shall be paid out of the contingent fund of the proper school corporation, upon a certificate of the superintendent to and warrants of the secretary upon the treasurer; but if the superintendent is of the opinion that the proceedings were instituted without reasonable cause therefor, or, if in case of an appeal, it shall not be sustained, he shall enter such findings in the record, and shall tax all costs to the party responsible therefor. A transcript thereof shall be filed in the office of the clerk of the district court and a judgment entered thereon be made, which shall be collected as other judgments."

The question of costs is one entirely new to this department. Prior to October 1, 1897, any one aggrieved by the order or decision of a board of directors could, without cost, appeal to the county superintendent and again to the superintendent of public instruction.

The provisions of the law are plain. If the county superintendent is of the opinion that the proceedings were instituted without reasonable cause, or the case be not sustained on appeal, he shall tax all costs to the party responsible therefor. A careful study of the case reveals no error on the part of the county superintendent. The costs appear to have been taxed and filed as required by the statute. Any person aggrieved might upon application, have had the same retaxed and all errors corrected.

Counsel for appellant argues that the question at bar was presented informally to the county superintendent, who overruled his objections, after having considered the same. An additional transcript of the proceedings filed by the county superintendent, substantiates the claim of counsel but nullifies the force of of it by stating "that no formal or written objection to the taxing of said costs were filed by said appellant, nor any motion to retax said costs." In the 101 Iowa, case of *John*

Roane, appellant, v. J. A. Hamilton et al., involving the question of costs, the supreme court held that since no motion was made in the district court to retax costs, no consideration would be given the matter by the supreme court. It cannot, we think, be contended reasonably that rules of court practice, so far as applicable, should not be followed in matters triable before this department. A failure on appellant's part to avail himself of his legal rights may not wisely be overlooked here.

In regard to the time in which appeal may be taken, the law provides that thirty days' notice shall be given. The transcript shows that the case was heard by the county superintendent, January 7, 1898. The affidavit of appeal was received by special delivery Sunday, February 6, and filed Monday, February 7, 1898. We think appeal was taken in time, since in computing time, the first day shall be excluded and the last day included, unless the last day falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday. Code, section 48, subsection 23.

While the counsel for appellee does not refer to the fact, we find in addition to the foregoing that the affidavit of appeal presented is defective in this, that the notary, before whom appellant was sworn, failed to attach notarial seal. This, however, has not been considered irremediable in the consideration of the appeal.

After having carefully considered the whole matter, we are of the opinion that the case is not legally before us, since the transcript fails to show service of proper notice and a motion to retax costs.

The legality of this department entertaining any appeal in which a money consideration is the principal issue is seriously questioned. Certainly neither the county nor the state superintendent is authorized to render judgment for money. Acts of these officers are held by the courts to be ministerial, and not judicial. To burden this office with the adjustment of affairs involving such considerations as can best and only be determined finally by the courts is, from our point of view, to place unnecessary and unproductive labor upon the department.

DISMISSED

RICHARD C. BARRETT

Superintendent of Public Instruction

Des Moines, Iowa, May 26, 1898

THOMAS HUDGENS v. INDEPENDENT DISTRICT NO. TEN, CEDAR FALLS TOWNSHIP

Appeal from Black Hawk County

DISCHARGE OF TEACHER. A teacher cannot be discharged by the board except after a full and fair investigation.

SPECIAL MEETING. A meeting of the board, called for no specific purpose and of which the teacher was not served with due and proper notice, could not legally discharge such teacher.

DEFENSE. The teacher is entitled to a reasonable time to prepare for and make his defense. The refusal of the board to grant a teacher a single day's time in which to make such defense is not only an abuse of discretion but a violation of law.

On the third day of January, 1898, Thomas Hudgens, a teacher in Independent District Number Ten, Cedar Falls Township, was dismissed by a majority vote of the board. From the action of the board he appealed to the county superintendent, who affirmed the order of the board. From his decision appeal is taken to this department.

Section 2782, laws of Iowa, concerning the dismissal of the teacher, is as follows: "It may by a majority vote discharge any teacher for incompetency, inattention to duty, partiality, or any good cause, after a full and fair investigation made at a meeting of the board, held for that purpose, at which the teacher shall be permitted to be present and make defense, allowing him a reasonable time therefor."

Did appellant have a fair trial? Was the meeting held for the purpose of discharging the teacher or giving a full and fair investigation? Did the teacher have a reasonable time to make defense?

In his decision the county superintendent says: "Then from the minutes of the school board as kept by the secretary, January 3d, we must determine what occurred at this meeting." If the correctness of the record were unquestioned this would be true.

In the case of *Appleton Park v Independent District of Pleasant Grove*, this department held that "the fact that the transcript referred to is not certified to by the secretary, and the further fact that he was not present at the board meeting in question, and wrote the minutes as dictated from memory by the president of the board, three days after the meeting, fully justified the superintendent in ruling it out and admitting parol evidence." The testimony of the secretary of the board is to the effect that the original notes made by himself at the time of the discharge of the teacher were destroyed; that the notes from which the certified transcript was made were written days after the meeting. His further testimony, which is not denied, is that the record of the meeting as finally certified to the county superintendent was written by himself, aided by the president and another member of the board, after appeal was taken to the county superintendent. A record of such a character "made in view of appeal" can scarcely be said to be its own best evidence.

In his decision the county superintendent quotes a former opinion of this department to this effect. "The discharge of a teacher is largely within the discretionary power of the board. It is to guard the rights of the school, as well as the rights of the teacher. *After a full and fair investigation* it is its duty to act as it deems best under all circumstances of the case. This being the case, it is the duty of the county superintendent not to interfere with the action of the board unless he is convinced that it in some way abused its discretion. He is right in sustaining the board even though as an individual he would have preferred some other action on his part."

In the case at bar did the board make that full and fair investigation contemplated? We think not. The evidence submitted reveals many irregularities on the part of the board. The meeting was not called for a specific purpose. Appellant was not served with due and proper notice. The law provides that a reasonable time shall be given the teacher in which to make his defense. Appellant's request for a single

day's time was refused. In fact, according to the president's own testimony, no investigation took place.

The school may not have been as ably conducted as the board desired, or in accordance with the particular views of the different members, but we cannot approve of the action of the board in discharging the teacher without first making that full and fair investigation contemplated by the statute. A teacher is the employee of the board and as such is entitled to its co-operation and support. For certain causes the teacher may be discharged, but only after charges preferred have been carefully and impartially investigated. We have given the case unusual attention and are forced to the conclusion that the teacher was not accorded that investigation which the law intends. The decision of the county superintendent is reversed.

REVERSED

RICHARD C. BARRETT
Superintendent of Public Instruction

Des Moines, Iowa, June 23, 1898

R. A. KLETZING v. THE INDEPENDENT DISTRICT OF MONTOUR

Appeal from Tama County

DISCHARGE OF TEACHER. The action of the board in discharging a teacher, after a full and fair investigation, will not be reversed unless it is clearly shown that that board violated the law, abused its discretion, or acted with manifest injustice.

COUNTY SUPERINTENDENT. The county superintendent has only appellate jurisdiction, and should sustain the action of the board unless it be clearly shown that they violated law or abused their discretion.

On February 14th, J. D. Booher, a resident of Montour, filed with the secretary of the school corporation a complaint charging the principal, R. A. Kletzing, with incompetency, partiality, the infliction of inhuman and cruel punishment and general inability to govern the school over which he had supervision.

The record, which is unquestioned, shows that a notice of the hearing was served on the appellant and the time fixed for the nineteenth day of February, at which time all parties interested appeared. Appellant was represented by his attorney who filed a general statement denying charges preferred. Affidavit of appellant was also filed claiming that the board had negligently or wilfully refrained from visiting the school or in any manner advised with or directed appellant in his conduct and management of the school. The hearing was concluded on February 26th and appellant was discharged by the unanimous vote of the board. Appeal was then taken to the county superintendent who reversed the board. The board appeals to this department.

As it appears to us, the question to be determined is of sound judgment and discretion and not of law. Should it appear that the county superintendent opposed his judgment to the judgment of the board, there is but one course for an ultimate tribunal to pursue.

It is the earnest desire of this department to sustain decisions of county superintendents. Their official acts and the correctness of their views will not be set aside unless for cause. A similar principle should

be held by county superintendents when called upon to pass upon the decisions or orders of boards of directors.

For almost a third of a century it has been the holding of this department that discretionary action of a board should be affirmed on appeal, unless by the evidence it is clearly proven that the board violated law or abused its discretion. "If there is reasonable doubt the board is entitled to its benefits. The action of the board may not be wholly approved by the judgment of the county superintendent, but if it be not illegal or clearly unjust, it should be sustained." See *Edwards et al v. District Township of West Point,* School Law Decisions of 1884.

The county superintendent is a court of appellate jurisdiction and is compelled to sustain the action of boards unless the evidence clearly indicates that they have violated law, acted with passion or prejudice, or with manifest injustice, or abused their discretion.

In the case before us we are inclined to the opinion that the superintendent passed upon the case as though he had original instead of appellate jurisdiction, and failed to give due consideration to the discretionary power granted school boards.

The power to discharge a teacher is conferred upon boards of directors by section 2782, which in part reads as follows: "It may by a majority vote discharge any teacher for incompetency, inattention to duty, partiality, or any good cause, after a full and fair investigation made at a meeting of the board held for that purpose, at which the teacher shall be permitted to be present and make defense, allowing him a reasonable time therefor."

Affiant, in appealing to the county superintendent, alleges that he was not accorded a full and fair investigation. In reversing the board the county superintendent so found and assigned as a reason that Mr. Stevens, president of the board, appeared as the prosecuting attorney.

We cannot concur with the view expressed by the county superintendent that appellant was not given a fair trial. That the board gave the case careful thought is shown by the fact that the hearing occupied nearly all of a week. Appellant was given every opportunity to prepare for his defense, to call witnesses, and was ably represented by his attorney. So far as we have been able to learn from the transcript, which appears to be complete, it is not shown that malice or prejudice was exhibited on the part of any member of the board. The fact that Mr. Stevens, the president of the board, is an attorney, may not be considered prejudicial. Naturally, as president, he would be expected to lead in the investigation of complaints, since in cases of this kind the board may not employ counsel.

The claim that the board has negligently or wilfully refrained from visiting the school or advising with the teacher, is worthy of most careful consideration. It is the duty of the board to aid teachers in the government and management of schools; to counsel with them and cooperate in the promotion of all the educational interests of the district. It does not appear that members made regular and frequent visits to the school, but that general interest was manifested and a desire shown on the board's part to strengthen the schools is evidenced by the fact that the course of study was revised, rules for the government of

teachers and pupils adopted, and consultations held by members of the board with the principal.

In his decision, the county superintendent finds that appellant Kletzing was obstinate and worked in opposition to the board of directors; that his punishment of pupils was open to severe criticism; that he was disliked; that he did not give satisfaction; that a very undesirable condition existed; and that he did not exercise that judgment necessary to carry on the school harmoniously and without friction. The evidence clearly sustains the above enumerated findings. The opinion of the county superintendent is reversed.

REVERSED

RICHARD C. BARRETT
Superintendent of Public Instruction

Des Moines, Iowa, September 10, 1898

J. L. MUNN v. SCHOOL TOWNSHIP OF SOAP CREEK

INDEPENDENT DISTRICT BOUNDARIES. The provision of section 2794 of the Code, requiring the board of a school township, upon proper petition, to establish the boundaries of a proposed independent district, is mandatory.

BOUNDARIES. Must include all of the city, town or village, and also such contiguous territory as is petitioned for by a majority of the resident electors but may include additional territory.

COUNTY SUPERINTENDENT. On appeal the county superintendent can make such order touching the boundaries as the board should have made.

TIME. The time in which to take the initiatory steps to form an independent district is not fixed by the statute.

COMPLETION. The provision of section 2796, "that the organization of such independent district shall be effected on or before the first day of August of the year in which it is attempted," is directory and has special reference to the levying of taxes. It does not apply where by reason of an appeal to the county superintendent, or to the superintendent of public instruction the completion is not effected until after such date.

ELECTION. The boundaries having been fixed, it is the duty of the board to give notice of a meeting of the voters of the territory included in the proposed district.

MANDAMUS. Should the board fail or refuse to give the required notice of election, they may be compelled to do so by mandamus.

ELECTORS. The electors are the sole and final judges of the desirability of a separate organization.

This case relates to the formation of an independent district out of a school township.

Residents of the village of Belknap petitioned the board of directors to form an independent district. The board by a vote of two to six refused to establish the boundaries of the district. From the board's refusal appeal was taken to the county superintendent.

Before this officer motion to dismiss was made by appellee on the ground that *mandamus* and not appeal was the proper remedy.

The statute provides that a writ of mandamus "shall not be used in any case where there is a plain, speedy and adequate remedy in the ordinary courts of law, save as herein provided." Section 4344 Code.

In the 73 Iowa, 134, case of *Barnett et al. v. Board of Directors Independent District of Earlham*, the supreme court held that where the party has the right of appeal to the county superintendent, mandamus will not lie against a board of directors.

It is provided in the school laws that "any person aggrieved by any decision or order of the board of directors of any school corporation in a matter of law or fact may, within thirty days after the rendition of such decision or the making of such order, appeal therefrom to the county superintendent of the proper county." Section 2818, Code. "Upon the hearing of the appeal the county superintendent is required to hear testimony on behalf of either party. The fullest opportunity is allowed for a thorough investigation of the matter of the appeal and the superintendent is required to make such decision as shall be just and equitable. And if the appellant is aggrieved at the decision of the county superintendent he may appeal in like manner to the state superintendent of public instruction." 35 Iowa, 444. We find no error on the superintendent's part in overruling the motion to dismiss.

The superintendent reversed the board and established the boundary lines of Belknap, and ordered that the district consist of the present town plat. J. L. Munn appealed to the superintendent of public instruction, who heard the case July 30th.

At the hearing before this department, appellee moved to dismiss the case for the reason that the organization of the contemplated independent district could not be completed on or before the first day of August, 1898.

The time in which to take the initiatory steps to form an independent district is not fixed. The law says: "Upon the written petition of any ten voters * * * such board shall establish the boundaries." A petition signed by the requisite number of voters might be presented at such a date as to preclude the possibility of completing the organization on or before the first day of August. To grant reasonable requests made by attorneys for continuance might also prevent the formation of districts. The wishes of parties interested could easily be thwarted by dilatory tactics on the part of attorneys. Under the laws of this state both county and state superintendents are called upon to perform many and varied duties. Not infrequently engagements are made weeks and sometimes months in advance. In some cases it is quite impossible for these officers to grant a hearing and render a decision within the time mentioned in the statute. While it may be desirable that the organization be perfected within the statutory time, we are inclined to the opinion that the date is only directory and has special reference to the levying of taxes. To sustain the motion to dismiss would establish a precedent far-reaching in its effects and one tending in many cases to hinder educational advancement.

The record upon which the county superintendent decided the appeal shows the following facts, which are undisputed: The village of Belknap is located at the crossing of the Rock Island and Wabash railways on the east one-half (½) of section thirty-five (35) and the west one-half (½) of section thirty-six (36) and includes forty acres more or less. On the twenty-first of March, sixteen residents of Belknap petitioned

the township board to form an independent district. At the time action was taken by the board there was on file a petition signed by B. B. Shaffer and twenty-two other citizens asking that sections twenty-five (25), twenty-six (26), thirty-five (35), thirty-six (36) and the east three-quarters (¾) of section thirty-four (34) be included in the proposed new district; also a petition from A. J. Blankenship and five others asking that the remainder of section thirty-four (34) and section twenty-seven (27), less the northwest quarter (¼) of the northwest quarter (¼), together with the southeast quarter (¼) of the southeast quarter (¼) of section twenty-two (22) be included in the Independent District of Belknap. B. B. Shaffer and P. H. Burns presented an amendment to the original Shaffer petition asking that it be amended by striking out the north one-half (½) of section twenty-five (25). The record however fails to show that the amendment was filed with the board of directors.

With these petitions before it, what was the duty of the board?

We regard the construction of section 2794 so important that it was submitted to Hon. Milton Remley, attorney general, for his opinion. He says in part: "The language of the section relating to the duties of the board is as follows: 'Such board shall establish the boundaries of a proposed independent district, including therein all of the city, town or village, and also such contiguous territory as is authorized by a written petition of a majority of the resident electors of the contiguous territory proposed to be included in said district in not smaller sub divisions than entire forties of land in the same or in an adjoining school township, as may best subserve the convenience of the people for school purposes, and shall give the same notices of a meeting as is required in other cases.'

"The board of directors of the school township is elected by the people of the entire township. They may have interests antagonistic to the formation of an independent district. There seems to be but little left to the discretion of the board. They are required to include therein all of the contiguous territory proposed to be included in said district in not smaller subdivisions than forty acres of land. It seems to be obligatory upon them to include the territory petitioned for, except where the proposed boundary line would divide forty acres of land, according to the government survey. They might, however, in case the convenience of the people of some subdistrict left out of the proposed independent district demanded it, include more territory than was described in the petition. The circumstances might be such that a few families, after the proposed independent district was carved out of the school township, would be practically left without school privileges. The law seems to require, in fixing the boundaries, that all of the contiguous territory petitioned for shall be included, but does not even inferentially prevent the board of directors, in fixing the boundaries, from including some not petitioned for.

"I think the statute is mandatory, requiring the boundaries to be established by the directors, which boundaries shall include all territory petitioned for, and as much more as the judgment of the board of directors shall deem necessary to subserve the convenience of the people for

school purposes. It is also mandatory upon the board to give notice of the meeting at which the people may vote."

To the question, "In case an appeal is taken to the county superintendent from the action of the board in refusing to establish boundaries, should the county superintendent consider both the convenience of the people and the petition presented by the majority of the electors, or is he limited to the petition alone?"

His reply is: "He can exercise no power not given by statute to the board of directors, and can make such order as the board of directors should have made. In adding any territory not embraced within the petition he should certainly consider the convenience of the people, both in the proposed independent district, and also the convenience of any who are left in a school township; but like the board of the district township, he would not be authorized to omit any of the territory included within the petition from the proposed independent district. He is not, however, limited any more than the board would be by the petition in regard to adding to the proposed independent district land not included in the petition."

Since it is the duty of the board and the superintendent, in case of appeal, to include in the proposed district at least all of the contiguous territory petitioned for, it only remains for us to do likewise. Our opinion is not final, however. The voters themselves are to determine whether or not they desire a separate organization. A careful consideration of the facts in the case leads us to the opinion that the formation of the independent district of Belknap is desirable; that it will accommodate well a large number of children. At no distant day a graded school will be provided, and with modern equipment and trained teachers, pupils will enjoy advantages superior to those now granted them.

In harmony with the petitions of the electors, and the ruling of the attorney general, it is therefore ordered that the independent district of Belknap be constituted to contain sections twenty-five (25), twenty-six (26), twenty-seven (27), less the northwest quarter (¼) of the northwest quarter (¼) thirty-four (34), thirty-five (35), thirty-eight (38), and the southeast quarter (¼) of the southeast quarter (¼) of section twenty-two (22) of Soap Creek township. It is further ordered that in accordance with section 2794 the board shall take the necessary steps to provide for the holding of an election. The same to be held before November 1, 1898.

REVERSED

RICHARD C. BARRETT
Superintendent of Public Instruction

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Des Moines, Iowa, October 1, 1898

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*For decision of the Supreme Court in this case see 110 Iowa, 652.

J. L. MUNN v. SCHOOL TOWNSHIP OF SOAP CREEK
Appeal from Davis County

APPLICATION FOR REHEARING

NEW QUESTIONS. Questions not raised at the hearing before the county superintendent nor before the superintendent of public instruction at

the time the appeal was heard by him cannot be considered for the first time on an application for a rehearing.

REHEARING. The application for a rehearing will be denied unless sufficient reasons have been presented warranting a change in the former opinion.

Application for a rehearing in the above entitled case is now made by the appellee, the district township of Washington, on the ground that "this case does not decide whether or not an appeal lies where a board fails to take action." A review of the case shows that the board did act. It declined to establish the boundaries of the proposed independent district of Belknap. We do not understand that counsel contends otherwise.

Affidavit of appellant Munn, made in taking appeal from the decision of the board, says: "The school board of said school township rendered a decision refusing to grant the petitions of residents of Belknap and *contiguous territory.*" Again, quoting from affidavit: "Said board erred in that they have no legal discretion in the matter, and should have granted the independent district as asked for by said *petitions.*"

Attorney for appellee argues that only the single petition from the village of Belknap was refused and that others from contiguous territory are now before the board and may be called up and passed upon at any meeting. This point was presented both orally and in written argument by counsel, and was given due consideration before announcing former decision.

In the case of *Johnson v. School Township of Utica,* appeal from Chickasaw county, the board had before it at its September meeting a petition requesting the formation of a new subdistrict. Without action the board adjourned to consider the petition the following February. At the trial before the county superintendent motion was made to dismiss the case on the ground that the petition was still before the board. The motion was overruled by the county superintendent. On appeal, this department, we think, rightly sustained the lower tribunal.

In the case before us no action of the board could have barred more effectually the formation of the independent district. That petitions from contiguous territory were before the board has not been questioned.

Our attention is again called to the time in which the organization of the independent district may be completed. No sufficient reason has been presented to warrant us in changing our opinion in regard to this point.

The other question, whether or not the village of Belknap has sufficient population, was not raised at the hearing before the county superintendent nor this department and may not be considered now.

The foregoing review disposes of the material points involved in the motion for rehearing.

This department might have reversed the decision of the county superintendent and remanded the case to the board with instructions to establish the boundaries of the proposed district in accordance with the opinion of the attorney general. Had this been done the only course for the board to pursue would have been to fix the boundaries of the district including all contiguous territory petitioned for. The course

adopted appeared to be the more speedy and for that reason was chosen.

As previously stated, our decision is not final. The law wisely leaves the final settlement covering the formation of districts, in such cases as this, to the voters themselves. If those residing upon the outside territory proposed to be included, desire to vote separately on the proposition, they may do so. Should a majority of the votes cast on such outside territory be against the proposed district, it shall not be formed.

The application for rehearing is denied. DENIED

RICHARD C. BARRETT
Superintendent of Public Instruction

Des Moines, Iowa, October 18, 1898

O. F. HALE v. SCHOOL TOWNSHIP OF RIVERDALE
Appeal from Kossuth County

APPEALS. Should be conducted with fairness and impartiality.
TIME OF HEARING. If the county superintendent cannot hear testimony for both parties at the time set for such hearing, he should give the parties ample time later to make a clear and full presentation of their cause.

At a special meeting of the board of directors, held September 30, 1898, it was voted to change the schoolhouse in subdistrict number one, from the present site to a point one mile west. From the decision rendered, O. F. Hale appealed to the county superintendent, who affirmed the board's action.

In appealing to the superintendent of public instruction, appellant alleges errors as follows:

1st. He, the county superintendent, failed to take into consideration the geographical position, number and convenience, of the scholars and residents of the subdistricts, as required by section 2773, Code of 1897.

2d. That the trial being set for 1 p. m. on October 27th, he failed to appear until about 4 p. m., and then conducted the trial in such haste and evident impatience as to embarrass appellant whose witnesses had returned to their homes before the superintendent's arrival, and thus prevented him from fully presenting his case.

3d. That he refused to allow your appellant to argue his case and adjourned the trial without affording appellant an opportunity to fully present his case.

It is due all parties in controversy that appeals be conducted with impartiality. The law expressly declares that notice of the time and place of hearing appeals shall be sent in writing by the county superintendent to all parties adversely interested. It is expected that the utmost fairness will be shown.

A failure on the part of the county superintendent to appear at the appointed hour set for hearing the case is not an error of great consequence, provided ample time is given all parties to make a clear and complete presentation of their cause.

We find no denial of errors charged and are disposed to remand the case to the county superintendent with the suggestion that he fix a time in the near future for hearing the case anew, and give notification to interested parties as provided by statute.

Having heard the testimony, and considered the geographical position, number and convenience of the pupils, he shall then make such decision as may appear just and equitable.

REMANDED

RICHARD C. BARRETT
Superintendent of Public Instruction

February 3, 1899

E. F. BACON v. THE INDEPENDENT DISTRICT OF WEST DES MOINES

Appeal from Polk County

EXPULSION OF PUPILS. Pupils may be expelled by the board for immorality, violation of the regulations and rules established by the board, or when their presence is detrimental to the best interests of the school.
JURISDICTION. The board of directors of a school corporation have no jurisdiction over children after the termination of the school year.
EXISTING SCHOOL. The order expelling a scholar must be from an existing school. The scholar's relationship with the school is severed when the school year has closed and vacation has begun.

The facts presented for consideration in this case show that on the third day of June, 1898, the superintendent of the West Des Moines city schools, in accordance with the provisions of section 2782 of the Code, notified the president of the board of directors of the suspension of certain pupils, among them Julius Bacon, son of the appellant, for acts of disorder, insubordination, and for conduct detrimental to the best interests of the school. On the sixth day of June the board of directors met in regular session and was addressed by the appellant in behalf of his son. Several of the suspended pupils present also spoke, acknowledged their wrongs and asked for reinstatement. Julius Bacon acknowledged his error, but pleaded extenuating circumstances. The board then adjourned without action until June 13th, a week after the close of the school year, at which time Bacon was expelled for one year from June 3, 1898, and the others from four to seven months. From the action of the board E. F. Bacon appealed to the county superintendent, who heard the case in regular form and affirmed the action of the board. Appellant now appeals to the superintendent of public instruction.

The law provides that the board of directors may expel any scholar from school; first, for immorality; second, for violation of rules; third, when the presence of the scholar is detrimental to the best interests of the school.

To warrant the board in exercising its expulsive power it is not necessary that the scholar be a corrupter of youth, or a flagrant, or a persistent violator of the established rules. It may, if occasion requires, summarily expel a pupil whose presence is considered harmful to the best welfare of the school.

To deprive a pupil of school privileges, however, is an act of so much consequence that it should be decided upon only after all the circumstances entering into the case have been thoughtfully weighed.

The provision authorizing boards to expel when the presence of any scholar is harmful is a recent enactment. Formerly courts held that pupils could be expelled from school only as a punishment for breach of discipline or for offenses against good morals.

Instances have arisen where pupils intellectually the superior of their

associates and possessed of high ideals in many respects have, without displaying a spirit of insubordination themselves or openly disregarding the expressed wishes of those placed over them, become leaders and incited others to open revolt against the school authorities. Recognizing the weakness of the former provisions of law to deal with such cases, the general assembly in revising the code inserted the third division above given in order that boards could protect the interests intrusted to them. While the provision is an excellent one, the power conferred by it should always be exercised with great care and within proper and legal limits.

Several questions are presented to us for consideration by counsel for appellant. In view of the construction we feel obliged to put upon section 2782 it is only necessary to determine the question: Has the board of directors of a school corporation jurisdiction over children after the termination of a school year, as determined by the board of directors?

We are unable to find that this question has ever been determined by the supreme court of our state; hence to a certain extent reliance is placed upon the holdings of the judicial tribunals in other states. In a Nebraska case given in 48 Northwestern Reporter we find that an attempt was made to show that the board was justified in expelling a pupil because of an alleged insubordination. In answer to the allegation the court said: "But the charge even if true relates to her conduct during a former term of school. We need not determine therefore whether the testimony sustains that charge or not." Here the court declined to consider alleged charges of insubordination because they were committed at a *term* of school having previously closed.

The statute says that the board of directors have power to "expel any scholar from school." This language evidently means that before a board of directors may issue a valid order expelling a scholar from school, there must be an *existing* school and also a *scholar* to be expelled therefrom.

The transcript shows that all school exercises for the year had closed, contracts had expired and teachers were released.

While boards of directors are charged with the making of rules for the government of schools, we are not disposed to hold that the law authorizes them to exercise control over teachers and pupils during vacation. Notwithstanding the fact that the board in this case ordered one pupil expelled for four months, three of which are for the vacation months of June, July and August, we are not fully satisfied that the board claims such authority or wishes to be charged with the responsibility. If such is the view taken, however, it cannot be sustained.

Julius Bacon had been a scholar the past year, but the relationship was severed at the time of the board's action. There is nothing to indicate that he would present himself and claim school privileges at the opening of the next year.

We are always gratified when we can affirm the decision of a county superintendent who has sustained a discretionary act of a board. A statement of fact such as was in this case presented to the county superintendent for his consideration would warrant an affirmance of a

board's action in expelling a pupil for a reasonable time, if jurisdiction were not questioned.

Inasmuch as there was no school and consequently no scholars we can only find that Julius Bacon was not subject to the authority of the board of directors of the school corporation of West Des Moines and could not therefore be expelled.

The decision of the county superintendent is reversed. REVERSED

RICHARD C. BARRETT
Superintendent of Public Instruction

Des Moines, Iowa, March 18, 1899

E. F. BACON v. INDEPENDENT SCHOOL DISTRICT OF WEST DES MOINES

Appeal from Polk County

APPLICATION FOR REHEARING

ORAL ARGUMENT. The failure of counsel for appellee to present oral argument after being informed of the hearing, will not justify a re-opening of the case.

REHEARING. To warrant the superintendent of public instruction in granting a rehearing it must be shown that some very serious error has been made.

The attorney for the appellee comes now and asks for a rehearing in the above cause for the reason "that the sole question considered by the state superintendent was one upon which this appellee was not heard in oral argument before him."

For many years it has been the custom of the department of public instruction in hearing appeal cases to notify interested parties. The office record shows that both appellant and counsel for appellee were notified of the time set for final hearing. The failure of counsel for appellee to present oral argument after being duly informed of the hearing will not justify the department in reopening the case.

It is somewhat doubtful whether under the law a rehearing is contemplated or possible. An examination of the statute fails to reveal any direct provision authorizing the same, while section 2820 relating to appeals to the superintendent of public instruction says: "The decision when made shall be final." Doubtless, upon being convinced that a decision rendered was erroneous, either the county superintendent or superintendent of public instruction might recall the same and reverse or modify former holdings. To warrant either of these officers in reopening a case, it must be shown that some very serious error has been made, or that some additional testimony has been discovered which could not have been presented at the former hearing by using reasonable diligence. See case of *Mary Grey v. Independent District of Boyle*, S. L. 1897.

In response to the application for a rehearing a willingness to receive and consider a written argument which counsel for appellee might submit touching the point determined in our former decision was expressed by the superintendent of public instruction. Before rendering our decision of March 18, 1899, all of the material points suggested were fully and carefully considered. Since the receipt of counsel's argument we

have reviewed the case and read with care the cases cited, and believe that nothing would be accomplished by a rehearing.

The application is denied. DENIED

RICHARD C. BARRETT
Superintendent of Public Instruction

Des Moines, Iowa, June 1, 1899

W. H. MESSNER AND FOSTER RIGLER v. THE SCHOOL TOWNSHIP OF BEAR GROVE

Appeal from Guthrie County

BOND FOR COSTS. The law does not require the filing of a bond for costs or the giving of security therefor as a condition necessary to perfect an appeal.

EXPENSE OF APPEALS. It is the evident intent of the law to make it possible for aggrieved parties to have a hearing with the least possible delay and annoyance, and at the lowest expense.

This case arises from the action of the board of directors of the school township of Bear Grove to redistrict the same.

From the board's action the appellants appealed to the county superintendent. In accordance with the statute the secretary of the board of directors filed a transcript of the board's proceedings March 15th. On the twenty-second of March the county superintendent notified appellants that the appeal was not perfected, and that unless bonds for the costs were executed, filed and approved within twenty days from the date of notice the appeal would be dismissed and the action of the board of directors affirmed. On the eleventh of April, the appellants having failed to comply with the order of the county superintendent the appeal was dismissed and the order of the board redistricting the township affirmed. From this order appeal is now taken to this department.

Appellants appeal from the ruling of the county superintendent in dismissing the appeal case, affirming the action of the board, and in requiring them to give bonds for costs:

1. Because the county superintendent erred in requiring appellants to give bond for costs.

2. Because said ruling and action is, in fact, a denial of justice, in that it prevents appellants from having a trial and hearing as provided by law.

An examination of the law relating to the taking of appeals from the action of a board of directors to the county superintendent fails to show any requirement demanding a bond for costs from any of the parties in controversy. So far as we are able to learn, the only reference to costs in cases appealed to the county superintendent, is that contained in section 2821, which reads: "But if the superintendent is of the opinion that the proceedings were instituted without reasonable cause therefor, or if, in case of an appeal, it shall not be sustained, he shall enter such findings in the record and tax all costs to the party responsible therefor."

The general provisions of law touching the question of costs are in no sense applicable to cases of appeal to the county superintendent or the department of public instruction. On the contrary, the law provides

that any person aggrieved by any order or decision of the board of directors may appeal therefrom to the county superintendent, and the basis of the proceedings shall be an affidavit filed with the county superintendent, within the time for taking the appeal. Nowhere can we find that the county superintendent is authorized to establish a different basis such as the giving of bonds for the security of costs. The evident intent of the law relating to appeals appears to be to make it possible for aggrieved parties to have a hearing with the least possible delay and annoyance and at the lowest expense.

Believing that the law does not require the filing of a bond for costs or the giving of security therefor as a condition necessary to perfect an appeal taken from the action of the board of directors, the decision of the county superintendent is reversed and the case is remanded with instructions to fix an early date for hearing the same upon merit.

REVERSED AND REMANDED

RICHARD C. BARRETT
Superintendent of Public Instruction

June 26, 1899

NORA OELKE v. R. C. SPENCER, COUNTY SUPERINTENDENT

Appeal from Audubon County

GOOD MORAL CHARACTER. The county superintendent should require proof that the applicant for a certificate possesses good moral character, unless he has personal knowledge of the same.

REFUSAL OF CERTIFICATE. Good moral character being one of the essential qualifications of a teacher, the county superintendent is fully justified in refusing a certificate to an applicant who fails to furnish satisfactory evidence of such character.

NORMAL INSTITUTE. The county superintendent may refuse to enroll such persons as members of the normal institute as he has reason to believe are morally deficient.

COUNTY SUPERINTENDENT. Has large discretionary power in the matter of issuing or withholding certificates, and his decision will not be reversed unless it is clearly shown that he was prompted by prejudice or ill-will, or acted with manifest injustice.

This case arises from the refusal of the county superintendent to grant Nora Oelke a certificate to teach in the public schools, and to enroll her as a member of the normal institute.

A hearing was had on the twenty-third and twenty-fourth days of August, 1899, before the superintendent, who affirmed his former decision. Nora Oelke appeals.

The law vests in the county superintendent large discretionary powers in the matter of issuing certificates. He must be fully satisfied that the applicant possesses scholarship, teaching ability, and good moral character. Of the last named qualification the law makes it his duty to require proof, unless he has personal knowledge of the same.

Too great stress cannot be laid upon the value of character in the schoolroom. The teacher's character and public conduct should be without reproach. Section 2737 of the Code contemplates that the county superintendent, among other things, should find as a fact and so certify

that the person to whom authority to teach is granted is of good moral character.

The county superintendent, being charged with this grave responsibility, is presumed to exercise his discretion justly and impartially. Not only is he the sole judge of the qualifications of those who desire to teach, but also of how fully he will give the applicant reasons for the refusal of a certificate. *Walker v Crawford*, p. 42, S. L. Decisions, 1897.

There is no evidence in this case that the action of the county superintendent was prompted by prejudice or ill will. He privately cautioned the appellant, as well as her father, against certain indiscretions on her part which had become a matter of public gossip, without receiving any satisfactory explanation.

The superintendent, being a near neighbor to the applicant, formed his judgment as to her fitness to teach in a measure from personal observation of her conduct. Although represented by counsel at the hearing before the county superintendent, the evidence offered in her behalf is very meager. So far as the record shows, no evidence whatever was offered to show that she is of good moral character.

The refusal of the county superintendent to permit applicant to enroll as a member of the normal institute, is also assigned as error.

Under the law the county superintendent has general charge and control of the normal institute. As its head he not only possesses the legal right, but in our opinion it becomes his duty to exclude from its membership persons who are intellectually or morally unfit to attend. Most educational institutions require testimonials as to character before students are admitted. This rule is a reasonable one, and the head of a college or normal institute would be justified in refusing to enroll such students as he has reason to believe are morally deficient.

Under the law we are compelled to give due weight to the acts of the county superintendent. His decision should not be reversed unless it is clearly shown that he violated the law, abused his discretion, or acted with manifest injustice. The evidence fails to disclose that such showing has been made.

The decision of the county superintendent is therefore affirmed.

AFFIRMED

RICHARD C. BARRETT

Des Moines, December 15, 1899 *Superintendent of Public Instruction*

J. M. SUTTON v. THE INDEPENDENT DISTRICT OF SHELBY

Appeal from Shelby County

LOCATION OF SCHOOLHOUSE SITE. In the location of a schoolhouse site the board is justified in considering the wishes of a majority of the people as indicated in the vote upon the issuance of bonds.

EXPENDITURE OF MONEY. Where money is voted by the electors for a specific purpose, or where they couple certain directions with their vote when authorizing the expenditure of money, such directions or vote may not be disregarded by the board.

The board of directors, being about to erect a new building to be used for high school purposes, were petitioned to locate the same at a point east of the railroad track. From their action in refusing to grant the

prayer of said petition, the plaintiff appealed to the county superintendent, who, on the twenty-first day of September, 1899, affirmed the action of the board. From that decision appeal is taken to this department.

It appears from the evidence that in March, 1899, the electors of the Independent District of Shelby voted to authorize the board to issue bonds in the sum of six thousand dollars, "for the purpose of erecting an additional school building, the same to be built of brick, and purchasing a steam heating plant and placing it therein and in the present building of said district, in such a manner as that both the new and the present school building shall be heated thereby." It being subsequently found that the amount first voted would be insufficient, the electors on the third day of August voted an additional three thousand dollars upon the same condition as the first issue was voted.

We are unable to find that the board abused its discretion or violated law in rendering the decision complained of. The members of the board were evidently desirous of carrying out the wishes of the people as indicated in the vote upon the issuance of bonds. To our mind it is quite clear that the electors authorized the issuance of bonds with the understanding that the new building should be erected in close proximity to the present one. Any other theory renders the clause, "and placing a steam heating plant therein and in the present school building in such a manner as that both the new and the present buildings shall be heated thereby," practically meaningless.

This department, as well as the supreme court of our state, has held that where money is voted for a specific purpose, or where the electors couple certain directions with their vote when authorizing the expenditure of money, such directions or vote cannot be disregarded.

The decision of the county superintendent is affirmed. AFFIRMED

RICHARD C. BARRETT

Des Moines, December 14, 1899 *Superintendent of Public Instruction*

J. E. RUSH *et al.* v. SCHOOL TOWNSHIP OF FRANKLIN

Appeal from Allamakee County

APPEAL. An appeal may be taken from the decision of the board to place a petition on the table.

In this case the appellants presented the following petition to the board of directors of the school township of Franklin at the regular meeting of the board of directors in September:

"We, the undersigned citizens and residents of Franklin, in Allamakee county, Iowa, respectfully represent that they are without school advantages by reason of being so far from a schoolhouse that during the winter season nearly all of the small children in our neighborhood have to remain at home.

"That there is a sufficient number of school children of school age in our neighborhood to form a school if a school building could be placed near the section corners of sections 2, 3, 10 and 11.

"We therefore respectfully ask that you take such action as will secure the location and erection of a school building at the corners of the sections above named and provide for a school to be held at that point."

The certified copy of the transcript of the proceedings of the board shows that "after much discussion it was decided to place the petition on the table until the next meeting of the board." From this decision J. E. Rush *et al* appealed to the county superintendent. At the hearing before this officer a motion to dismiss the appeal was filed on the follcwing ground, to-wit:

"That there is in the records no grounds shown for an appeal in this —that the action complained of was simply a motion to lay the petition on the table—a matter from which no appeal can be taken."

Two other counts are assigned, but are not of importance in the determination of this appeal.

The county superintendent sustained the motion for the reason "that the action was not appealable," and dismissed the case. J. E. Rush and W. T. Roderick appeal to this department.

The main contention is: May appeal be taken from the decision to place the petition on the table.

In the case of *Rogness v. District Township of Glenwood*, appeal from Winneshiek county, this department held that the right of appeal from the vote of a board to lay a petition on the table cannot be questioned, but like any other action must be regarded as subject to appeal.

In this opinion we find ourselves in accord. To hold otherwise under conditions such as are alleged to exist in this case would, we think, work great injury. The purpose of the board in laying the petition on the table is not apparent, but no other action upon their part could have more effectually prevented petitioners from obtaining relief. To sustain the decision of the county superintendent would, we think, at least be to encourage boards of directors in employing dilatory tactics instead of business methods in the transaction of educational affairs.

The law prescribes that boards of directors shall hold semi-annual meetings in September and March. By section 2801 authority is conferred upon boards of directors to divide the school township into subdistricts such as justice, equity, and the interests of the people require. This provision in the case of *Donelon v. The District Township of Kniest*, was held to mean that changes in boundaries of subdistricts could only be made at the regular September meeting or one called for that purpose before the following March.

The order of the board was that the petition be laid on the table "until the next meeting of the board," but the records fail to show that any time was fixed for the meeting.

It may be said that a special meeting could be called at any time. This is true, but the fact that no such meeting was held up to the time of hearing the appeal before the county superintendent on the nineteenth of December, and the further fact that appellees are now strenuously seeking to have this department affirm the decision, is presumptive that the board had no intention of considering the interests of petitioners, prior to the annual meeting in March if at all.

In view of the above we think the case should be heard upon its merits by the county superintendent. It is therefore ordered that he fix a time, giving due and proper notice to interested parties, and after hear-

ing testimony for either party, render such decision as may be just and equitable.

REVERSED AND REMANDED

RICHARD C. BARRETT

Superintendent of Public Instruction

Des Moines, Iowa, March 27, 1900

A. J. JONES v. INDEPENDENT DISTRICT OF OCHEYEDAN

Appeal from Osceola County

DISMISSAL OF TEACHER. The board may not dismiss a teacher for refusing to teach grades or classes other than those named in the contract.
SPECIAL MEETING. A teacher may not be discharged at a special meeting called for the purpose of securing modification of his contract.
CONTRACT. A refusal of the teacher to agree to a change in a legal contract with the board is no ground for discharge.

On March 23, 1899, the appellant entered into a written contract in the usual form by the terms of which he was to "teach the high school and superintend the public school" in the Independent District of Ocheyedan for the term of twenty-four weeks, commencing in September, 1899, and was to receive for such service the sum of seventy-five dollars per school month.

On September 11, the opening day of the term, the board of directors at a special meeting convened at the schoolhouse passed the following resolution: "WHEREAS, The Principal, A. J. Jones, has refused to accede to the request of the board in regard to the eighth grade being advanced to the high school room, he is hereby dismissed as principal and superintendent of the Ocheyedan public schools from this date, and his contract is hereby annulled."

From the order of the board appeal was taken to the county superintendent who affirmed the action of the board, and the appellant now seeks relief in this department.

Appellant asks a reversal chiefly on two grounds, viz.:

(1) That the eighth grade was no part of the high school and for that reason it was no part of his duty to teach it.

(2) That he was not accorded that full and fair investigation contemplated by the law as set forth in section 2782.

These two points will be considered in the order presented:

(1) We find from the transcript that a meeting of the board of directors, held October 10, 1898, the appellant was requested to prepare a three years' course of study for the high school, and also a set of rules and regulations for the government of the schools.

Appellees earnestly contend that the power to prescribe a course of study and rules and regulations, rests with the board, and that in the absence of delegated authority to re-delegate such power, no power exists to thus delegate, and any attempt to do so is void. This question we need not determine, as no action of the board shows that it attempted to delegate any authority to appellant.

A reasonable construction of the board's action providing that the principal prepare a course of study, is that he might make such course as would in his judgment meet the needs of the schools under his supervision, and submit his report to the board for approval, modification

or rejection. This method is that usually adopted by boards, and the principle has indirectly been approved by the supreme court. (*Hall v. Ind. District Aplington*, 82 Iowa, 686.)

At a special meeting of the board on October 15, 1898, the course prepared by appellant, together with rules and regulations, was adopted, and according to the testimony of Mr. Underhill was, so far as completed, printed by him on the order of the board in November following. It must, we think, be conceded that the board adopted the course of study with suitable regulation. We are led to this conclusion by the further fact that the board on September 11, 1899, voted to rescind the action of October 15, 1898, in reference to the course of study. The query naturally arises, why this action if no course were adopted.

The contract entered into by the board with appellant was made in March following the adoption of the course, and, as above stated, provided that he should teach the high school, which, according to the classification adopted October 15th, consisted of the ninth, tenth and eleventh grades.

Did the board have the right to dismiss appellant for refusing to teach grades or classes other than those named in the contract? We think not. To answer affirmatively would be equivalent to stating that boards of directors have abrogative power relating to contracts with teachers. To allow them to repudiate contracts and force other parties to perform duties not agreed upon would, we think, be to encourage a breach of contract and a breach of faith.

If a board has a right to modify, without consent, a contract to the extent of requiring a principal to teach an eighth grade not contemplated when the contract was made, there would appear to be no limit; and a hostile board could demand that a teacher under contract to give instruction in high school branches should teach primary pupils, or *vice versa;* and upon failure to execute in a satisfactory manner the demands of the board, discharge him for incompetency.

(2) This case differs from that usually presented. There are no charges of incompetency, inattention to duty, partiality, or immorality. The testimony and the record show that appellant began his school September 11th at the usual hour of opening.

The board of directors met on the afternoon of September 11th and after rescinding the action of October 15, 1898, whereby a course of study was adopted, "adjourned to meet at the schoolhouse at once." Here the appellant was discharged, as stated in the resolution above given.

Was the meeting such as the law contemplates shall be held in cases of this kind? The law wisely provides that a teacher may only be discharged after an impartial trial held for that purpose. In all the testimony, there is no disagreement as to the purpose of the meeting. It was for the purpose of getting the appellant to modify the contract by accepting the eighth grade, and not for the purpose of discharging him. He was called into the presence of the board and informed of its purpose.

Appellant stated in his reply, which was written, and which he was asked to give at once, that he was ready to fulfill his contract; that if the board had rescinded its action in regard to a course of study he

would like to know what the course of study for the high school should be, and the duties of the superintendent under the same. He expressed a willingness also to teach even the eighth grade for a reasonable amount of additional salary.

In view of this expressed willingness of appellant to do that which seems reasonable, we are unable to justify the action of the board. We think a compromise might well have been attempted, and proven at least reasonably satisfactory to both parties. The whole case has been given most earnest attention, and we cannot find that appellant was discharged for good and sufficient cause, after that impartial investigation contemplated. His dismissal under all the circumstances revealed by the record cannot be approved.

REVERSED

RICHARD C. BARRETT

Superintendent of Public Instruction

Des Moines, Iowa, May 12, 1900

J. W. LYTLE v. SCHOOL TOWNSHIP OF WASHINGTON

Appeal from Story County

INDEPENDENT DISTRICT BOUNDARIES. It is mandatory upon the board of a school township to include in a proposed independent district all of the territory within the corporate limits of the town.

INCORPORATED TOWN. In the formation of an independent district under section 2794 of the Code, all the town must be included in the proposed district, notwithstanding the fact that said town was formerly located partly in a school township and partly in a rural independent district. BOUNDARIES. The extension of the boundaries of a municipal corporation extends the boundaries of the independent district of said municipal corporation.

On February 17, 1900, at a special meeting of the board of directors of the school township of Washington there was presented a petition of thirty-three citizens of the town of Kelley, asking the establishment of an independent district, including therein all of the incorporated town.

After discussion, the matter was deferred for a week in order that the board might more thoroughly investigate and obtain an opinion of the county superintendent, county attorney, and other unbiased counsel, if deemed necessary.

At the date fixed the board met and established the boundary lines for the new district, as requested by petitioners.

On March 6, 1900, J. W. Lytle *et al appealed* from the order of the board to the county superintendent, who reversed its action.

From the plat submitted, it is shown that the town of Kelley is situated on the township line in the townships of Washington and Palestine, and includes the following territory:

The south three-fourths of section thirty-one (31), and the south three-fourths of section thirty-two (32), west one-half of section thirty-three (33), range thirty-three (33), township twenty-four (24), in Washington township; the northwest quarter (¼), of section four (4), north one-half (½) of section five (5), and north one-half (½) of

section six (6), in Palestine township, range eighty-four (84), township twenty-four (24).

The chief point in controversy is, has the board of directors of a school township authority in establishing the boundary lines of a proposed independent district to include in the new district any part of the territory of adjacent rural independent districts? Generally speaking, such territory cannot be included.

Section 2794 of the code provides, however, that "upon the written petition of any ten voters of a city, town or village of over one hundred residents, to the board of the school township in which the portion of the town plat having the largest number of voters is situated, such board shall establish the boundaries of the proposed independent district, including therein all of the city, town or village."

The section clearly indicates that it is mandatory upon the board to include in the proposed district all of the territory within the corporate limits of the town, regardless of whether or not the territory in part belongs to rural independent districts. Failure to do so would, we think, be a plain violation of law.

It is true, as held by the county superintendent in his opinion, that no independent district may, in the formation of a new district, be subdivided so as to contain less than four sections of land, except in certain instances enumerated in section 2798. It is also true that "the independent district from which territory is detached shall, after the change, contain not less than four government sections of land," etc. (Section 2793.) We are of the opinion that these limitations apply to the cases set forth in the sections cited, and are not applicable when it is proposed to form an independent district containing an incorporated town, located largely in a school township, and in adjacent rural independent districts.

On March 23, 1899, in answer to the question: "Does the law as found in chapter eighty-nine (89), acts of the twenty-seventh general assembly, contemplate that 'when the corporate limits of any city or town are extended outside of the existing independent district or districts, the boundaries of said independent district or districts shall be also correspondingly extended,' without regard to township or county lines, manner of organization of the district or districts from which territory is taken, or the condition in which such district or districts will be left after the territory has been taken?" Hon. Milton Remley, attorney general, in concluding his official opinion to the department said:

"My conclusion is that the extension of the boundaries of a municipal corporation made in the manner required by law, extends the boundaries of the independent districts of said municipal corporation, without any action on the part of the school districts or their officers, and regardless of the effect of such change upon the district from which territory is taken."

Thus it appears that while section 2794 makes it the duty of the board to include all of the territory of the city, town or village in the formation of a new independent district, chapter eighty-nine (89) provides for the enlargement of the boundaries of the independent district, whenever the corporate limits are legally extended. So broad is this provision that the extension of the boundaries of the municipal corporation, so as

to include an entire district or districts, correspondingly extends the boundaries of the independent district.

Though the opinion quoted has special reference to the *extension* of the boundaries of the municipal corporation, we think the holding applicable in the case before us.

We cannot find that the board violated law, abused its discretion, nor acted with prejudice or malice.

The decision of the county superintendent is therefore reversed.

REVERSED

RICHARD C. BARRETT
Superintendent of Public Instruction

July 3, 1900

G. N. WILSON v. INDEPENDENT DISTRICT OF HITEMAN

Appeal from Monroe County

EXPULSION OF SCHOLAR. The board may, by a majority vote, expel any scholar from school for immorality, or for any violation of the regulations or rules established by the board.

NOTICE. The law does not require school boards to give parents or pupils notice or a chance for defense before ordering suspension or expulsion.

ACTION OF THE BOARD. Must be affirmed in the absence of showing of malice, prejudice, or violation of law.

The majority of the board of the Independent District of Hiteman expelled a son of the appellant, a pupil in room No. 3, from the school and school grounds for bad and immoral conduct. From the action of the board, appeal was taken to the county superintendent, who sustained the board, and an appeal is taken to the superintendent of public instruction.

Section 2782 provides that the board may, by a majority vote, expel any scholar from school for immorality, or for any violation of the regulations or rules established by the board; and it may also confer upon any teacher, principal or superintendent the power temporarily to dismiss a scholar, notice of such being at once given in writing to the president of the board.

The record presented shows that the board had by Rule No. 2 conferred upon the principal the "power to suspend any pupil for repeated disobedience; for filthy or immoral habits or language, for injuring or defacing school property, or for any intentional violation of the rules." Under the authority thus conferred, the principal did, on the seventeenth day of December, 1900, notify the president of the board of the dismissal of J. Wilson, for conduct unbecoming a pupil. On the following day the board in special session sustained the order of the principal "until such time as his parents shall give assurance to the school board that he will comply with the rules of the school."

In appealing to the county superintendent, appellee alleges that said pupil was "expelled without cause and without legal notice or chance to defend." Appellant seems to have an erroneous idea regarding the power of a board to dismiss a pupil. The law does not demand that the board shall give parents or pupils notice or chance for defense before ordering suspension or expulsion. The power to expel a pupil is wholly

within the discretion of the board. However, the undisputed testimony of the principal goes to show that the father of the boy was notified by a member of the board of the meeting to be held for the purpose of investigating the case.

A careful examination of the entire record submitted fails to reveal that the action of the board is in any way tainted by malice or prejudice, or that there has been a violation of law. In expelling the pupil until such time as he was willing to conduct himself properly and obey the reasonable regulations of the school, we think the board acted in a very conservative and proper manner, and that the county superintendent was justified in sustaining its action.

The decision of the county superintendent is affirmed. AFFIRMED

RICHARD C. BARRETT
Superintendent of Public Instruction

Des Moines, Iowa, May 27, 1901

H. A. TOPPING AND THOMAS WILLIAMS v. SCHOOL TOWNSHIP OF UNION
Appeal from Van Buren County

CORRECTION OF DECISION. The superintendent, in the discharge of his judicial duties, may, within a proper time, recall and correct a decision erroneously rendered.

DECISION. The county superintendent is warranted in rendering a decision based upon certain conditions.

This case arises from the action of the board of directors of the school township of Union in voting to remove the schoolhouse in subdistrict number four from its present location to a site one-half mile south and one mile west.

Upon appeal to the county superintendent, it was shown that the children from the families of appellants would be nearly or quite two and one-half miles from the schoolhouse located upon the new site. The county superintendent remanded the case to the board July 1st, with the recommendation that it make provision for the schooling of children in adjacent districts, provided they desire to attend, "but if that is not done we will be compelled to reverse the action of the board." On July 16th a statement signed by the president and secretary pro tem. of the board of directors of Union township was filed, alleging that the board had made arrangements to send appellants' children to school in accordance with the decision. On the same date attorneys were notified that the action of the board was sustained. On July 23d counsel for appellants filed a statement from the board of directors of the Independent District of Winchester to the effect that "no provision has been made with the board of the school township of Union for the schooling of the children of Thomas Williams." On the following day counsel filed a motion, asking that the decision rendered July 16th be set aside, since the board had failed to carry out its provisions.

In passing upon this motion the superintendent held, that since notices had been sent to interested parties that the action of the board was sustained, the case was closed and could neither be reopened nor the decision set aside.

In his conclusion we think the superintendent unintentionally erred.

In the case of *Desmond v The Independent District of Glenwood*, 71 Iowa, page 23, the supreme court held:

"The superintendent of public instruction, in the discharge of his judicial duties, has the power to correct mistakes in rendering judgments in a case before him possessed by all court and judicial officers. If, through mistake, he should announce a decision differing from the decision actually rendered, he possesses the power to recall such an announcement, and publish the decision correctly; or if, mistakenly, he should render a decision, he could, before rights had been acquired under it, and within a proper time, upon discovering the mistake, recall it and decide rightly." We think that the county superintendent has the same power.

By the provisions of section 2774, the board of directors has power to contract with boards of other school townships or independent districts for the instruction of children who live at an unreasonable distance from their own school; and we think the county superintendent was warranted in rendering a decision based upon certain conditions.

The case is remanded to him with the suggestion that he reopen the same, and give all parties interested the opportunity to show clearly and definitely that there has or has not been a compliance with the decision.

If such showing is not made within a reasonable time, it is recommended that he make such decision as to him appears just and equitable, after taking into consideration the geographical position, number and convenience of pupils. From the decision, any party aggrieved will have the right to appeal.

REMANDED

RICHARD C. BARRETT
Superintendent of Public Instruction

Des Moines, Iowa, November 13, 1901.

F. E. HAMMER v. WILL COOK

Appeal from Adair County

CONSTITUTIONALITY OF LAWS. It is not the province of the county superintendent or of the superintendent of public instruction to determine the constitutionality of the law, since these officers exercise ministerial rather than judicial powers, and no appeal may be had to the supreme court.

JURISDICTION OF SUPERINTENDENT. It is the duty of the county superintendent and of the superintendent of public instruction to give effect to the law as interpreted by the courts.

COSTS—TAXING OF. The costs in cases triable before the county superintendent should be paid by the party instituting the proceedings unless there were good and sufficient reasons for beginning the action and the allegations have been proved.

COSTS—TAXING THE CORPORATION. Under section 2821, where the county superintendent could not under her findings tax the costs to the plaintiff because there was reasonable cause for instituting the proceeding, nor to the defendant for the reason that she had to find for said defendant, she must tax them to the school corporation.

On the twelfth day of January, 1904, Mrs. Ella C. Chantry, county superintendent of Adair county, in rendering a decision in the above entitled case, taxed the costs amounting to $51.05 to the school township of Harrison. Thereupon the school township, through its attorney, filed a motion with the county superintendent to retax the costs, and on the ninth day of February, 1904, the motion was overruled. From this action of the county superintendent, the board of directors of the school township of Harrison appeals to the superintendent of public instruction.

Two questions only need be considered: First, had the county superintendent warrant in law to tax the costs to the school township; and, second, if she had such warrant, did she abuse her discretion in so taxing?

Section 2821 of the Code says:

"The county superintendent in all matters triable before him shall have power to issue subpoenas for witnesses which may be served by any peace officer, compel the attendance of those thus served, and the giving of evidence by them, in the same manner and to the same extent as the district court may do, and such witnesses and officers may be allowed the same compensation as is paid for like attendance or service in such court, which shall be paid out of the contingent fund of the proper school corporation, upon the certificate of the superintendent to and warrant of the secretary upon the treasurer; but if the superintendent is of the opinion that the proceedings were instituted without reasonable cause therefor, or if, in case of an appeal, it shall not be sustained, he shall enter such findings in the record, and tax all costs to the party responsible therefor."

The transcript of this case shows that the plaintiff, F. E. Hammer, preferred charges against Will Cook, a teacher, and sought to secure the revocation of the certificate of said Cook. The two parties in interest were Hammer and Cook. Counsel for appellant argues that the school township "was in no way made a party to the proceedings, had no notice therein, nor any opportunity to appear, defend or prosecute said proceedings;" and that the order of the county superintendent in taxing the costs to the school township, if sustained, would deprive the school township of its property without due process of law. It is, therefore, urged that section 2821 of the Code, insofar as it attempts to confer jurisdiction to tax costs to school corporations, where such a school corporation was not a party to the proceedings, is unconstitutional, and we are asked to so declare it. This, manifestly, we cannot do, since no appeal can be taken to the supreme court from a decision of the superintendent of public instruction. We are obliged to give effect to the law as it stands until the same is annulled by the supreme court. Section 2821 plainly makes it the duty of the county superintendent to tax the costs in "all matters triable before him," either to the school corporation or to the party responsible for bringing the case.

If the county superintendent could not, under her findings, tax the costs to F. E. Hammer, she was obliged to tax the costs to the school township of Harrison, and if the constitutionality of the law under which this power was exercised is to be questioned, the school township

should seek to secure an order from the district court to set aside the judgment.

But, had F. E. Hammer reasonable cause for instituting the proceedings? The county superintendent in her decision says: "I find that this proceeding was begun in good faith and that he (F. E. Hammer) had reasonable 'cause for filing the information." In support of this conclusion the evidence shows that the most serious allegations for the information were sustained—that the teacher had resorted to methods of punishment that cannot be approved, and that in the course of a fight with two of the large boys of the school he had used obscene and indecent language. But there were extenuating circumstances, and the certificate was not revoked, the superintendent instead reprimanding the teacher for his errors.

We are of the opinion that the costs in cases triable before the county superintendent should be paid by the party instituting the proceedings, unless there is very good cause for beginning the same and the allegations are fully proved. In the case before us the allegations of the plaintiff were sustained by the evidence, and while the prosecution was, no doubt, prompted in part by malice, in the exercise of her discretionary powers conferred by section 2821 of the Code, the county superintendent refused to tax the costs to the plaintiff, F. E. Hammer. We do not find sufficient cause for reversing this decision, it being a well recognized rule of the courts that in the absence of an affirmative showing of an abuse of discretion, the presumption is that it was properly exercised.

(58th Iowa, page 131.)

AFFIRMED

JOHN F. RIGGS

Superintendent of Public Instruction

Des Moines, Iowa, May 25, 1904

G. E. HANCOCK *et al* v. SCHOOL TOWNSHIP OF FRANKLIN

Appeal from Allamakee County

POWER OF COMMITTEE OF A SCHOOL BOARD. A school board may not confer upon a committee authority to purchase a site, contract for the erection of a schoolhouse or perform any other duty enjoined upon the board by the law.

SCHOOL PRIVILEGES—TRANSPORTATION. While it is incumbent on the board to furnish reasonable school privileges for all the children of the township, it is often the better plan to transport pupils to existing schools than to establish additional schools.

REDISTRICTING—ENTIRE CORPORATION CONSIDERED. A school board in establishing subdistrict boundaries must consider the interests of all in the corporation.

At a regular meeting of the board of directors of the school township of Franklin, held on the twenty-first day of March, 1904, a motion was adopted by unanimous vote by which the president of the school board was empowered and instructed to "appoint a committee of three to lease a schoolhouse site to set the No. 9 schoolhouse on. That this committee be empowered to let contract of moving schoolhouse, surveying school site, and all other work pertaining to such work, and are authorized to draw orders on the treasurer to pay for the same."

From this action of the board appeal was taken tc the county superintendent, who, on June 6, 1904, rendered his decision affirming the action of the board, as set forth in the resolution, and approving the selection of the site made by the committee appointed under the resolution.

From this decision of the county superintendent G. E. Hancock *et al*, appeal to the state superintendent, and ask a reversal on two grounds:

First, that the order and proceedings of the school board were unauthorized, and

Second, that, had the action been regular, the removal of the schoolhouse to the location where the testimony shows the committee proposed to move it, would be prejudicial to the rights of appellants and the school patrons and tax payers of the township.

Section 2773 of the Code makes it the duty of the school board to "fix the site for each schoolhouse," and it has been held by this department that "the power to locate sites for schoolhouses is vested, originally, exclusively in the board."

Counsel for appellees contend that when the action of March 21st was taken it was well understood by all members of the board where the schoolhouse was to be placed. While this is altogether probable, it is not revealed in any way in the records, and there was nothing in the resolution that limited the committee in any particular. Neither is there any record to show that the committee was to report its findings back to the board for final action. In fact, the contrary is inferred, since the committee was "empowered to let contract for moving schoolhouse, surveying school site, and all other work pertaining to such work, and to draw orders on the treasurer to pay for the same."

We are of the opinion that the board clothed this committee with powers which a school board alone can exercise.

A committee of the board may properly make choice of a definite site and secure an option from the owner of same, either to lease or sell, and then report back to the full board for adoption or rejection.

The fact that the committee did make a report to the board on the eighteenth day of June—twelve days after the county superintendent gave his decision,— does not legalize the act of the board in appointing the committee with powers which the board could not legally delegate. It was the evident intent of the board when appointing the committee that no report was expected, at least not until the entire work of surveying the site and of moving the schoolhouse should be completed. The board was further in error in authorizing a committee of its members to "draw orders on the treasurer." Section 2780 of the Code makes it the duty of the board to "audit and allow just claims against the corporation, and no order shall be drawn upon the treasury until the claim therefor has been audited and allowed."

Since the powers delegated to the committee were unauthorized by law, it follows that the work of the committee cannot stand. It is thus unnecessary to enter into a full discussion of the second contention of plaintiff, viz.: That the site selected by the committee, had it in fact been regularly and legally selected, would have been an abuse of discretion and reversible error.

But since the board will have the whole question before it anew, we venture to suggest that in adjusting the subdistrict boundaries or in changing the location of one or more of the schoolhouses, careful deliberation should be had and the strict form of the law should be adhered to.

The record of the case shows that the board has for years attempted to harmonize conflicting interests and has, as we believe, sought in good faith to serve the interests of the entire township. While it is incumbent upon the board to furnish reasonable school privileges for all the children of the township, it would, in our judgment, be unwise to create a new subdistrict and establish an additional school. Last year there were but 184 pupils enrolled in the entire township of Franklin. In some of the schools of this township the enrollment is now far too small for satisfactory school work or reasonable economy in the maintenance of the school. A saner course than the establishing of an additional school would be for the board to furnish transportation for those children remote from school. Indeed, we are strongly of the opinion that some of the schools now existing could be profitably abandoned and the children carried to another school, which could easily be made a better school. We commend to the board a careful consideration of this suggestion, believing as we do that partial consolidation of school interests and transportation of pupils remote from school will solve the difficult problem with which the board has been contending for years. We venture this suggestion as one of the means of meeting a difficult situation and at the same time of increasing the enrollment and average attendance in the township.

But whatever course the board may take, the interests of the entire township must be considered and an adjustment made that will do practical justice to all. It is with the confident belief that the board will make such adjustment that the case is remanded for further consideration and action.

REVERSED AND REMANDED

JOHN F. RIGGS

Superintendent of Public Instruction

Des Moines, Iowa, November 14, 1904

A. ENGBERS *et al* v. SCHOOL TOWNSHIP OF RICHMOND

Appeal from Mahaska County

RECORDS. The secretary's record should show a copy of each notice, a complete account of the transactions of all meetings of the board and of the electors, arranged in chronological order, the date of each being given, the names of the members present at each meeting of the board, and the names of those voting for and against each proposition acted upon by it.

RECORD—DEFECTIVE. A defective record may render it impossible to try a case on its merits.

ELECTION—NOTICE OF PROPOSITION. No proposition may legally come before the electors at a regular or special meeting unless ten days' notice has been given.

NOTICE—FORM OF PROPOSITION. The proposition submitted to the elec-

tors must not differ in any essential from the proposition as advertised in the notices.

VOTE OF ELECTORS—INSTRUCTIONS. When the electors vote a schoolhouse tax to erect a schoolhouse on a particular site the board is without power to erect it on a different site.

JURISDICTION OF SUPERINTENDENT. Neither the county superintendent nor the superintendent of public instruction have jurisdiction over questions arising under the voting of taxes.

The transcript in this case shows that on the sixth day of March, 1905, the electors in Subdistrict No. 10 of Richland township decided to ask that a tax be voted for the erection of a schoolhouse in said subdistrict on the old site.

At the annual meeting, held one week later, the proposition was presented to the electors, the secretary's record of the proceedings being as follows:

"No. 10, subdistrict, asked for tax to build new schoolhouse; amount, $700. They also asked for new road to schoolhouse; amount not named. Motion made to move schoolhouse site one hundred rods south and one-half mile west in subdistrict number ten from what it is now, providing the tax for schoolhouse carried."

Eighty-four ballots were cast for this motion, fifteen against, and one blank. The school board held meetings on March 20th, April 10th, May 27th and July 22d. But the record does not show who of the members were present, although the testimony would indicate that a majority of the members were present at each meeting. It appears that no motion was made or vote taken at any one of these meetings and the secretary, so far as the transcript shows, took no minutes of what may have been informally agreed upon.

The following advertisement appeared in the New Sharon Star for four consecutive weeks, beginning with the issue of June 14, 1905:

BIDS FOR SCHOOLHOUSE

The school board of Richland township will receive bids for the building of a new schoolhouse in Subdistrict Number 10, Richland township, Mahaska county, Iowa. Plans and specifications are now in the hands of the secretary, with whom bids may be left. Said bids will be opened July 22, 1905. The board reserves the right to reject any and all bids.

MAMIE LINDSLEY, SEC.,
Peoria, Iowa.

Bids were opened and the contract awarded July 22d, and on the same date appeal was taken to the county superintendent who, after admitting an amendment to the affidavit of appeal, proceeded with the trial and rendered a decision, ordering the schoolhouse to be placed on the old site. From this decision of the county superintendent the board of directors appeal to the superintendent of public instruction.

We cannot condemn too strongly the careless manner, both in transacting the business and in keeping the records in this school township. The secretary's records should show copies of all notices posted, a complete record of all business transacted at the annual meeting of electors,

the date of every meeting of the board and the place held, the members present, the votes taken, and every important item of business transacted. Particularly in all matters relating to the voting of taxes and expending of public money the records should be full and explicit. But in the case at bar, with four meetings of the board held, and important questions involving the expenditure of public money determined, there is no evidence that the business transacted at any of these meetings was made a matter of record. While there is nothing in the testimony to show that the board acted in bad faith or purposely sought to deceive, the record is so incomplete that the actions from which appeal is sought to be made could not be easily located or the nature of the action clearly determined.

The transcript in the case does not give a copy of the notice of the annual meeting (required by section 2746 of the Code), and the record is silent as to what said notice contained. This omission is unfortunate, for the whole question of the legality of the action taken by the electors and the subsequent actions of the board rests upon the contents of this notice. Section 2749 of the Code enumerates certain powers the electors may exercise when assembled at the annual meeting on the second Monday in March, among others the power to vote a schoolhouse tax for the purchase of grounds and the construction of schoolhouses. Section 2746 provides that the secretary of the board of directors shall give not less than thirty days' notice of said meeting by posting notices in at least five public places in the corporation, said notices to specify "the place, day, hours during which the meeting will be in session, specifying the number of directors to be elected and the terms thereof, and such propositions as will be submitted to and determined by the voters."

In the case of *Goerdt v. Trumm*, 118 Iowa, page 207, the supreme court holds that none of the propositions enumerated under section 2749 can be legally acted upon by the electors at the annual meeting unless specific and legal notice has been given that such proposition or propositions will be submitted. In the case at bar, with the incomplete transcript, we are unable to know whether or not the action taken by the electors March 13th was legal.

The preponderance of the testimony shows that the motion voted upon was understood by the electors to combine two propositions, viz.: The location of the site and the voting of the tax. If then the notices previously posted by the secretary stated that the question of voting a tax to build on a site at or near one hundred rods south and one-half mile west of the old site would be submitted, the vote on each question locating the schoolhouse and voting the tax for its erection was legal and the board was without power to select a different site.

While the record is entirely silent as to the contents of the notice of the annual meeting posted by the secretary, it was improbable that any mention was made in such notice that a change of site was contemplated, for Mr. W. S. Lindsley, in his testimony, says: "At the annual meeting I made the suggestion that we change the schoolhouse site from where it was to one hundred rods south and a half mile west." It appears that this suggestion was made for the first time at the annual meeting, and that it had not been mentioned in the written notices posted by the

secretary ten days before, and therefore could not be considered by the electors. If no notice of the site proposition was given, the fact that it was coupled with the tax proposition would invalidate the entire vote, even if legal notice as to the tax proposition had been given, the rule being that the proposition as voted upon must not differ in any essential from the proposition as advertised.

If then the electors acted within their rights in voting the tax and the location, the board was under the necessity of carrying out the instruction given. (*Rodgers v. School District of Colfax*, 100 Iowa, 317.) If, on the other hand, the action of the electors in voting the tax and the location was illegal, no tax could be legally raised and no schoolhouse could be legally constructed. In either case an appeal would not lie. If the whole procedure has been without warrant of law, as we suspect, the board may be enjoined from collecting or applying any public funds for the payment of site or construction of school building.

The county superintendent was without jurisdiction, and the case is therefore dismissed.

DISMISSED

JOHN F. RIGGS

Superintendent of Public Instruction

Des Moines, Iowa, November 27, 1905

ROSE BYRNE v. INDEPENDENT SCHOOL DISTRICT OF STRUBLE

Appeal from Plymouth County

DISMISSAL OF TEACHER—CHARGES. Charges to warrant a dismissal must be specific and sustained by evidence. Indefinite and anonymous complaints are insufficient.

DISMISSAL OF TEACHER—APPEAL—BURDEN OF PROOF. In a trial before the county superintendent on an appeal from an action of the school board dismissing a teacher the burden of proof is on the board.

On the twenty-third day of January, 1906, the board of directors of the Independent District of Struble met in special meeting to investigate certain charges preferred against Rose Byrne, a teacher in the employ of said board. At said meeting seven communications (one of them anonymous), addressed to the school board were read. Each of these communications contained one or more complaints against defendant teacher. At said meeting Miss Byrne was represented by her attorney and filed a denial of the charges. The transcript does not show that any evidence was introduced before the board in support of the charges, but that, after hearing the complaints read and the denial by defendant teacher, a motion to dismiss Miss Byrne at once was carried, three of the four directors present voting in the affirmative. Appeal was taken and the case coming on for hearing before the county superintendent, the action of the board was reversed and Miss Byrne ordered reinstated in her position in the Struble board, whereupon the board appealed to the superintendent of public instruction.

The case, as we view it, involves the question:

First. Can a board discharge a teacher on complaints general in character and without the introduction of evidence to fully substantiate the same?

Second. In an appeal to the county superintendent from a decision of the board in dismissing a teacher, is the burden of proof upon the board or upon the teacher?

Section 2782 of the Code provides that a teacher may be discharged for "incompetency, inattention to duty, partiality, or for any good cause."

While the boards are given large discretion and, in the trial of such cases, are not required to observe the strict forms of a court of law, it is necessary that they make thorough investigation of charges lodged; that the charges, if proven true, be of sufficient consequence to warrant a termination of the contract, and that such charges be specifically set out and clearly proven.

In the case at bar the charges were so general in character, and some of them so trivial, that full testimony from creditable witnesses would be required to convince any court of review that they were sufficient to warrant the board in dismissing the teacher. Such testimony was not given before the board. It was therefore the duty of the county superintendent upon appeal to take evidence and determine the very case the board had determined. (S. L. 2819.) When that case was before the board, the burden of proof was unquestionably upon that body. The prosecution must establish the guilt of the accused, not the accused prove her innocence. If the board, without examining a witness or taking a word of testimony that would have standing in any court of law, can discharge a teacher, such board cannot in the hearing before the county superintendent insist that the burden of proof is upon the teacher. While the county superintendent must give due weight to the decision of the board, and will not reverse the board except upon a clear showing of violation of law or abuse of discretion, he cannot require the teacher to offer testimony in proof of her innocence when the board has introduced no testimony to prove her guilt.

The decision of the county superintendent is affirmed. AFFIRMED

JOHN F. RIGGS
Superintendent of Public Instruction

Des Moines, Iowa, March 27, 1906

CLYDE FREEMAN v. D. E. BRAINARD
Appeal from Harrison County

REVOCATION OF CERTIFICATE—CHARGES. Defendant through defective hearing is incapacitated to properly conduct school—that he had been in the habit of going to the outbuildings to smoke—that he was indifferent and neglectful of his duties.

EVIDENCE. The evidence establishes the fact that defendant was in such a measure deaf that he could not detect by ear the disorder resulting from whispering and that he could not properly conduct classes. It was also shown that he smoked in the outbuilding. The evidence concerning other complaints was not so full, but proved carelessness and indifference.

COUNTY SUPERINTENDENT. The law makes it the duty of the county superintendent to satisfy himself of the general fitness and good moral character of every applicant for a certificate and provide that he may revoke a certificate, "for any cause which would have authorized or required a refusal to grant the same."

Clyde Freeman received a uniform county certificate of good grade July 1, 1909.

He was subsequently employed as a teacher in Harrison county.

On March 18, 1910, the county superintendent of Harrison county notified Clyde Freeman that certain complaints having been made concerning his work as a teacher, a hearing would be held on March 25, 1910, at which time he would be given opportunity to show why his certificate should not be revoked.

At the hearing, it was shown that plaintiff is in such measure deaf that he cannot detect by ear the disorder resulting from whispering and that in conducting classes he must be near to and in front of the class in order to hear well.

It was also shown that he has been in the habit of going to the outhouse at recess for the purpose of smoking and that this fact was known to the pupils.

The evidence concerning other complaints is not full, although it seems pretty well established that there has been in some measure indifference and neglect of the work of the school.

After the hearing, the county superintendent took the case under advisement and on March 26, 1910, issued an order revoking the certificate. Clyde Freeman now appeals to the superintendent of public instruction.

The law makes it the duty of the county superintendent to satisfy himself of the general fitness and good moral character of every applicant for a certificate and provides that he may revoke a certificate "for any cause which would have authorized or required a refusal to grant the same."

In the case of *Walker v. Crawford*, school law decisions, Hon. Henry Sabin says: "The discretion vested in the county superintendent by law is very large, and for this purpose, that he may guard the public schools against the intrusion of persons unworthy or unfit for the office of teacher. The department of public instruction cannot release him from his responsibility, nor can it interfere with his discretionary acts except upon the clearest and most convincing proofs of violation of law, or of the influence of passion or prejudice in the performance of his official duty."

In the case before us, the evidence shows that the county superintendent had visited the school and was familiar with all the facts. Although the charge is made that he was actuated by malice, we fail to find evidence of this in the transcript.

From the facts shown we fail to find reason for reversing the decision of the county superintendent, and his order of revocation is, therefore, sustained to become effective on and after April 23, 1910. AFFIRMED

JOHN F. RIGGS
Superintendent of Public Instruction

W. C. ARNOLD *et al* v. SCHOOL TOWNSHIP OF RICHLAND
Appeal from Wapello County

SCHOOLHOUSES. Schoolhouses must be located to accommodate all pupils and may not be in an objectionable locality.

BOARD OF DIRECTORS. School boards must provide equal school advantages to all so far as possible either by furnishing a suitable building or by transportation.

TRANSPORTATION. If the schoolhouse has been destroyed and school cannot be maintained then all pupils shall be transported who live over one and one-half miles from the schoolhouse they are directed by the board to attend.

On September 18, 1909, the board of directors of the school township of Richland entered into a contract with Thomas Vanderpool for the use of a building to serve as a schoolhouse in subdistrict No. 7 for the current school year and ordered school to be held therein. From this action appeal was taken to the county superintendent who affirmed the decision of the board, and W. C. Arnold *et al*, now appeal to the superintendent of public instruction.

From a careful study of the record and of the written arguments of counsel it appears that all admit the necessity of a schoolhouse in subdistrict No. 7. This subdistrict has been without a schoolhouse since February 16, 1908. Since that date two elections have been held in the school township and one in the subdistrict for the purpose of voting a schoolhouse tax with which to build a schoolhouse in this subdistrict, but in each case the proposition failed to receive a majority of the vote cast.

Failing in the attempt to rent a room in the subdistrict for schoolhouse purposes during the school year 1908-1909 the board provided transportation for the pupils of subdistrict No. 7 to other schools in the school township.

As the school year 1909-1910 approached, the electors having failed to provide funds with which to erect a schoolhouse in subdistrict No. 7, two courses were open to the board: First, to provide transportation for the children in this subdistrict as was done last year, or, second, rent a room and establish a school in the subdistrict. The board chose the second alternative. But it is charged that the building selected is remote from many homes in which school children reside, and that the surroundings are so objectionable as to make it undesirable for school uses. In our opinion the evidence fully sustains these charges.

The county superintendent in her opinion raises the question as to the legal right of the board to transport the pupils in this particular case, since it is evident that it will cost the township more to transport the pupils of subdistrict No. 7 and provide them school privileges in other districts than it will to maintain a school in the Vanderpool building. The law requires the board to furnish equal school privileges as nearly as may be for all the children of the school township. No subdistrict may be discriminated against. If it were possible to secure a building near the center of the subdistrict and one that would provide for the convenience and comfort of the children, it would clearly be the duty of the board to hire such building and maintain a school, rather than transport the children, unless it could be shown that by transporting the children there would be a saving of expense and they would also secure increased advantages. But in the case before us there is no building suitably located in the subdistrict that can be secured for school purposes. The fact that the board has hired a small building

ten feet from a barn-yard and at one side of the subdistrict cannot be offered now as the only course open since the expense is less than if provision had been made for transporting the children to other schools. Under such circumstances it is not only the legal right but the clear duty of the board to furnish transportation. Counsel for defendant rightly contends that the board is powerless to permanently settle this difficulty until funds are voted with which to build a schoolhouse in subdistrict No. 7. But until such funds are provided the board under the law must provide the children school advantages, and since no suitable building can be hired in the subdistrict transportation must be provided.

It is clear from the evidence and from the pleadings of counsel that the failure to vote a tax to rebuild the schoolhouse in subdistrict No. 7 is not due to cupidity on the part of taxpayers or to their lack of appreciation of or interest in the educational needs of the children.

The difficulty arises over a custom that seems to have prevailed in the township for the past forty-five years by which each subdistrict has voted the necessary funds for building its own schoolhouse when needed.

In our opinion the law gives no warrant for such usage, but on the other hand clearly makes it the duty of the voters of the school township to vote necessary taxes for the purchase of grounds and the erection of schoolhouses.

Section 274 of the Code can admit of no other interpretation. Neither is there the slightest conflict between this section and section 2753 which provides that the voters of the subdistrict "may vote to raise a greater amount of schoolhouse tax than that voted by the voters of the school township." It was the evident intent of the legislature to afford the people in the subdistrict the opportunity of securing a better schoolhouse than the ordinary by voting an additional tax on the subdistrict; but it was not the intent to relieve the township of its duty to vote a sufficient sum to purchase a site and erect a building that would fairly meet the needs of the subdistrict.

Until the electors of the township vote the required tax the law clearly contemplates, it is the duty of the board to do all within its power to provide for the children resident in subdistrict No. 7 school privileges equal to those offered the other children of the school township. It is our opinion that in attempting to provide for such children in the Vanderpool building the board committed an error. It is therefore directed that on and after January 1, 1910, the board of directors of the school township of Richland provide school privileges in other schools for the children resident in subdistrict No. 7 of said township and that transportation be provided for all such children who reside more than one and one-half miles from the schoolhouse where they are directed by the board to attend.

REVERSED

JOHN F. RIGGS

Superintendent of Public Instruction

Des Moines, Iowa, December 15, 1909

W. M. Waskow v. Independent District No. 8, Center Township

Appeal from Fayette County

Appeal. The action of the board in fixing the schoolhouse site should not be interfered with on appeal, except upon evidence that the board exercised its power improperly. School boards should not act with undue haste in making contracts when appeal is pending. Work done with undue haste to prevent relocation of school site will not prevent relocation if evidence justifies a change.

Location of School Site. The convenience of all residents concerned should be subserved in choosing a site.

On the fifth day of September, 1910, the board ordered that a new schoolhouse be erected "six feet east of the old one," which would be on the present schoolhouse site. On the sixth day of September, 1910, an appeal was taken from the action of the board by W. M. Waskow to the county superintendent, alleging that the proper place for said schoolhouse is eighty (80) rods west of the present school site, which would be approximately in the center of the district and that no children would be required to travel more than two (2) miles to reach the schoolhouse if so located, while rebuilding on the old site would be injurious to said affiant in that it would compel children where he resides to travel a distance of two and one-fourth (2¼) miles to school.

On trial, the county superintendent reversed the action of the board, and ordered a suitable site procured eighty (80) rods west of the present site at or near the junction of the north and south road with the road running east and west.

From his decision D. N. Austin and John Hack, two members of the board, appeal, claiming that the county superintendent of schools erred in reversing the decision of the board and in ordering that said schoolhouse site be changed, and abused discretion in so reversing the decision of said board of directors for the reason that the location of said school site, as made by said board of directors, is proper and for the best school interests of said district.

From the findings of the county superintendent, as expressed in his decision, it appears that some of the patrons living east of the present site are constrained through fairness to those living west of the site to testify that they would prefer that the new schoolhouse should be located eighty (80) rods west of the present site; that a part of the membership of the board was actuated by selfish motives to retain the old site, that a preponderance of the evidence shows that a better site can be obtained eighty (80) rods west of the present site.

The question to be decided is, did the county superintendent err or overstep his authority in reversing the decision of the board and by ordering a change of site upon which to build a new schoolhouse, as directed in his decision?

Reference to the testimony in the case and to a map furnished with the transcript showing the location of houses occupied by residents of the district establishes the fact that by locating the new schoolhouse as ordered by the county superintendent no children would be required to travel over one and three-fourths (1¾) miles to school, except from

the residence of the affiant in the case before the county superintendent, who would still have nearly two (2) miles to travel to school.

The action of the board in fixing the schoolhouse site should not be interfered with on appeal, except upon evidence that the board exercised its power improperly. In fixing the school site, the geographical position and the convenience of the people of each portion of the district should be considered. The discretionary power vested in the board does not preclude the authority of the appellate tribunal to decide the question upon its merits as the evidence favors, otherwise an appeal would be a useless provision of the law. It is even held that "the county superintendent is not limited to a reversal or affirmance of the action of the board, but he may determine the same questions which it had determined." (Opinion of attorney general published in the Iowa School Journal, April, 1866.) See *John Clark v. District Township of Wayne*, School Law Decision, 1876, page 47, *J. J. Wilson et al v. District Township of Center of Monroe*, and *J. S. Folsom et al v. District Township of Center* School Law Decisions, 1907, pages 27 and 41. See also 110 Iowa 652.

In the case in question, the old schoolhouse is considered unfit for school purposes, a tax has been levied for a new building and the board has proceeded, as hereinbefore stated. The time seems opportune to consider carefully the convenience and rights of all families in the district and in deciding upon a location for a new schoolhouse, every dwelling house in the district should be taken into account. See case of *J. S. Folsom et al v. District Township of Center*, School Law Decision, 1907, page 41.

It should be noted that a meeting of the residents of the district was called by the president for the purpose of gaining the views of said residents as to the proper location for the new schoolhouse. All members of the board were present at this meeting. The testimony found in the transcript discloses the fact that the meeting was well attended and that a majority of those who spoke favored the site at the center of the district. The individual testimony at the trial also discloses the same condition, but more pronounced in favor of the proposed new site at the center of the district. The testimony also shows that the board, which consists of three members, did not decide unanimously in favor of the old site. It appears in the testimony that there are some grounds for the accusation that the board was actuated by some selfish motive in coming to the conclusion, and there was an abuse of discretionary powers in this respect. It appears in the answer to the affidavit of appeal filed with the county superintendent that between the date of fixing the schoolhouse site, September 5, 1910, and the date of said appeal, September 6, 1910, the contractor had already "entered upon a fulfilling of his contract and had laid the foundation and erected a part of the frame work of said school building prior to the time the notice of appeal was served." It is argued that a change in said site at this time might involve said school district in litigation with the contractor. It is obvious that special haste must have been exercised in the fulfillment of the contract.

In the case of *Atkinson et al v. Hutchinson et al*, 168 Iowa, page 161, the court has said: "When an order for a change of site is made, and

it is not known that all persons affected are satisfied with the order, it appears to us that prudence would dictate that the execution of the order should be postponed until an opportunity has been afforded, for a review of the same, if any desired to appeal." It would seem that a similar rule might apply in this case with regard to the erection of a new schoolhouse practically upon the old site. The board knew that there was dissatisfaction with this site and that an appeal might probably be made from its action in choosing the old site for the new building. The evidence shows that one of the directors had himself told appellee, prior to said action, that he might appeal therefrom. Under these circumstances, it would seem that the board might prudently have postponed the erection of the new building until an opportunity has been afforded for a review of their action, if any desired to appeal. We think, therefore, that the point attempted to be made by the board, to the effect that work already done by the contractor might involve them in litigation, is not well taken. If true, it is the fault of appellants and not of appellee, and the latter should not be made to suffer therefor.

From the evidence submitted in the case it appears that the convenience of all residents concerned can be better subserved by choosing a site for the new schoolhouse as directed in the decision of the county superintendent; that a majority of the residents favor such a location; that the patrons having the greatest number of children including one patron living on the east side of the district having the greatest number of children of school age of any one in the district favor the new site and that a preponderance of the evidence favors the central location as the more desirable site.

The decision of the county superintendent is affirmed. AFFIRMED

A. M. DEYOE
Superintendent of Public Instruction

Des Moines, Iowa, March 4, 1911

WILLIAM ERICKSON AND C. G. YOUNGGREN V. INDEPENDENT SCHOOL OF COBURG

Appeal from Montgomery County

MINORITY. Even a small minority of the patrons of the school have rights that cannot be ignored. School boards in locating schoolhouse sites, should equalize the distance to be traveled by children as nearly as possible.

TRANSPORTATION. Transportation of pupils in a small district is not feasible. The funds could be used to better advantage to pay better teachers and securing better equipment.

RIGHTS OF ALL. The rights of all must be considered rather than the convenience of even a majority in selecting a school site.

The history of this case and the conditions existing in the Independent School District of Coburg are very similar to those recounted in former decisions by the Department of Public Instruction.

The boundaries of the incorporated town of Coburg coincide with the boundaries of the Independent District of Coburg. The area embraced in the Independent District of Coburg consists of four sections of land as usually arranged, together with the adjacent forties on the north; the

district being two miles from east to west and two and one-fourth miles from north to south. The platted town of Coburg is located about midway between the north and south boundary lines and to the extreme western side of the district. The present schoolhouse site is located about forty rods south of the center of the district at the center of the four sections which enter into the formation of the district.

The transcript in the case shows that a special election was held, as provided by law, in the Independent School District of Coburg, at which the following questions were submitted to the voters: "Shall the Coburg Independent District issue bonds in the sum of $1,500.00 for the purpose of purchasing site and construction of schoolhouse?" The proposition carried by a majority of two votes.

A special meeting of the school board followed when the board entered into negotiations for the disposal of the bonds and steps were taken toward securing plans for a new schoolhouse, to submit to the county superintendent for approval.

At the regular meeting of the board on the first day of July, the plans and specifications approved by the county superintendent were accepted, and the president of the board was authorized to purchase certain lots within the town plat of Coburg. The site selected is 212 rods west and 45 rods north of the old schoolhouse site, a distance of but a trifle over one-third of a mile from the west boundary line of the district.

From the order of the board directing the purchase of the lots selected for a new schoolhouse site, William Erickson and C. G. Younggren, farmers residing in the eastern part of the district, filed an affidavit of appeal with the county superintendent of Montgomery county, in which it is alleged that said board committed error in not taking into consideration the geographical position, number and convenience of the pupils residing in the district, and that the proposed site is so situated as to practically deprive the children living in the southeast and northeast parts of the district of the privilege of attendance at school. The board evidently had not contemplated making provision for their attendance at any other school.

The county superintendent is of the opinion that the board erred in its selection of the new site and therefore reversed the action of the board. From this decision, the board appeals to the Superintendent of Public Instruction.

The board charges in its declaration of grievances that the county superintendent in making her decision, "went contrary to the numerical and geographical location of the majority of the children of school age living in the district and further that the evidence does not show that said board had planned to have the few children living in the extreme part of the district conveyed at public expense."

The evidence in the case shows that three of the five directors live in the town proper of Coburg.

The question to be determined is, did the county superintendent commit error in reversing the action of the board in selecting the site for the new schoolhouse so far removed from the geographical center of the district, notwithstanding the fact that about half of the persons of school age reside within the comparatively small area forming the town

plat of Coburg, and further that a majority of the families live nearer the proposed site than the old one?

A school located within the borders of any town is a convenience to be appreciated, and a school building of modern architectural design may well be the pride of any community. However, the claim set forth by counsel for appellee is correct, "that even a small minority of the patrons of the school have rights that cannot be ignored." It is the intent of the law, that school boards in locating schoolhouse sites, equalize the distance to be traveled by children to school as nearly as possible. We think it is clearly implied in section 2803 that no child shall be required to travel an unreasonable distance in order to secure school privileges.

Section 2774 of the school laws provides that "when there will be a saving of expense, and children will also thereby secure increased advantages, the board may arrange * * * for the transportation of any child to and from school in the same or another corporation."

The evidence in the case established the fact that none of the residents of the district live more than two miles from the old site, while the proposed site would place as many as four families each having several children attending school, from 2½ to 2¾ miles from school, which is considered too great a distance for children to travel to school, and would virtually deprive them of school privileges unless some means of transportation is provided for them. It is obvious from the testimony in the case that the board had not considered the matter of providing transportation for these children at the expense of the district. In so small a district, we very much doubt the advisability of selecting a site for a schoolhouse that would necessitate incurring the expense of providing proper transportation of children, when it is possible to locate a schoolhouse in the district where no one will be placed at an unreasonable distance from school. The use of school funds might be used to better advantage in salaries for the best teachers to be had and in securing the best possible equipment for the school. If the Independent District of Coburg included the four sections of land west of the present district, it could afford some expense for transportation of pupils and the location of the school would very properly be in the proximity of the town of Coburg.

The intent of the board to build up a graded school and provide for two departments is commendable. With a school population of about sixty persons it appears that the average daily attendance ought to exceed eighteen. Undoubtedly there are those among the older boys and girls who could profitably be in school, and possibly would be in school during the winter months at least if special school advantages were afforded in the district. Unquestionably as good a school can be provided where the old schoolhouse stands, or at any other place within the district, as at the proposed location. Even though the children in the town may be compelled to travel about ¾ of a mile to school, such distance would not be an unusual distance for children to travel to school in towns and cities.

The fact that nine-tenths of the school taxes are paid by residents outside the town plat of Coburg is not entitled to consideration in deter-

mining the location for the schoolhouse site. The child of the poorest parentage is as much entitled to free public school advantages as is the child of the extensive property holder who may be a heavy taxpayer.

We agree with the county superintendent in the interpretation of the law when she states in her decision "that the rights of all must be considered rather than the convenience of even a majority and that the board erred in its selection of the proposed site." The case of *J. O. Severeid and John Stenberg v. Independent District of Fieldberg*, School Law Decisions, 1907, page 62, corroborates this view.

The decision of the county superintendent is affirmed. AFFIRMED

A. M. DEYOE
Superintendent of Public Instruction

Des Moines, Iowa, November 25, 1911

F. C. PAINE v. THE SCHOOL OF AMSTERDAM

Appeal from Hancock County

RE-OPENING OF CLOSED SCHOOLS. The matter of re-opening a school is purely a discretionary power of the board, and like all discretionary acts of the board, is subject to appeal to a higher tribunal. The number of children who live in a district is not necessarily a determining factor in re-opening a school.

POWERS OF BOARD. Subdistricts do not exist as school corporations but merely subdivisions of the township unit and do not determine where children shall attend school. The board may determine what school in the corporation children shall attend without regard to subdistrict boundaries.

This appeal relates to the re-opening of a school ordered closed by the board as provided in section 2773 of the School Laws. The school in question is located in subdistrict No. 5, Amsterdam Township, Hancock county.

At the last regular meeting (July, 1911) of the school board, F. C. Paine, the director for subdistrict No. 5, sought to have the school re-opened and have a teacher regularly employed as is done for the other schools in the school township. The board refused to open the school and hire a teacher, but directed that the children in each family residing in the subdistrict be assigned to the nearest school, with the privilege granted, if any families preferred to do so, of sending their children to schools of their choice in the township, including the graded school in the Independent District of Kanawha.

The school building in the Independent District of Kanawha is located about one mile south from the schoolhouse in subdistrict No. 5.

The board also ordered that the tuition and all necessary expenses for text-books and supplies for any children who might select the Kanawha school should be paid by the school township. The school township of Amsterdam furnishes free text-books and supplies for the schools of the district, consequently no discrimination of expense for text-books and supplies was allowed to stand against those who might choose to attend the Kanawha school.

F. C. Paine appealed to the county superintendent who sustained the

board. Affiant then appealed to the Superintendent of Public Instruction.

The essence of the grievances set forth in the affidavit of appeal is "that the county superintendent erred in affirming the action of the board" for the reason that the evidence substantiates the cause of appeal from the decision of the board, viz., "the school board entirely ignored and failed to take into consideration the geographical location and the number and convenience of the pupils of school age in subdistrict No. 5; that all of the schools to which the pupils of said subdistrict No. 5 were directed to be sent are more inaccessible and at a greater distance from the respective homes of said pupils than the schoolhouse in subdistrict No. 5."

The gist of the argument of appellant's counsel is founded on the following phrases in section 2773 of the Code of 1897; "taking into consideration the geographical position, number and convenience of pupils," which relate to the power of school boards in fixing schoolhouse sites. The citation to decisions of the supreme court relate to the same matter. When locating schoolhouse sites, the geographical position and convenience of pupils should be carefully considered in order that no child may be compelled to travel an unreasonable distance to school. Would the language of the law quoted apply with equal force to the power of boards in closing schools under section 2773? We do not think so. The construction of the language of this section does not so indicate. The phrases quoted relate to fixing schoolhouse sites and not to closing of schools. The board possesses entire jurisdiction in the matter of fixing schoolhouse sites within the limitation of the law, but school boards cannot shorten the number of months of school to less than the required number of six months each year, except when authorized to do so by the county superintendent. However, the matter of re-opening a school is purely a discretionary power of the board, and like all discretionary acts of the board, is subject to appeal to a higher tribunal. It has ever been held by this department that discretionary action of school boards should be affirmed on appeal, unless by the evidence it is clearly proven that the board violated the law or abused its discretion.

The evidence in the case shows that four families having ten children to send to school reside in subdistrict No. 5; that two of these families have no farther to travel to school by attendance in subdistricts Nos. 4 and 6 than to the schoolhouse in No. 5; that there are public roads leading directly to these schools from both homes over which other children are compelled to go back and forth to school. The claim is made that the road to No. 6 over which affiant's children would be required to traverse is nearly impassable, yet small children from another family living across the road from affiant must travel this road to school. The teacher for No. 6, whether from choice or necessity, has boarded most of the time of late years with this family and must walk to school over this same alleged impassable road. The argument is advanced that because the schoolhouse in No. 5 is in the direction of town from all residents having children to send to school, who live in subdistrict No. 5, the failure of the board to take this condition into

consideration is evidence that said board has abused its discretion. There will probably be very few occasions when it will be convenient to drive to town and then return home just at hours when children should go to school in the morning and return home after the close of school. If there is any force in this argument, then there should be a general re-arrangement of subdistrict boundaries in order that all children may travel in the direction of town when going to school.

Two families are situated at a greater distance from school by reason of the closing of the school in subdistrict No. 5. The plat submitted with the transcript shows these families reside—one a little over a half mile east and the other family about one-half mile north from the schoolhouse in district No. 5 and that both families reside about one and one-half miles to the next nearest schools in the district township and about one and one-half miles from the school in Kanawha. Wherever the element of distance is mentioned in the school laws, one and one-half miles is not considered an unreasonable distance to school. See section 2803 of the Code 1897. Of course there might be unusual conditions, such as unbridged streams or impassable highways. There might be a wise saving of school funds by the closing of all schools when by so doing no child would be located more than one and one-half miles from school. The evidence shows that the children in this subdistrict were given permission to attend the school in the Independent District of Kanawha which would permit these children to travel to the town school, if there is any virtue in the argument "of opening a school so that children may travel in the direction toward town when going to school."

We can hardly conceive of a condition more favorable where it would be possible to apply the provision of section 2773 concerning the lessening of the number of months of school each year. There is one family, that of Mr. Williamson, which does appeal to our sympathy. There are three little girls in the family, the youngest of whom is a little past five years of age and the oldest is nine years of age. This family resides east a little over one-half mile from the schoolhouse, and nearly one and one-half miles to No. 6 and about one and one-half miles to Kanawha, and yet these children need travel but one-half of a mile before joining other children and the teacher who, as before stated, boards usually in the direction of this home from No. 6. Undoubtedly there may be days in winter when children should be transported to school. We are not ready to say that the board has abused its discretionary power. "The action of the board may not be wholly approved by the judgment of the county superintendent, but if it be not illegal or clearly unjust, it should be sustained." *Edwards et al v. District Township of West Point.* School Law Decisions.

We are impressed with the force of the claim made by counsel for appellant in his ably prepared argument, that until schools in the rural district are consolidated and pupils transported at public expense, each subdistrict has an absolute right to fair treatment in the distribution of the district funds and in the maintenance of equal school privileges. However, that subdistrict is fortunate indeed where none of its patrons are located at a greater distance from school than one and one-half

miles. Simply because there is a schoolhouse in a subdistrict, does not give any resident a vested right to demand a school. It is clearly within the jurisdiction of the board to designate which school each child shall attend as long as there is no manifest abuse of discretion. We cannot believe that there is abuse of authority by closing a school and directing that children shall attend another school when the greatest distance children will be required to travel does not exceed one and one-half miles.

A recent decision of the supreme court in upholding the opinion of the department in the case of *W. C. Arnold, et al v. The School Township of Richland, Wapello county,* in requiring the board to provide transportation for those children, only, who live more than one and one-half miles from other schools, and where the board had failed to take action to replace the building that had burned in one of the subdistricts, would support the opinion that one and one-half miles should not be considered an unreasonable distance for children to walk to school.

The subdistrict does not exist as a school corporation, but merely as a subdivision of the township unit of organization, and is not formed necessarily to determine where children shall attend school, but the board may determine what school in the district the children shall attend, without regard to subdistrict boundaries.

The decision of the county superintendent is affirmed. AFFIRMED

A. M. DEYOE
Superintendent of Public Instruction

February 1, 1912

J. H. BECK AND S. O. ANDREWS v. SCHOOL TOWNSHIP OF JEFFERSON
Appeal from Polk County

HIGH SCHOOL. A township high school may not be maintained in a one-room country school where grade subjects are taught.
LOCATION OF TOWNSHIP HIGH SCHOOL. The location of a township high school is a little different from locating the site of a grade school.
DISTANCE. Distance is not so important because the children usually drive.

The above entitled cause originated in the action of the school board in changing the township high school from what is known as the Lincoln school in Jefferson township to the Herrold schoolhouse. For about two years, a township high school had been conducted in the Lincoln building, where there are two rooms separated by a rolling partition. The high school occupied one of these rooms. At the regular July, 1912, meeting of the board, action was taken by a vote of 6 to 3 "to try the high school at the Herrold Schoolhouse for the ensuing year." The Herrold schoolhouse is an ordinary one-room rural school building. Two teachers are employed, one of whom has charge of the grades below the high school and the other teacher has charge of the high school. Both teachers are conducting work in the same room. The high school occupies one side of the room and the grades the other. There is no suitable classroom connected with the building. The attendance in both departments is small. The evidence shows that both teachers are doing good work considering the circumstances.

Jefferson township is very irregular in shape, and it is more difficult to select a central location for the high school than in the usual form

of the congressional township. Taking into consideration those to be accommodated in the township high school, location of highways, the location of a cream station near Herrold school on an interurban railway passing through the township, where farmers deliver cream, we are of the opinion that so far as mere location is concerned the board made no mistake in choosing Herrold in preference to Lincoln.

If the pupils in the township who want high school privileges and have been accustomed to attending the township high school at Lincoln were now attending Herrold, the attendance would be about the same as it was at the Lincoln school during the two years the high school was conducted at that place. But for some reason there are pupils in the vicinity of the Lincoln schoolhouse attending high school in an adjoining district and traveling farther to attend that school than would be necessary in order to attend their own high school at the Herrold schoolhouse. We are not questioning the motives of these families, but the fact should appear in this opinion, in order to show that if all pupils were now attending the high school at the Herrold location there would probably be about the same attendance at Herrold as formerly at the Lincoln school. The evidence shows that at least two pupils would have farther to go to Lincoln were the high school maintained there than any pupils would have to travel to the Herrold school. However, the matter of locating a site for the rural school for the grades below the high school is a little different from locating a site for a township high school. The usual size of the rural school district is four sections, with the express provision that the schoolhouse be located as near the geographical center as possible in order that it may be possible for all the children to walk to and from school. In order that no one may be discriminated against and be required to walk an unreasonable distance to school, the rights of a minority are as carefully guarded as the rights of a majority of children attending school.

In the matter of the location of a high school, it is somewhat different; for it is quite possible that a majority of the children will have to be transported to school, and there would be some reason to adjust the distance to school on a little different basis. Justice would not be violated by requiring one child to drive a little farther, provided several other children would be convenienced thereby.

The evidence shows that there are two or three barns within a few rods of the Lincoln school, and that there is no barn nearer than a quarter of a mile to the Herrold school. Undoubtedly shed room for teams should be provided near the school. This could be provided for either in private barns or better in sheds put up by the district on the school grounds. To be compelled to drive a quarter of a mile beyond the school to put up a horse and then walk back, is a factor of importance.

However, taking into consideration the center of population in the township as well as the geographical center, highways, accessibility from all parts of the township, we believe the board exhibited no abuse of discretionary power in selecting the Herrold site, as far as conditions just mentioned affect the selection of the proper location for a township high school.

There is another matter, however, that is determinative in this case.

The rural high school is an institution of recent origin in Iowa. The tendency to establish rural high schools in the state is growing. The decision in this case is important in defining conditions that may seriously affect the future organization of rural high schools in the state. To establish the principle that a high school may be maintained in a one-room country school, by simply employing an additional teacher and conducting the high school in a room where another teacher is employed teaching the grades, would be unwise. In the matter of establishing a high school, the Department has advised that a separate room should be used for high school purposes. In harmony with this view, see Note 6, under section 2776, in which graded and higher schools are defined This note has appeared in several editions of the school laws.

Two separate schools with two teachers employed and conducting classes simultaneously in the same room, could not promote the best conditions for successful work. The opinions of experienced teachers given as witnesses for appellants and appellees reach the following conclusion. In order to secure the best work possible, it is reasonable to lay down this rule, that a separate room or rooms should be provided for the high school department depending upon the number of teachers employed in the high school department. A separate room exists at Lincoln building where a high school was maintained for two years, and we are of the opinion that the board of Jefferson township did err in changing the high school to the Herrold schoolhouse before a separate room was provided for the high school department. It is, therefore, ordered that the high school be transferred to the Lincoln schoolhouse until a suitable, separate room or building is provided in some other convenient place in the township, preferably near the Herrold schoolhouse.

We dislike to overrule the county superintendent or to interfere with the action of the board, but we believe the condition at the Herrold schoolhouse warrants a reversal, therefore, the decision of the county superintendent is reversed.

REVERSED

A. M. DEYOE

Superintendent of Public Instruction

Des Moines, Iowa, December 28, 1912

O. L. COX *et al* v. THE INDEPENDENT SCHOOL DISTRICT OF FABIUS NO. 2

Appeal from Davis County

GOVERNMENT SURVEY. The government survey will be accepted and a section even though it be short in acreage will meet the requirements of the law.

FORMATION OF NEW RURAL INDEPENDENT DISTRICTS. It was not the intention of the legislature to invest school boards with power to form new independent districts without a vote of the electors.

The independent rural districts of Burr Oak and Fabius No. 2 are adjoining districts and each comprises about eight sections of land located in the southern part of Grove township, Davis county. Appellants sought to have about four sections, according to government survey, of contiguous territory consisting of equal portions of the above named rural independent districts detached from each for the purpose of form-

ing a new rural independent district, said new district to be named The Rural Independent District of McDowell. Appellants proceeded to have this done by concurrent action of the school boards of Burr Oak and Fabius No. 2, basing their authority for this plan of procedure upon section 2798 of the School Laws of Iowa.

Accordingly a petition was properly prepared and signed by several patrons living in the central and southern parts of the proposed new district. This petition was first presented to the Burr Oak Independent District. The board of Burr Oak decided in favor of granting the request of the petitioners by a vote of 2 for and 1 against. The board of Fabius No. 2 was then asked to concur in the action of the board of Burr Oak. The board of Fabius No. 2 rejected the prayer of the petitioners by a unanimous vote. From the action of the board of Fabius No. 2, the appellants appealed to the county superintendent. The county superintendent sustained the board. Appellants appealed to the Superintendent of Public Instruction.

A few of the facts and reasons why appellants are asking for the formation of a new independent district are as follows: That the distances to school are unreasonable, that the roads are bad, never having been properly graded and that unbridged streams interfere with the children's ability to travel to school.

The districts of Burr Oak and Fabius No. 2 or Beulah have been in existence in their present form for many years. From all that can be learned from the testimony in the case, there are good grounds for the contention of appellants. It is unreasonable to expect small children to walk from 3 to 3½ miles to school over roads not properly worked as some of them are compelled to do. Why such a condition concerning roads has been allowed to continue for so many years is difficult to understand. We cannot help but feel that there has been a too manifest disposition on the part of these districts to neglect the matter of establishing proper school roads and to provide adequate school privileges to all children in the district. We are inclined to the opinion that the spirit of rigid economy in the maintenance of their schools has been practiced without proper effort to furnish school privileges to the children of the district. Why did these districts wait until patrons were driven to appeal for relief, before taking steps for proper roads and allow transportation for pupils? Although some testimony was produced to show that some effort is now being made to open up roads to school and provide transportation since the trial before the county superintendent, which of course was taken too late to receive consideration on appeal to the Superintendent of Public Instruction.

The county superintendent sustained the board on the following grounds: 1. The territory proposed to be included does not consist of four full sections of land. 2. That the tendency is toward consolidation and not division in order to establish better school facilities, suggesting that transportation be provided appellants as a better solution of the problem. 3. That two of the schools, the Burr Oak and the school in the new district, would be very small and therefore inefficient schools. 4. That, although the new districts be formed, there would still be a few residents in both of the old districts with little better

facilities than those affecting the appellants. It is also noted in the testimony that there are residents living in the north part of the proposed district who are opposed to its formation on the grounds that they would be farther from school in the new district than they now are from the schools they attend.

The decision of the county superintendent is well taken except as to the first reason. While some of the government sections do not contain 640 acres, yet they are all sections according to government survey, and we believe meet the requirements of the law in this respect. Had roads been provided and had the districts offered transportation before this action was taken, we should consider that these appellants had no cause for grievance. But under the present condition of the law, whereby the provisions for opening roads depends upon a vote of the people and where transportation is optional with the boards, what assurance have the appellants that these matters will be improved? Both of these improvements are essential.

Let us now consider the legality of the procedure of appellants. The question involved is a difficult one. We have given the matter long and earnest consideration. As before stated, the action was taken under section 2798 of the School Laws. Does this section mean that new rural independent districts may be formed by concurrent action of school boards? It nowhere says so. The law simply states that "independent districts may subdivide for the purpose of forming two or more independent districts or have territory detached to be annexed with other territory in the formation of an independent district or districts—such new districts to contain not less than four government sections of land each, etc." The law is silent as to the plan of procedure, unless it be defined in the latter part of the section which says, "and the proceedings for such subdivision shall in all respects be like those provided in the section relating to organizing cities and towns into independent districts, so far as applicable." We must admit that the law is not clear. However, we cannot believe it was ever intended that school boards should be empowered to form entirely new independent districts by concurrent action, in other words, create new school corporations. Section 2794, which relates to the formation of independent village, town, and city districts, requires a vote of the electors residing within the proposed new district. Section 2792 provides that before a township district consisting of subdistricts can be changed into independent organizations, that the proposition must carry by a majority vote of the electors in each of the subdistricts. In the formation of the proposed Independent District of McDowell, there are residents living in the north part especially who are opposed to its formation because they would be placed at a considerably greater distance from school than they now are from Burr Oak and Fabius No. 2. Should these people be deprived of their privileges without having any voice in the matter? It is also true that outside of certain families seeking to be set off, the people in the remaining portions of Burr Oak and Fabius No. 2 are opposed to the division of the territory. They are not in favor of the formation of more schools and consequently smaller schools; but some of them favor providing

reasonable transportation for those living at an unreasonable distance from school.

Again, as to the method of procedure in the subdivision of rural independent districts for the purpose of forming new independent districts, counsel for appellee makes the following statement: "We must admit that the meaning of this section 2798, is not clear to us, but as we understand it from its origin up to the present time, we believe it means that no independent district can be established out of territory comprising two seperate, independent districts, without first a majority of the votes of both districts affected by such change are cast in favor of such change."

Section 2798, in addition to the provisions already quoted, mentions two exceptions which permit the formation of independent districts with less than four sections of land—one where the proposed district includes a village or town, and the other where a natural obstruction exists, such as an unbridged stream. The counsel for the appellants claim that the appellants' action is duly authorized by law, and base their contention on the decision of the supreme court in the case of *School District No. 10 v. The Independent District of Kelley,* from which they quote the following language: "Counsel for plainff contends that it is impossible for an independent district to exist consisting of less than four sections of land save under the contingencies specified in Code Section 2798, which relates, however, to subdivision of an existing independent district by *concurrent action of the board of directors of the two districts.*"

We are of the opinion, however, that the court in quoting the contention of the plaintiff's counsel in the case cited did not intend to rule on the manner of procedure, under section 2798, since this point was not an issue in the case at bar.

In the Kelley case, the formation of a town or village district is involved, and section 2794 provides how it may be done. Section 2798 also provides a method of how town and village districts may be formed which is not in accord with section 2794 in all respects, but a vote of the electors is required in either case. The question of mode of procedure was not involved in the Kelley case; consequently we do not understand that the court placed any interpretation upon this matter as involved in section 2798.

The determination of the plan of procedure in the case of formation of new school corporations is far reaching, and we therefore submitted the following question to the attorney general: "May school boards of two rural independent districts by concurrent action set off contiguous territory for the purpose of forming a new rural independent district under the provisions of section 2798 of the Code without a vote of the people?" We simply quote the concluding paragraph of the opinion prepared by counsel in the office of attorney general: "One thing is certain, that this section is so uncertain in its meaning that it should be rewritten and the intended meaning more clearly expressed, and until this is done a board or officer whose duty it is to construe this section might well be justified in construing the same either way as in his own judgment he might think proper."

As stated before, we do not believe it was the intention of the legis-

lature to invest school boards with power to form new independent districts without a vote of the electors. Until such time as the legislature shall provide otherwise, we shall hold that the plan of organization as applied to rural independent districts, under section 2798, shall be like that provided for the organization of town and city districts and can be accomplished only by a vote of the electors; and that the plan of procedure in this case was not in accordance with the law.

With this conclusion, there is nothing to do but dismiss the case, as should have been the action of the county superintendent. DISMISSED

A. M. DEYOE
Superintendent of Public Instruction

Des Moines, Iowa, December 31, 1912

A. L. BEAR v. INDEPENDENT SCHOOL DISTRICT No. 3, JOHNS TOWNSHIP
Appeal from Appanoose County

SCHOOL SITE. School boards have power to choose a new schoolhouse site after bonds have been voted even though the district owns an old site, provided the bond issue was not voted to expend the money on the old location.

The Independent School District No. 3, Johns Township, Appanoose county, consists of six sections of land. A railroad crosses the southeastern part of the district. The village of Plano is located in the southeastern part of the district on the railroad, the plat of which extends within one-half mile of the eastern boundary of the district and within a few rods of the southern boundary. The original village plat was made about thirty years ago and was located entirely south of the railroad tracks.

A portion of land was later platted north of the tracks, we judge from the evidence, not many years ago. Two schools have been maintained in this district for many years, the site of one, known as the "college school," being located at the four corners at the center of the four sections of land to the west, and the site of the other, known as the Plano village school, is adjoining the village on the south.

Bonds were voted to build a new school house in the village of Plano. The proposition to sell the old site was voted down by the people. However, the school board decided to purchase a new site north of the railroad tracks. A. L. Bear, a resident of the western portion of the district and a patron of the college school, appealed from the action of the board. The county superintendent sustained the board. Appeal was then taken to the Superintendent of Public Instruction. The only question to be determined in his appeal is, did the school board abuse its discretionary power in selecting a new site north of the railroad tracks? The case seems to be a very simple one to decide.

The principal complaint of appellant seems to be that the greater number of the children who attend the Plano school live south of the railroad and that the crossing over the track is dangerous. It is true that there is always danger connected with crossing railroad tracks, especially in the case of children. This condition is not peculiar to Plano. Many cities, towns, and villages, and even rural communities, are intersected by railroads and children are compelled to cross the

tracks in order to reach school, but it is no worse for children crossing railroad tracks in one direction than for those traveling in the opposite direction. It is the duty of railroad companies and of the town and township officials as far as possible to properly safeguard the lives of people at such places.

Counsel for appellant claims that where a district already owns a site that the school board cannot legally change to a new site without being directed to do so by a vote of the people. There would be grounds for claiming an abuse of discretionary power by the school board in the case of the removal of a schoolhouse of large size and constructed of material that would make it expensive or difficult to move the building. Had the bonds been voted to build on a particular site, then the school board could not disregard the vote of the people. In this case, a new schoolhouse is to be erected. The bonds were not voted to build on any specified site. We believe that it is within the jurisdiction of the school board to select a site for the same. Section 2773 of the School Laws of Iowa provides as follows: "The board may fix the site for each schoolhouse, taking into consideration the geographical position, number and convenience of the scholars." This Department has always ruled that unless it can be shown that the school board has clearly abused its discretionary power, its action should not be reversed.

The evidence shows that the new site will be more convenient for all portions of sections 16 and 21 on the east side of the district for which the Plano school is maintained. The school appears to be established largely for the children residing in the village of Plano. There does not seem to be much choice between the old site and the new site as far as average distance to school of residents in the village is concerned.

We do not see wherein residents in the western part of the district can be aggrieved by locating the school on the proposed site. In fact, should they ever desire to send children to the Plano school, it seems that the new site would be more conveniently situated. As before stated, the only question involved in the appeal is, did the school board abuse its discretionary power in voting to purchase a new site? We do not find that the board acted with prejudice or malice, neither do we find that any one will be inconvenienced by choosing the new site. We believe that the county superintendent could find no valid reason for reversing the action of the board. The county superintendent in sustaining the board is therefore approved.

AFFIRMED

A. M. DEYOE

October 3, 1913 *Superintendent of Public Instruction*

WM. KOPASKA V. THE SCHOOL TOWNSHIP OF SEELEY

Appeal from Guthrie County

APPEAL. An appeal may not be taken from an action of the board that is not final.

REMEDY. In case a school board fails to carry out the will of the electors as expressed the remedy is *mandamus.*

The following facts in the history of the case are gathered from the transcript. At the annual March meeting in 1910, the board of directors of the School Township of Seeley was authorized by the electors to

purchase a school road forty feet wide and about one-half mile in length, for the purpose of giving one William Kopaska, a road to school. The board was further authorized to order the levy of a tax not to exceed five mills on the dollar to purchase said road. A tax of three mills on the dollar was ordered by the board for the specific purpose of buying the Kopaska road. The money is now in the hands of the school treasurer, and is more than ample to pay for the land required for the road. It appears that the board has made some attempts to secure the land for the road but has failed to reach an agreement with the owners as to prices for the property.

The question of allowing the school board an option of securing a road for Mr. Kopaska in another location was later submitted to the electors of Seeley township district and again the voters favored the location of the road as at first directed.

At the annual meeting of the board, July 1, 1913, Mr. Kopaska was represented by his attorney who presented a petition to the board praying that immediate action be taken for the establishment of the road. Whereupon the following motion was lost by unanimous action of the board. "Moved that we grant the petition of William Kopaska and proceed to establish and procure for use said school road as in petition set forth; that warrants issue in the following amounts to the respective parties for land and damages because of the establishment of said school road.

J. B. and Mary Tallman	125
Ann Congdon	200
Hans Jorgenson	525

"The secretary is hereby instructed to issue said warrants, have them properly signed by the president, and to deliver same to said parties, taking their proper receipt therefor."

The amounts set forth in the motion are purported to be the amounts claimed by the owners of land wanted for the road. Mr. Kopaska appealed from the action of the board to the county superintendent, claiming the said action of the board to have been a final action. After the hearing was concluded, the county superintendent dismissed the appeal on the ground that said action by the board was not final and that the proper action by appellant was not appeal. Appeal was taken to the Superintendent of Public Instruction.

We agree with the county superintendent in dismissing the appeal. The board had the right to refuse to allow the prices as fixed by the motion, if considered excessive.

Section 2815 of the School Laws provides the method whereby school boards may by condemnation proceedings obtain right and title to schoolhouse sites and land for school roads when property so desired cannot be secured upon satisfactory terms to the school board by mutual agreement between the board and the land owners. The law provides for the appointment of disinterested persons to act as referees who "shall fix the damages sustained as near as may be on the basis of the value of the real estate so appropriated * * * * and upon the amount found by the referees being deposited with county treasurer for the use of the owner, possession may at once be taken."

A refusal by the board to proceed according to the provisions of this act should undoubtedly be considered as a final action of the board. The board has not *refused* to resort to the extent of the law to secure the school road for Mr. Kopaska. It has simply failed to do so.

It seems that an agreement between the board and the owner of the land is improbable. We are of the opinion that the board should have come to this conclusion some time ago. We are of the opinion also that the board of the School Township of Seeley has been dilatory almost to the extent of negligence of duty in not carrying out the instructions of the voters in providing a road for Mr. Kopaska. This is a matter of much importance to Mr. Kopaska who has several children to send to school. No children should be compelled to travel through neighbors' pastures and climb barb-wire fences to reach school. School districts can well afford to provide suitable roads for children to travel to school unless conditions are very unusual.

Section 2778 of the School Laws provides "that school boards shall carry into effect any instructions from the annual meeting upon matters within the control of the voters." It seems unreasonable that it should be necessary for a school board to delay nearly four years in carrying out the will of the electors as expressed at an annual meeting.

We are of the opinion that the remedy in this case is an application to the court of law for *mandamus* to compel the board to act as directed by the electors and that an appeal is not the proper method of procedure. We trust that the board will now act promptly in the matter and that it will not be necessary for Mr. Kopaska to apply to the court for relief.

The decision of the county superintendent is affirmed. AFFIRMED

A. M. DEYOE
Superintendent of Public Instruction

Des Moines, Iowa, January 6, 1914

O. J. STRIKE v. THE INDEPENDENT SCHOOL DISTRICT OF LELAND

Appeal from Winnebago County

EQUAL SCHOOL PRIVILEGES. The law contemplates that school boards shall render justice to all children residing within the district. Two and one-half miles is too far to require small children to walk to school.

TRANSPORTATION. Transportation as provided in section 2794-a does not apply to schools organized under section 2794 but applies to consolidated schools only. However, transportation of pupils in rural schools is many times advisable.

DUTY OF SCHOOL BOARD. A school board has not exhausted its powers to provide proper school advantages until it has taken full advantage of the law.

The town of Leland was incorporated in 1895, consisting of six sections of land. The Independent School District of Leland was formed in the same year under the provisions of section 2794 of the School Laws of Iowa, consisting of the incorporated town of Leland and two additional sections including one subdistrict from the school township of Forest and one subdistrict from the school township of Newton, Winnebago county. The Independent School District of Leland is two miles east and west, by four miles north and south. The town plat of Leland is

located about one-half mile south of the center of the independent district, in which stands the Leland schoolhouse. In the stipulation of facts as made of record at the request of defendant and which is made a part of the transcript in the case, the following statements appear: "Prior to the year 1895 the schoolhouse in the subdistrict of Forest township was located in the village of Leland and there was a schoolhouse in the geographical center of the subdistrict of Newton township. After the formation of the said independent district, school was continued at each of the said locations until about the year 1905, when school was discontinued in the schoolhouse in Newton township and ever since such discontinuance the school board has transported to the Leland school pupils tributary to the Newton school, the average number being about fourteen pupils, and has not provided transportation for other children at any time. As shown by the secretary's report, there are seventy children of school age in the corporation. That there are not and never have been any other branches taught in said district other than the usual and ordinary requirements for country schools which are up to and including the eighth grade. The average attendance in the Leland school for the year 1912-1913 was forty-two pupils."

About the year 1900, a new four-room schoolhouse was erected in the town of Leland. Two teachers have been employed in the Leland school since the discontinuance of the school in the Newton township territory.

O. J. Strike, appellant, lives in the southern part of the Independent School District of Leland. in what was formerly the subdistrict of Forest township about two and one-half miles from the Leland school. Some children living in the northern part of the Leland Independent District, in what was formerly the Newton township subdistrict, are being transported to school, who live no farther from the Leland school than does Mr. Strike. The board has never provided transportation for Mr. Strike's children, claiming the district could not afford to provide transportation for one family; that by providing transportation for Mr. Strike, a precedent would be established that might in the future embarrass the district financially. Mr. Strike has sent his children some of the time tc a school in an adjoining district, a distance of a little over one and three-fourths miles, and the tuition has been paid by the Leland district. There is no evidence submitted to show that the school board of the Leland district has ever attempted to arrange with the board of the adjoining district for the attendance of the children of Mr. Strike in accordance with section 2774 or section 2803. The evidence does show that the school board of the Leland Independent District has allowed bills for tuition for Mr. Strike's children in an adjoining district and has never refused to do so. But attendance of his children in an adjoining district never was satisfactory to Mr. Strike. He has at different times petitioned and requested the board of the Leland District to provide transportation for his children to their own school. The board failed to take any action on the petition until ordered to do so by the court under *mandamus* proceedings. The board then denied Mr. Strike transportation for his children.

Mr. Strike appealed to the county superintendent and claimed the district must furnish transportation on the following grounds:

"1. That the law making transportation mandatory was provided in section C, chapter 143, acts of the Thirty-fourth General Assembly (section 2794-a2, School Laws of Iowa, Edition of 1911), as applicable to districts organized under section 2794-a, chapter 143, acts of the Thirty-fourth General Assembly, was equally applicable to districts organized under section 2794 of the Code. (Sections 2794-a and 2794, School Laws of Iowa, Edition of 1911.)

"2. That by denying the affiant the relief asked in his said application the board is discriminating against the affiant by denying him school privileges granted to others in the said district similarly situated with respect to school advantages."

The first proposition depends upon what construction is given to the sections of the School Laws held in question, viz.: Sections 2794, 2794-a and 2794a-2. The second proposition refers to the duty of the school board in providing equal school privileges to children living in the district situated under similar circumstances, the facts concerning which must be determined upon the evidence submitted in the case.

The county superintendent bases his reasons for reversing the board on the following grounds:

With reference to the first proposition, the county superintendent assumed that the legislature intended section 2794-a to be an amendment to section 2794, therefore transportation is compulsory in both instances in accordance with section 2794-a2; that section 2794 is a provision for the formation of an independent district to include a city, town or village and territory contiguous thereto, through process of annexation or consolidation without limitation as to size of the district; that section 2794-a is a provision for the purpose of encouraging further consolidation of school districts in exclusively rural communities. The county superintendent "inferred that the legislature considered sixteen sections about as small a territory as might be consolidated in a section containing no city, town, or village, and be financially able to maintain a school where transportation is furnished."

With reference to the second proposition, the county superintendent supported the contention of appellant, and considered this cause sufficient, providing he has taken an erroneous view concerning the proposition.

We cannot find the least foundation for the assumption of counsel for appellant, in which the county superintendent concurred, that chapter 141, acts of the Thirty-first General Assembly, as amended by chapter 143, acts of the Thirty-fourth General Assembly (sections 2794-a to 2794-a7, School Laws of Iowa, Edition of 1911), was intended as an amendment to section 2794 of the School Laws of Iowa. By reference to the bill as enacted by the General Assembly, there is nothing in the title, nor in the language of the law, to indicate that section 2794-a is to be considered as an amendment to 2794 or that the two sections are connected laws. Section 2794-a2 which makes transportation mandatory was enacted with section 2794-a and applies to independent consolidated districts only; such as are formed in accordance with section 2794-a. The county superintendent was clearly in error in assuming that sections 2794 and 2794-a are related laws in the sense that the former provides

for consolidation of school districts which include a city, town, or village, and that the latter refers especially to the formation of consolidated independent districts composed entirely of the union of rural districts. Section 2794-a is the only section of the school laws that provides for the formation of consolidated independent districts and in which transportation of pupils is made mandatory by section 2794-a2. The fact that one section is number 2794 and the other is numbered 2794-a should not be construed to mean that the second was intended as an amendment to the first. Section 2794-a was enacted several years after section 2794, but was so numbered by the editor of the Code Supplement, 1907, to give the law the proper setting in the Code with other laws relating to formation of school districts, the plan followed frequently in numbering sections in the Code. Section 2794-a is applicable to conditions and makes requirements independent of section 2794. This is the opinion of those well versed in the law and having a broad legislative experience.

The Independent School District of Leland is not a consolidated district in the meaning of the law; it was not formed in accordance with section 2794-a, therefore, appellant cannot legally claim transportation for his children as provided in section 2794-a2.

However, we are of the opinion that the law in sections 2774, 2803, and 2806 amply provides for just such cases as that of Mr. Strike, and that the law contemplates that school boards shall render justice to all children residing in the district. Further, we are of the opinion that two and one-half miles is too far to require small children to walk to school.

As to matters of fact, we think the county superintendent is correct in the following conclusions: "The evidence shows that the board has made no attempt to furnish appellant school privileges in another corporation as provided by law. The evidence also shows that the distance to the nearest school outside the Independent District of Leland is really an unreasonable distance for small children to walk to school, even though such arrangements were made. It is self evident that the privileges furnished in a small rural school are not equal to those which may be and are afforded to pupils in a two-room school in which more time may be given to classes and where in general better teachers are employed and more money expended for all purposes. In order to guarantee appellant's children equal privileges, it will be necessary for the board to furnish the privileges within the school corporation in which the children reside."

"It must be admitted that the board is not furnishing appellant's children the same school privileges as far as possible as are accorded to other children living within the school corporation, a duty incumbent upon every board."

The county superintendent offers the following solution of the problem in which we concur: "The board, in my opinion, may pay the appellant a reasonable amount for the transportation of his children, even though the amount might not be acceptable to the appellant." It would bankrupt many independent districts in the state were such districts compelled to hire special vehicles to transport different families located as is Mr. Strike. No such result will occur by making an allowance for the

transportation of children as suggested in his case. It must be acknowledged that Mr. Strike is not as fortunately situated with respect to neighbors having children to send to school as are the patrons in the northern part of the district, and it seems improbable that the district could hire a special driver to transport his children without incurring an expense to the district nearly equal to the total expense of transporting the children of several families living north from Leland. We believe the claim of Mr. Strike is entitled to recognition by the board and that he should be allowed an amount for the transportation of his children at least in proportion to the average cost of transporting other children in the district.

"When there will be a saving of expense, and children will also thereby secure increased advantages, it may arrange with any person outside the board for the transportation of any child to and from school in the same or in another corporation and the expenses shall be paid from the contingent fund." Section 2774 of the School Laws.

Simply because one family may be somewhat isolated from other families should not excuse the district from furnishing that family as far as possible equal school advantages with other families grouped together and similarly situated with respect to distance from school.

"While the law does not prescribe a maximum for school travel, yet by permitting provisions to be made under given conditions for children to attend other schools than their own when they live more than one and one-half miles from the latter, it is evident that the legislature regarded that distance about as far as a child should travel to reach school. *Severeid & Stenberg v. Independent District of Fieldberg*, S. L. Decisions. Also section 2803, School Laws of Iowa.

"While it is incumbent on the board to furnish reasonable school privileges for all children of the township, it is often the better plan to transport pupils to existing schools than to establish additional schools." *Hancock et al v. School Township of Franklin*, S. L. Decisions. Also S. L. Decision, *Arnold et al v. School Township of Richland*, and Supreme Court decision sustaining the opinion of the Superintendent of Public Instruction in Arnold case, 152 Iowa 500.

"The board of each school corporation * * * shall estimate the amount required for the contingent fund, * * * and such additional sum as may be necessary not exceeding five dollars for each person of school age for transporting children to and from school." Section 2806, School Laws of Iowa.

A district whose taxable valuation is large, or a district embracing a larger area than the customary four sections, should undoubtedly avail itself of its ability to raise funds for the proper support of its school or schools. We do not feel that any school board has exhausted its power to provide proper school advantages for children living an unreasonable distance from school until it has taken full advantage of the law as found in section 2806 of the School Laws. No other interpretation of the law can consistently harmonize with the principle of providing equal school privileges as far as possible for all children. The law limits the amount that may be levied for transportation purposes, consequently there can be no danger of embarrassing any district finan-

cially for this purpose. We believe it is consistent with the law and only fair to appellant, for the board to make a reasonable allowance for the transportation of his children to the Leland school. We are of the opinion that it would be unfair to base the allowance on the attendance of one child considering the total number of children transported as given in the stipulation of facts in case there should be only one child attending school from the Strike farm and the resident of said farm were compelled to furnish his own horse and vehicle for transportation.

In so far as the decision of the county superintendent is based upon the proposition that section C, chapter 143, acts of the Thirty-fifth General Assembly (section 2794-a2, School Laws of Iowa, Edition 1911) is applicable to the Independent School District of Leland, the same is reversed, but inasmuch as his ruling is proper on the ground of an unreasonable distance for small children to travel to school and that the children of Mr. Strike are entitled to equal school privileges with other children in the district in so far as the board is able to provide, his decision is affirmed except that the same is hereby modified so as to permit the school board to make to Mr. Strike, or his successors, an allowance for transportation of his children equal at least to the average cost of transporting pupils to school in said district, from and after the commencement of the next term of school in said district in lieu of transporting said children, by electing so to do by August 15, 1914, notice of such election to be filed with the county superintendent of schools of Winnebago county, provided that the minimum allowance shall not be less than six dollars per school month.

The decision of the county superintendent is therefore affirmed.

AFFIRMED.

A. M. DEYOE

Superintendent of Public Instruction

Des Moines, Iowa, June 22, 1914

JOHN ALLSUP *et al* v. THE INDEPENDENT SCHOOL DISTRICT OF MAPLE GROVE, CEDAR TOWNSHIP

Appeal from Mahaska County

BOUNDARIES. The description of the boundaries given in the original notice and the notice of election should be the same.

NOTICE. Due and legal notice of election must be given. The statute, however, does not require that the description shall be printed on the ballot as the voters have ample opportunity to familiarize themselves with the posted description of the territory included in the consolidation.

The above entitled action relates to the formation of the Consolidated Independent School District of Wright, Mahaska county, as provided in section 2794-a, School Laws of Iowa, edition of 1911. (Chapter 141, acts of the Thirty-first General Assembly, as amended by chapter 143, acts of the Thirty-fourth General Assembly.)

Briefly stating the history of the case, the proposed consolidation includes the Maple Grove, and parts of the rural independent districts of Buckeye and Pleasant Grove, all in Mahaska county. The petition describing the boundaries of the proposed consolidated independent school district containing not less than sixteen (16) sections of land and signed

by more than the required number of voters was approved by the county superintendent and filed with the school board of the Independent District of Maple Grove.

The following is quoted from the secretary's minutes of a called meeting of the school board of the Independent District of Maple Grove, held at Wright on the 19th day of May, 1914: "A petition has been circulated and signed by more than one-third of the qualified voters of the school districts of Unity of Spring Creek, Zoar of Harrison, South White Oak of White Oak, and Maple Grove of Cedar Township, to call an election to vote on the question, 'Shall the proposed whole of the rural independent districts of Zoar, Unity, South White Oak, and Consolidated Independent District of Wright be established?' said petition being approved by the county superintendent May 16, 1914, and placed in my hands May 18, 1914." An election was called on June 2, 1914, and the secretary instructed to post notice of election. A map of the proposed consolidated independent district shows the village of Wright to be located at the four corners of the independent districts of Unity, Zoar, South White Oak, and Maple Grove.

Appellant denies the validity of the proceedings by which the Consolidated Independent School District of Wright was established and organized and hereby seeks to have the establishment and organization of said Consolidated Independent School District of Wright nullified. Several irregularities and errors in the proceedings are charged by appellant in his affidavit of appeal and an amendment thereto. Counsel for appellant places special emphasis upon the following alleged particulars wherein the law was disregarded:

"That there is a fatal variance between the petition, the notice of election, and the question as submitted upon the ballot. No two of the same being alike."

"That there was no petition filed in the district having the greatest number of voters, as provided by law, as a basis for the calling of the said election, and that there was no election called and held to vote upon the organization of the proposed district by the Board of Directors of the district within said territory having the greatest number of voters, as provided by law."

"That said notices of election provided for an election at which the polls should be opened at 10 o'clock a. m., which is contrary to law."

The ruling of the county superintendent, dated August 14, 1914, contains the following: "It is hereby decided that there is no merit in the appeal; that the law has been substantially complied with in the matter of procuring and filing the petition for consolidation; that the election was legally held, and that the judges and clerk of said election were legally qualified to act, and that the statute has been substantially complied with in every respect."

Appeal is carried to the Superintendent of Public Instruction.

We find that the descriptions of the boundaries given in the original copies of the petition and the notice of election are the same, and that no error was committed in this respect. With reference to the allegation that an exact and complete description of the boundaries of the proposed consolidated district should have been printed on the ballot and

that said description on the ballot should correspond to those given in the petition and in the notice of election, we are of the opinion that the law nowhere makes any such requirement. Undoubtedly in case the description of the boundaries were printed on the ballot, then said description should agree with the descriptions given in the petition and in the notice of election. We do not find that the statute requires that the description be printed on the ballot. In fact, since the law makes no such requirement, we are of the opinion that such printing of the description of the boundaries on the ballot would be entirely useless and superfluous. Every voter had ample opportunity to become familiar with the description of the territory included in the proposed consolidation by reading the notice of election. The statute implies that notice in writing of such propositions as will be submitted to and be determined by the voters, shall be posted by the secretary of the board in at least five public places in said corporation, for not less than ten days next preceding the day of the meeting." The proposition submitted in this case was set forth in the petition describing the boundaries of the proposed district and requesting the establishment of a consolidated independent district. (Section 2746, School Laws of Iowa, edition 1911.) Section 2749 of the School Laws of Iowa, edition 1911, practically suggests the form of a ballot to be used in school elections. There are advantages in having a form of ballot that is as simple as possible and yet clearly stating the proposition to be voted upon. The wording of the ballot used was as follows:

Shall the districts of Zoar, Unity, Maple Grove, South White Oak, and parts of Buckeye and Pleasant Grove districts be formed into a consolidated district?

Yes.

No.

We believe a better wording would have been as follows:

Shall the proposed Consolidated Independent District of Wright be established?

Yes.

No.

A note of explanation as to how to mark the ballot when voting "Yes," or when voting "No" would have been instructive to the voters.

The evidence does not show that any other proposed consolidated independent district including any of the territory included in the proposed Consolidated Independent District of Wright was being considered.

We do not excuse the action of the school board in fixing an hour for the opening of the polls different from that as provided in section 2754, School Laws of Iowa, edition 1911. It was a dangerous thing to do, and might easily have resulted in sufficient cause for the courts to rule the election not legally conducted. Section 2754 of the School Laws, provides that the polls in rural independent districts shall open at 1 o'clock p. m. and must remain open not less than two hours. Appellant finds no fault with the hour of closing the polls, viz., 3 o'clock p. m.

Mack's Cyclopedia of Law and Procedure contains the following concerning the construction of a statute with respect to the conduct of elections: "The provisions of a statute as to the time of opening and

closing the polls is so far directory that an irregularity in this respect which does not deprive a legal voter of his vote or admit a disqualified person to vote will not vitiate the election. But if the departure from the provisions of the statute in regard to the time of opening or closing the polls was so great that it must be deemed to have affected the result, the election must be called invalid." Volume 15, page 364.

From the above citation, it appears that the courts have not held an election illegal because of an irregularity as to the time of opening or closing the polls unless it has been shown that illegal votes were cast or that persons were deprived of their right to vote by reason of such irregularity. No such charge is made neither does the testimony reveal any such condition. However, the question of the legality of an election has always been considered a matter for the courts to determine.

Finally, we find no testimony taken in the trial before the county superintendent showing that any voter was misled or deceived concerning the proposition voted upon in marking his ballot, that no one was deprived of his rights and privileges as a voter, or that any one voted who was not a legal voter by reason of the opening of the polls at 10 o'clock. Neither does the testimony establish the contention of appellant that the petition was not filed with the proper board, viz., the school board of the Independent District of Maple Grove.

After carefully reading the transcript, including the testimony, we agree with the county superintendent, "that the statute has been substantially complied with in every respect."

The decision of the county superintendent is therefore affirmed.

AFFIRMED

A. M. DEYOE

Superintendent of Public Instruction

Des Moines, Iowa, November 18, 1914

J. G. SHEA v. THE DISTRICT TOWNSHIP OF PILOT

Appeal from Cherokee County

DUTY OF PARENTS. It is not the intention of the statute to place all the responsibility and all inconvenience upon the board and take all responsibility of transportation from the parents.

POWERS OF BOARD. There is no impropriety under the law in a board making an allowance to parents for transportation but it is purely discretionary.

DISTANCE. There may be some injustice to fix a maximum limit as a reasonable distance to travel to school. Something depends upon the conditions of the highway and the age of the pupils.

Appellant is a farmer living in Pilot township, Cherokee county, Iowa. He has four children of school age; the youngest being about six and the oldest twelve years of age. The nearest school to his home by a traveled highway is about two and one-half miles. An explanation of the distance of appellant's home from school is made in his affidavit of appeal as follows:

"That there is no schoolhouse or school in said Pilot township nearer to affiant's home than about two miles and one-half except a schoolhouse located across the Little Sioux River, which is inaccessible by reason of

the fact that there is no bridge or crossing over said river nearer than about two miles and a half from affiant's home, making the travel to said school house from affiant's home a distance of about five miles."

It is averred that appellant at different times made application to the school board of the District Township of Pilot to allow or furnish transportation for his children to and from school. The school board had directed that appellant's children attend school in subdistrict No. 5, which is the school located about two and one-half miles from his home. The authority of the board of directors to direct where children shall attend school within the corporation is fixed by section 2773 of the Code. (Same section in School Laws, edition of 1911.) The board agreed to allow appellant $10.00 per month for the transportation of his children to school in said subdistrict No. 5. This amount was accepted by him for a spring term of school of about two months. Appellant became dissatisfied with the amount paid by the board, refused to accept the allowance, and demanded that the board of directors furnish transportation for his children to school. Appellant has sent his children to a parochial school, at his own expense, in the city of Cherokee, a distance of about four miles, nearly all of the time they have attended school.

Conditions with respect to distance to school have not changed since Mr. Shea purchased the farm where he now resides. He purchased the farm knowing these conditions. No school has been closed or discontinued to cause him greater inconvenience.

Another school patron, a neighbor of Mr. Shea, by the name of Townsend, has been transporting his children, seven in number, to subdistrict No. 1, a distance of three and one-half miles, for the sum offered appellant, namely $10.00.

Several disputed questions are forced upon us for consideration in the case at bar:

1. What is the meaning of the following language of the law found in section 2774? "The board of directors * * * may arrange with any person outside the board for the transportation of any child to and from school * * *." 2. Did the school board err or violate the law by offering Mr. Shea $10.00 per month to transport his children to school? In other words, is it illegal for a board to contract with a parent to transport his own children to school? 3. In case the parent refuses to accept the amount the board agrees to allow him for transporting his own children to school, can the board be compelled to hire a driver who shall furnish a team and wagon for the purpose of transporting the children of every family to school that happens to be situated at a distance that may reasonably be considered too great for children to walk to school, regularly? 4. Was the sum of $10.00 allowed by the board to Mr. Shea a reasonable compensation under the circumstances? 5. The question also arises, what shall be considered an unreasonable distance for children to travel to school? 6. Should the law be construed to mean that it is an abuse of its discretionary power for a board to refuse to provide or make an allowance for the transportation of children to school, who reside at an unreasonable distance from school for children to walk? 7. Should the condition of the roads the children must travel

and the age of the children receive consideration in determining the question at bar? 8. Should the ability of the district financially to pay transportation be taken into account?

We believe the foregoing questions are vital. We are of the opinion that the power vested in boards of directors of all school corporations, concerning allowing or furnishing transportation for children to school at the expense of the district, except in those districts organized under the provisions of section 2794-a, Supplement to the Code, 1913 (also School Laws of Iowa, edition of 1911), is set forth in section 2774 of the Code (also School Laws of Iowa). Section 2774 provides as follows: "And when there will be a saving of expense, and children will also thereby secure increased advantages, it may arrange with any person outside the board for the transportation of any child to and from school in the same or in another corporation, and such expense shall be paid from the contingent fund."

The provision made by law for transportation of pupils in paragraph (c), section 2794-a, Supplement to the Code, 1913, applies only to consolidated independent districts where conditions are entirely different from those found in any other form of school district. The consolidated independent district plan contemplates a unit consisting of a larger territorial area where it is feasible to employ regular drivers and where the use of the special wagons for transporting children can be provided without too great expense per capita for children transported to school. Section 2774 remains in the Code unchanged as amended by the Twenty-first General Assembly, neither has a subsequent session of the General Assembly passed any laws in any way modifying the provisions of this section as applicable to certain forms of school corporations.

We think the county superintendent is correct in his opinion, "That it is not the intention of the statute to place all the responsibility and all the inconvenience upon the board, and to take all of the responsibility and all of the inconvenience from the patrons of the children living an unreasonable distance from school."

There are school corporations in the state, not organized as consolidated independent districts, where if each family living an unreasonable distance from school could demand that the school board furnish transportation by hiring a special driver and conveyance, that the expense would prohibit the maintenance of the number of months of school each year that should be maintained in each school. The use of the words, "may arrange," and also of the words, "outside the board," clearly prescribe that the matter of providing transportation and the method of providing transportation for children to school are discretionary powers of the board. In "arranging" for transportation of children to school, it is purely within the discretion of the board to make an allowance of money to a parent to transport his own child or children to school, or the board may employ some other person to transport them. The amount that shall be paid for such purpose is clearly a discretionary power of the board, also. There is no impropriety under the law in the action of the board of Pilot township making an allowance to Mr. Shea for transporting his children to school. In fact, it is the only arrangement the board could be expected to make.

We are of the opinion that there are conditions concerning distance children are compelled to travel to school, where a refusal on the part of a board to "arrange" for transportation would be a violation of discretionary power vested in school boards.

The question to be determined is whether the board abused its discretionary power under the terms of the law as provided in section 2774.

In section 2803 of the Code (also same section in School Law, edition of 1911), provision is made whereby children may attend school in another school corporation when living over one and one-half miles from their own school, but nearer a school in another corporation. A patron may not demand this privilege, however, as an agreement of both school boards must be obtained, or the consent of the county superintendent of the county in which the child resides and also the consent of the school board of such adjoining school corporation. Again, the compulsory attendance law, as provided in section 2823-a, Supplement to the Code, 1913, (same section in School Laws), "shall not apply to any child who lives more than two miles from any school by the nearest traveled road except in those districts in which the pupils are transported at public expense." While the law does not specify what distance shall be considered as an unreasonable distance for children to walk to school, the conclusion is natural that a distance exceeding one and one-half to two miles should be considered too far for small children especially to travel to school, regularly. There may be some injustice to fix arbitrarily a maximum limit as a reasonable distance to travel to school. Something depends upon the conditions of the highways.

It is impossible to establish schools equally convenient to all homes. However, there is a limit beyond which it should be considered unfair to expect children to walk to school. The customary size of a subdistrict and also of a rural independent district embraces four sections of land arranged to form a square and when a suitable site can be secured and roads are properly laid out on section lines, the school is generally located at the center of the district or the subdistrict. The greatest distance any child would possibly be compelled to travel under the customary conditions would be two miles.

Reference is made to the foregoing citations in the law relating to attendance of children at school and to the usual form and size of rural districts and subdistricts and the location of the schoolhouse therein for the purpose of establishing conclusions that would be fair to the children and also to the district concerning a reasonable distance for children to travel to school without expense to the district. We can arrive at no other conclusion than that it must be considered too far to expect small children to walk, who live at a greater distance than two miles from school, even in favorable weather and where roads are reasonably passable and good. Our judgment also leads us to confirm the above conclusion.

However, the inference should not be made that every family having small children to send to school, that lives more than two miles from school, is entitled to transportation at an expense that would be incurred by the district furnishing a regular means of conveyance for this purpose, such as the law necessitates in consolidated independent districts

organized under section 2794-a *et seq.* and with the requirements concerning transportation in such districts.

In conclusion, we are of the opinion that the action of the school board of Pilot township was fair, liberal, and in accordance with law in offering Mr. Shea $10.00 per month to transport his children to school. We think it would have been within the law for the board to have granted Mr. Shea the privilege of sending and transporting his children to any *public* school, not including the high school department, provided he chose to pay the tuition charged, himself, if he selected a *public* school outside the school corporation of his residence.

We find no abuse of discretionary power vested in the board and we think the board has endeavored to deal justly with Mr. Shea in offering him the sum of $10.00 per month to transport his children to school. We believe the county superintendent was justified in sustaining the school board and his decision is therefore affirmed. AFFIRMED

A. M. DEYOE
Superintendent of Public Instruction

Des Moines, Iowa, June 5, 1915

GLEN HOLCOMB v. SCHOOL TOWNSHIP OF NEW OREGON
Appeal from Howard County

TRANSPORTATION. Transportation discretionary with board when not required by specific statute.

Parents should bear their share of responsibility in getting children to school.

It is not expected that every child be able to walk to school every day during the school year to excuse board from obligation to pay transportation.

The question of whether transportation should be allowed any particular individual in an ordinary school district is wholly a matter of discretion of the board. There are some instances in which transportation should be allowed but if we apply this to the theory which was followed out in establishing rural districts in this state, that each district should be two miles square, there would be a number of children living in each rural district who would have at least two miles to travel twice a day in order to attend school. Ordinarily, transportation is impracticable in a small rural district and it is only in extreme cases that the board should be required to either transport the children or make the parents an allowance for transporting them. It is not the intention that all of the responsibility be placed upon the board. The parents should bear their share of the burden and only in cases in which it is unreasonable to require children to walk should the board be expected to furnish transportation. It is not expected that every child shall be able to walk to school every day during the school year in order to excuse the board from paying transportation. In fact, there are some days that the children cannot even be transported to school but this in itself is not proof that an allowance should be made to parents for transportation.

The plat submitted in evidence shows that the appellant lives about a mile and a half from school and that part of the road is not very

good, but it is a road which is passable and is not so far but that the children may walk when the weather is good. There is a stream which has running water but the board has provided a footbridge which makes this safe. The children are healthy, normal children and do not have as far to walk as many other children, since in any district two miles square there are often a number who are compelled to travel as much as two miles to attend school.

I find no evidence in the record that the board has abused its discretion in refusing to furnish transportation and I am of the opinion that the decision of the board and the county superintendent should be and it is affirmed.

AFFIRMED

P. E. McCLENAHAN
Superintendent of Public Instruction

Des Moines, Iowa, May 7, 1921

MABEL E. WALTER v. THE INDEPENDENT SCHOOL DISTRICT OF ODEBOLT
Appeal from Sac County

DISCHARGE OF TEACHER. Failure or refusal of teacher to comply with reasonable rules or regulations will warrant discharge.

The appellant in this case was an eighth grade teacher in the Odebolt schools, and having been asked by the superintendent to watch one of the lower halls to assist in keeping order from 8:30 to 8:45 A. M. every fifth week, she refused and the matter was brought to the attention of the school board. The school board at a meeting on December 1, 1921, at which time both the superintendent and Miss Walter were present, discussed the question but reached no conclusion. On December 9th a meeting of the board was called, all members being present, and also Miss Walter who admitted that she had refused to perform the duty assigned and that she still refused. At this meeting the board passed a resolution that Miss Walter take charge of the hall under the direction of the superintendent the week beginning December 12th and that if she failed, refused, or neglected to do so that she be discharged from further service in the public schools of Odebolt for insubordination and failure to obey the orders of the school board, and that her discharge date and begin from the end of the school month of December, 1921. Miss Walter was at once notified in writing and furnished a copy of the resolution.

There is no record that the board ever took any further action in the matter, but on the 21st day of December there was filed in the office of the county superintendent an appeal from the action of the board, setting forth that the requirement of the board to take charge of the hall was no part of her duty, that the board was discriminating by attempting to require her to perform a duty from which other teachers were excused, that appellant was not given a full, fair, and complete hearing as required by section 2782 of the code, that the place was insanitary and would be detrimental to the health of appellant.

There is little disagreement in the evidence in regard to the material facts. No question as to the competency of the appellant was raised. In our opinion the appellant has failed to sustain her contention in regard to insanitary condition in the school or that she had been discrimi-

nated against. It has been held "that only after a full and fair investigation at a meeting called for that purpose of which the teacher was served with due and proper notice and given a reasonable time to prepare and make defense and that a single day is not sufficient; and that the material reason therefore should be spread upon the records," as quoted by the counsel in his brief, but in this case the teacher was notified of the meeting which was called for the purpose of investigating the case, she was present and admitted the fact that she had refused to perform the duty assigned her. Even though no notice of the meeting was served upon her, she was present and there is no competent evidence to show that she asked for an extension of time, or that an extension of time was necessary since she admitted the charge; neither did she offer any reason for her refusal to perform the work assigned, apparently basing her refusal on the ground that it was not one of her duties as a teacher in the schools.

Ordinarily, the acts of the board are presumed to be correct until the contrary is shown. In the discharge of a teacher the burden is upon the board to sustain the charge against the teacher, but in any case where the teacher admits the charge, this is sufficient without a showing on the part of the board. It then becomes wholly a question of whether the board was justified as a matter of law in taking such action as may have been taken. To ask any teacher to do hall duty for fifteen minutes a day every fifth week is not a hardship, and in our opinion the requirement was reasonable and the board was justified in asking appellant to do her reasonable share of such work as was necessary to maintain the discipline of the school. As to the question of whether the building was insanitary or conditions were such as to endanger the health of the appellant, the county superintendent who heard the case on appeal is familiar with all the facts and conditions, has visited the school, and was in a position to reach an impartial conclusion, and I find nothing in the evidence which would justify any other or different finding on this point. The board took no further action after its meeting on December 9th and from the evidence I find that the appellant continued to refuse to perform the duty assigned, appealed the case to the county superintendent, and retired at the close of the month of December.

After careful review of the evidence, I am of the opinion that the board was justified in asking the appellant to assist in preserving the order in the hall and that she admits that she refused to perform that duty, and I find nothing in the record on which to base any other or different conclusion than that the county superintendent's decision should be and it is affirmed.

AFFIRMED

P. E. McCLENAHAN
Superintendent of Public Instruction

Des Moines, Iowa, June 14, 1922

A. C. HARKER AND CHARLES C. EDWARDS v. THE INDEPENDENT SCHOOL DISTRICT OF OXFORD

Appeal from Johnson County

TUITION—RESIDENCE FOR TUITION PURPOSES. Residence depends largely on intent, but acts must support claim as to residence.

A. C. Harker, one of the appellants, is a resident of the Independent School District of Oxford, Johnson county, Iowa, and is the uncle of Grace Edwards, who is the daughter of Charles C. Edwards, the other appellant, a resident of Minneapolis, Minnesota.

The school board, on December 10, 1921, entered a resolution finding that Grace Edwards is a non-resident of the Oxford Independent School District, and from this action an appeal was taken to the county superintendent who affirmed the action of board.

From the testimony introduced in evidence, as shown by the record, Mr. Edwards brought his daughter to Oxford in June, 1918, to visit with her aunt and uncle or to make her home temporarily, and this arrangement continued until the date of this appeal, Mr. Edwards still retaining control of his minor child, paying Mr. and Mrs. Harker the sum of twelve dollars per month regularly, and also some additional for the support of his daughter. For the first year Mr. Edwards paid tuition, and according to his testimony he is compensating Mr. and Mrs. Harker in full for the care and support of his daughter, and, also, as he further testified on hearing before the county superintendent that he had not relinquished control of his daughter and would not consider having a guardian appointed or having her legally adopted by Mr. and Mrs. Harker or any other person.

It is a general principle of law that so long as the parent retains custody and control of the child, its residence is the same as that of the parent. The residence of any person depends largely upon the intent, but the acts of the party must support his claim as to residence. Mr. Edwards testifies that he is a resident of Minneapolis, furnishes care and support of the child, has not relinquished his control and would not think of having a guardian appointed or the girl legally adopted by any one. The transcript of his evidence was not signed and the opposing counsel in oral argument raised objection to it for this reason, but the county superintendent certifies to this as being correct and also that a copy of it was furnished to Mr. Edwards to which no objection was raised except in argument. Therefore, the oral objection of the counsel is overruled and the evidence is taken as true since appellants made no formal objections to the transcript or any attempt to correct it prior to the date of final submission.

After the decision of the county superintendent, a certified copy of the appointment of a guardian for Grace Edwards was filed, showing that after the decision of the county superintendent was made and appeal was taken to the superintendent of public instruction a guardian was appointed in Johnson county, Iowa, but this certificate is no part of the record in the hearing before the county superintendent. If considered, it would not determine the question of the residence of Grace Edwards at or before the time of the hearing before the board or the county superintendent. The question of residence being largely one of intention it is possible that the conditions may be so changed after the hearing that the residence of Grace Edwards could be established at Oxford after the time of the hearing, but even if this fact is conclusively established it would not determine the question that was before the board at the time it reached the conclusion that Grace Edwards was a non-

resident of Oxford. The question of her residence after the date of the hearing before the board is not before me at this time.

After a careful examination of the record I am fully convinced that the school board was right in its conclusion that at that time Grace Edwards was a non-resident of the district and that the decision of the county superintendent affirming the board should be and it is affirmed.

AFFIRMED

P. E. McCLENAHAN
Superintendent of Public Instruction

Des Moines, Iowa, June 14, 1922

DAN WORDEN AND HARRY PORTER v. CASS TOWNSHIP
Appeal from Jones County

TUITION—AGREEMENT TO PAY. Where a board authorizes children to attend a school outside their own district the board cannot revoke said action, in the absence of fraud until the end of the school year.
TRANSPORTATION. Where pupils live an unreasonable distance from school over a road obstructed by natural obstacles the board must furnish transportation.

This matter comes on for hearing upon the appeal of Dan Worden and Harry Porter, notice of said appeal having been served in the time and manner provided for by statute. The record certified to the Superintendent of Public Instruction shows that on the 12th day of September, 1922, the school board of Cass Township met at Center schoolhouse in extra session and by a vote by ballot a motion prevailed "to allow Dan Worden's daughter tuition for the coming year." On the same day a motion was made and carried "to allow Harry Porter's children tuition for the coming year."

On the 28th day of September, 1922, an extra session of the school board of Cass Township was held at the schoolhouse and the following proceedings, among others, were had: "Motion made by Burlingham and seconded by Marek to reconsider action taken at former meeting in regard to paying tuition for Strickel, Worden and Porter children for 1922-1923. After hearing report from Mr. Lubbens consultation with county attorney and finding that Cass Township didn't have to pay tuitions for those children according to law. Therefore the board refused to pay it. Carried." From this ruling of the school board both Harry Porter and Dan Worden appealed to the county superintendent, where the action of the school board was affirmed. Since the questions presented by both appeals are substantially the same, I have treated them together in this opinion.

The county superintendent in her findings states that the said Dan Worden had one child seven years of age, that the public highway from his residence to the schoolhouse in Cass Township is bordered by timber land, and that there are few dwellings along the road; that it had been Mr. Worden's practice to leave his child in Anamosa with its grandparents during the school week; that he never made this arrangement known to the school board of Cass Township; that the highway between Anamosa and the home of Dan Worden is subject to overflow on account of a river adjacent thereto. There is some conflict in the record in

reference to the condition of this road. The county superintendent, in her finding, stated that she had measured the distance from Mr. Worden's residence to the two schoolhouses and found that he lives 2 7-10 miles from the Cass school and 3 3-10 miles from the Anamosa school, that investigation disclosed that fully two miles of the road leading to the Anamosa school was no more desirable than the road leading to the Cass school. For the purpose of this opinion, I will consider the finding of fact made by the county superintendent as governing in this matter so far as the roads are concerned.

The case of Harry Porter's children presents somewhat a different situation. He has four children, one in the high school at Anamosa, and three in the grades. The county superintendent found that it was 2 1-10 miles from the nearest Cass school to Mr. Porter's home and 2 8-10 miles to the Anamosa school. There can be no question but that the sending of all these children to one school would very greatly reduce the inconvenience and expense of educating the Porter children.

It seems to me, under the facts presented, that there are two matters involved. The first is decisive of this appeal and it has reference to whether or not a school board, having once authorized the sending of children to another district, under agreement to pay their tuition, can without notice to the parents of the children affected thereby or without notice to the children themselves, proceed to nullify the order previously made, especially when there is no showing sufficient to warrant a finding of fraud. From the record presented the school board could not have been deceived by any statements made to them relative to the distance either the Worden child or the Porter children were required to travel. To permit a school board to authorize the sending of children to a school outside of the district under an agreement to pay tuition and then to permit the revocation of the order is of unquestionable detriment to the child, also of great inconvenience to all concerned. If a school board is to be permitted to make an order at one time and to revoke it again in a few days it might keep making orders and revoking them during an entire school year to the unquestionable detriment of the child from an educational standpoint. The agreement to pay the tuition was in effect a contract between the parents and the school district, a contract which the school directors were fully authorized to enter into. Being a valid contract, I do not believe that the law contemplates that the board of directors may revoke it unless there is a positive showing of fraud, and there is nothing of this character in the present appeal.

The second question relates to the distance the children are required to travel and the condition of the roads leading to the various schools. I do not believe that it is necessary that this portion of the matter be decided at the present time in view of the finding that I have made relative to the right of the board to revoke its order authorizing the sending of these children to another district. I might state, however, that the record as presented to me in this appeal shows beyond question that all of these children are required to travel an unreasonable distance in order to reach a school and part of the road, or roads, over which they are obliged to travel are not in the best of condition. The school

board has made no provision for the transporting of these children to the schools within the district or for compensating parents who are obliged to provide transportation for their said children. I am inclined to believe that the board thought it to its advantage to have these children attend schools outside of the district at the time it made its original order.

The decision, therefore, of the county superintendent of Jones county and of the school board of Cass Township relative to both the cases of Dan Worden and Harry Porter is hereby reversed. REVERSED

MAY E. FRANCIS
Superintendent of Public Instruction

May 11, 1923

ROBERT T. EVANS v. HAMPTON SCHOOL DISTRICT

Appeal from Franklin County

TEACHER QUALIFICATIONS. One who is not qualified to teach cannot enter into valid contract to teach.

The above matter comes on for hearing before the State Superintendent of Public Instruction upon the appeal of Robert T. Evans against the Independent School District of Hampton.

There is really but one question involved in this appeal and that is whether Robert T. Evans was unjustly discharged by the school board of Hampton. I have carefully reviewed all of the evidence submitted to me, as well as the record that was made before the county superintendent, and I find no grounds or reasons for reversing the opinion of the county superintendent in this matter.

Both the school board and Robert T. Evans violated the law in entering into the contractual relations in this matter, as the record very clearly shows that he was not qualified to teach at the time he entered into this contract.

The decision of the county superintendent is therefore affirmed in every respect. AFFIRMED

MAY E. FRANCIS
Superintendent of Public Instruction

September 8, 1923

PATRONS v. NUMBER 4, JACKSON TOWNSHIP

Appeal from Monroe County

CONTRACT VALIDITY. A contract is invalid where the average attendance for the preceding year has been less than four pupils.

SCHOOL CLOSED. Where no showing of natural obstacles to transportation to another school, or that the number of children of school age has increased so that ten or more will be enrolled, a school should not be re-opened.

SAME. School will not be re-opened where only matter of expense is in question.

LEGISLATIVE INTENT. The legislature recognized that an average attendance of less than five pupils makes it impossible to conduct a successful school.

This appeal has been brought before the Superintendent of Public Instruction by some of the residents of District No. 4, who are appealing

from the decision of the county superintendent that the aforesaid school should remain open during the present school year.

The facts in this case are not in dispute. The school district last year had less than five children in average attendance. At the present time there are only three children attending this school. Under the provision of section 2639 of the Compiled Code of 1919, this school should not have been opened unless some of the provisions in said section should be found to operate in such a manner as to prevent the closing of the school. The material portion of the section reads as follows:

"The board of any school district may fix the site for each schoolhouse, etc. * * * determine the particular school which each child shall attend, and designate the period each school shall be held beyond the time required by law, except that no contract shall be entered into with any teacher to teach any school in the school corporation where the average attendance in said school the last preceding term was less than five pupils, unless a showing is made to the county superintendent that the number of children of school age in said school district has increased so that ten or more will be enrolled in said school and will attend therein, in which case, or when natural obstacles to transportation of pupils to another district or other conditions make it clearly inadvisable that such school should be closed, the county superintendent may consent to maintaining the school in said district for the ensuing term. * * * * * *".

There has been no showing made in this case that the number of children of school age in the school district has increased so that ten or more will be enrolled. No showing has been made that natural obstacles prevent the transportation of pupils to another district. The only showing that has been made that in any way would prevent the closing of this school is the matter of expense. A statement has been submitted in connection with this appeal that to transport these children to the Melrose School and to pay their tuition would cost Independent District No. 4 more money than to run the school.

No school can successfully operate with only three pupils, as was admitted by both sides of this appeal. Furthermore, the matter of expense, if it were to be the sole issue, would prevent the closing of practically every school under the law. The legislature intended that where there were not other causes submitted to prevent the closing of the school, that it should be closed where there were less than the statutory number of children attending.

My attention was called to a provision in section 1727 of the Code of 1873. I think this has been superseded by the section above quoted from the Compiled Code, as entirely different situations confront the state at this time than confronted the state in 1873. We have grown out of the limited school facilities then afforded, as has been manifested by the very clear expression of the legislature in section 2639 of the Compiled Code.

It is therefore the opinion of the Superintendent of Public Instruction that this school should be closed at once, and that the school board of Independent District No. 4, of Jackson Township was without authority

to enter into a contract with the present teacher for the school year of 1923-1924.

The opinion of the county superintendent is therefore reversed.

REVERSED

MAY E. FRANCIS

September 8, 1923 *Superintendent of Public Instruction*

INDEPENDENT SCHOOL DISTRICT BROAD HORN v. FLORENCE COCHRAN

Appeal from Warren County

DISCHARGE OF TEACHER. Teacher must have a fair trial. Charges must be sustained by the evidence submitted.

This case comes before the Superintendent of Public Instruction on appeal from the decision of W. M. McGee, county superintendent of Warren county, who held that the charges filed against the defendant teacher had not been substantiated by the evidence. Two specific charges were filed against the defendant, as follows:

1. Incompetency as a teacher
2. Use of obscene language in the presence of pupils

These charges were denied by the defendant, which denial put in issue each of the two charges filed and placed upon the board the burden of substantiating same by a preponderance of the evidence. Upon the issues thus joined, a hearing was had before County Superintendent McGee on the 31st of December, 1926, at which hearing witnesses were introduced on behalf of both parties and a transcript of all such evidence taken, which transcript of 212 typewritten pages together with all exhibits offered in evidence, is now before us. Able oral arguments were made by counsel for the respective parties and written briefs were filed. This matter is being decided on the transcript of the evidence, without additional testimony.

Florence Cochran, the teacher involved in this case, began her teaching experience in the fall of 1925 in the Broad Horn School. Before completing her first year, the board tendered the defendant a contract for the following year, which contract was signed on the 22nd of April, 1926. On the 6th day of September, 1926, the teacher began her second year under the new contract and continued to teach the school until about the 10th of December, 1926, at which time she was discharged by the board and enjoined from appearing upon the school premises.

The first charge filed against the defendant is that of incompetency. It appears from the record that the defendant graduated from the New Virginia High School in 1924; that during the summer following she attended the State Teachers' Extension Course at Osceola; that a second grade uniform county certificate was issued to her in 1925, and that she had completed all of the work for a first grade uniform county certificate with the exception of Civics; that her teaching during the first year was such as to induce the board during the year to increase her salary from sixty dollars to seventy dollars per month; that before the close of her first year of teaching, the school board offered her the position for the following year at an additional increase in salary. To further prepare herself, she attended the State Teachers' College at Cedar Falls the summer preceding her second year in the Broad Horn School.

In the record as it appears in the transcript, there is no evidence to support the charge of incompetency to teach as made by the board. We must, therefore, find that such charge has not been substantiated as filed and that the decision of the county superintendent on this charge should be affirmed.

The second charge made was that Florence Cochran, the teacher, used obscene and indecent language in the presence of her pupils. This charge is also specifically denied by the defendant. The board members offered the testimony of seven pupils, four of whom were members of their own families, to support the charge. Eight adult witnesses testified in the teacher's behalf. This compels us to consider the conflicting testimony offered in support of and in denial of this charge.

These seven children testify that the teacher told obscene and indecent stories in their presence under the tree, but they do not agree as to what stories were told, their number or order. Two girls, one of whom claimed to have been but a foot or so from the teacher's head during the entire time under the tree, testify to having heard but a part of one story, three girls and a boy testify to having heard three stories and James Crawford, the last to arrive at the tree, testifies that he heard four stories, but he could not recall what the fourth was.

One girl claims she had never before heard an obscene or indecent story, yet she says on the witness stand that at the time under the tree she knew from the way the teacher looked that she was going to tell bad ones. The Crawford girl, when asked if she knew the teacher was going to tell bad stories, replied "No, but I had an imagination."

The two Crawford children testify that later the teacher told two obscene stories out loud before the entire school, the girl claiming that the two stories were told one immediately after the other on the same day and just before the close of school; but the boy claims that one of the two stories was told inside the schoolhouse one day and the second story outside the schoolhouse on another day. The other pupils testify either that they did not hear these two stories or that no stories were told out loud before the entire school.

When these seven children were questioned as to other incidents or circumstances for the purpose of testing their memory or to corroborate their testimony, the stereotyped answer "I don't know" or "I don't remember" comes with such frequency as to discredit their entire testimony. Notwithstanding their faulty memory on other matters, these children repeat verbatim the several stories alleged to have been told by the teacher. The exactness and the apparent glibness with which these pupils recite these foul stories excite suspicion since, according to their testimony, they had not heard them before and heard them told only once by the teacher. There would be more persuasiveness in the testimony of these seven children had they been less in agreement in reciting the exact language alleged to have been used and more in agreement in other essential details and surrounding circumstances.

In view of the age of these pupils and the fact that they are the children of the members of the board or the patrons of the school who filed the charges, it is proper that the attitude of the witnesses in giving their testimony be considered. The county superintendent, having all of these

witnesses before him, was able better to pass upon their credibility and correctly to weigh their testimony. With this opportunity to observe, he could better consider their age, their strength of memory, and their seeming interest or lack of interest in the results of the trial. In view of the established rule of law that the credibility of witnesses can best be determined by observing and hearing them, the conclusions of the county superintendent to the effect that the charge relative to the use of obscene and indecent language should be given much weight.

If we were to believe these children, the teacher, at the noon hour on the 8th of October, 1926, regaled seven of her thirteen pupils, five girls and two boys, gathered around her in a mixed group under a pine tree on the school grounds, with a series of obscene stories that would do credit to the lowest brothel. There is no intimation in the record to show that any such stories had been told by the teacher prior to that time; the character of the stories alleged to have been told and the reaction of the children at the time, are such as to make the testimony of these children so improbable as to be beyond belief.

Had the members of the board and the other parents of these witnesses believed that the teacher had told these stories, it is our opinion that they would have taken steps to terminate her contract immediately on a charge that fitted the offense rather than on a mild charge of incompetency. But on the 29th of October, 1926, when they first asked for her resignation, they based the request entirely on an incompetency charge. The more serious complaint was not made until after the failure of the incompetency charge to create a vacancy.

The evidence in the transcript shows that the first intimation the teacher had of any trouble in the school came to her in a letter signed by the board and received by her at New Virginia October 30, 1926. This letter contains no hint of moral turpitude on the part of the teacher, but requests her resignation in these words:

"In view of the fact that we wish our pupils success in all branches, that they may pass the required examinations at the end of the school year, we think it advisable that they now have an instructor who has had considerable training.

As you have not yet had time to acquire that education, we think it would be asking too much to demand you to teach our school as we would have it.

Therefore, without prejudice to any one, we very kindly ask that you tender your resignation, to take effect not later than the ending of the present term, November 26, 1926.

Thanking you very much for your services in the past and wishing you the best success in the future, we remain, Yours truly,"

At the trial before the county superintendent, the three board members swore they knew of the alleged stories by the teacher at the time the above letter was written.

A pie social, attended by all the pupils of the district and practically all of their parents and the board members, with the possible exception of the president, was held at the Broad Horn Schoolhouse on the evening of the day this letter was written. At this pie supper, it appears from the transcript, that the relations between the teacher and the communiiy

were cordial and no dissatisfaction with her was voiced, but on her return to her home in New Virginia the following day, the above letter from the board, asking for her resignation on an incompetency charge, was waiting for her.

It also appears from the transcript that the daughter of one of the complainants spent the week-end with the teacher at her home in New Virginia, presumably with the consent of the parent, after the pie supper of October 29th, and after the request for the teacher's resignation on an incompetency charge had been mailed by the board. The daughter testifies that the teacher did not, during this week-end visit, tell any indecent stories or act other than as a lady.

A second letter came from the board as late as November 11, 1926, containing a copy of the letter of October 29th, calling the defendant's attention to the fact that no reply had been received. But even this second letter made no mention of any complaint other than the original charge of incompetency.

It is hard to reconcile the mild action taken by this board under the above circumstances, with the normal reaction of parents if they actually believed the minds of their children were being poisoned by vile stories from the mouth of their teacher. That they should be willing for her to remain in charge of the school a full month longer or until November 26th, in incredible.

Eight adult witnesses testify as to the excellent character of the defendant. The woman with whom she roomed, swears that she always conducted herself as a lady. A business woman; the superintendent of schools under whom the defendant graduated; a neighbor who had known the defendant from early childhood; a farmer's wife who had known her for years; and a man who sent his child to this school the previous year, all testify to the excellent character of the defendant. A mother whose daughter and the defendant had been bosom companions from childhood testifies, "She is one of the best girls I ever knew. She was in my Sunday School class for five years and I have the first time to see anything wrong with her." The school board must have shared this opinion, else why did it re-employ the defendant for a second year at an increased salary? In view of the character of this teacher as substantiated by the record, it seems improbable that she would have told the stories as alleged. It is incredible that a girl who had lived an exemplary life until October 8, 1926, could and would break away so suddenly from the high moral plane established by her former record and the witnesses in her behalf.

After having studied the transcript of evidence with particular care and after having given full consideration to the oral and written arguments of counsel for both parties and to all of the issues involved, we are forced to the conclusion that neither of the two charges filed against Florence Cochran are sustained by the evidence. It is our opinion that they are untrue.

The decision of W. M. McGee, county superintendent of Warren county, in reversing the action of the Broad Horn School Board is, therefore,

affirmed and the costs of this case are assessed against the Broad Horn School District.

AFFIRMED

AGNES SAMUELSON
Superintendent of Public Instruction

Des Moines, Iowa, April 30, 1927

T. J. BLEVINS v. SCHOOL TOWNSHIP OF BURRELL
Appeal from Decatur County

TRANSPORTATION. Board must furnish if distance is unreasonable. Rough and unfrequented roads, overgrown with weeds and brush, poorly fenced and badly washed, help make distances to school unreasonable.

Payment of transportation and tuition in another school by former boards is material in the determination of such cases.

This case comes before the Superintendent of Public Instruction on appeal from the decision of Eli Hutchinson, county superintendent of schools in and for Decatur county, Iowa, who had sustained the board of education of Burrell Township, said county, in its refusal to pay either transportation to and from school in subdistrict No. 1, said township, or tuition in the Decatur City schools, for the nine-year-old daughter of T. J. Blevins, the plaintiff and appellant in this case.

In his affidavit of appeal to the State Superintendent of Public Instruction, the plaintiff and appellant, T. J. Blevins, states for cause of action that he is the owner of the farm in Burrell Township, Decatur county, Iowa, upon which he resides; that his residence is approximately two and one-fourth miles from the public school in his district; that the road for the greater part of this two and one-fourth miles is in poor condition, unworked, grown up to weeds, bounded with brush on the sides, badly washed out, has practically no travel on it; and that for one and one-fourth miles of this road there are no houses; that he has a small daughter, Irolene Blevins, nine years old, who must travel this road alone to and from school. He further avers that his residence is but a few rods farther from the Decatur City school than from the school in his own district; that the road to Decatur City is always a good road; that he must transport this girl to and from school and because of the poor condition of the road to the school in his own district, the school at Decatur City is far more accessible than is the school in his own subdistrict. Therefore, he requests the board of education of Burrell Township to provide either transportation for his daughter or to pay her tuition in the Decatur City schools.

The board denies that the distance the said Irolene Blevins must travel to and from school in her own district is either unreasonable or that the road thereto is unusually bad or that the plaintiff and appellant is entitled to the relief prayed for in his affidavit of appeal.

Upon the issues thus joined a hearing was had before the State Superintendent of Public Instruction at Des Moines on March 19, 1927. Both sides were ably represented by counsel, oral arguments were made and written arguments were filed. All proceedings connected with this appeal conform to the statutes.

The evidence in this case, together with the evidence and exhibits offered in two preceding hearings and made a part of the record, covers

approximately 200 closely typewritten pages. The record also discloses that this case has come up for adjudication on three prior occasions, one of which was before the Department of Public Instruction.

All of the witnesses agree that the distance from the Blevins home to the district school house is between 2⅛ and 2¼ miles; that the road is not traveled much; that it is very hilly and rough; that brush and weeds abound along its sides; and that there are no homes along the greater part of the way from the Blevins home to the schoolhouse.

The township trustees, the road overseer and the men who dragged the road testified that it is an average township road; that they had been over it by team and in Ford cars just prior to the trial of this case. The township clerk testified that about $140 to $145 had been paid for work on this road during the past year. It is admitted that $100 of this work was done on the east one-fourth mile and $40 on the road running south from the Blevins home. These men who are responsible for the work done on the township road had been over this disputed road but once and that was just before the trial of this case in December, 1926. The county engineer in his report on this road, dated December 23, 1926, called this an average township road, with little travel, a part of it showing need of opening ditches, repair on culvert that was partly washed out, and work on heavy grade with north slope that might easily cause trouble in the spring. On the whole the report shows this road was not what was to be expected in a normal road working season but was not impassable.

Five men living near this disputed road and neighbors of Mr. Blevins all testified that the road complained of by this plaintiff is very bad; that it is often impassable except on foot or on horseback, full of ditches with water running across the road; that there is practically no travel on the east and west three-fourths of a mile of this road; that it drifts in the winter so it is impossible to get through; and that it is practically an abandoned road. They also testified that the road to Decatur City is always a good road and even in winter is never blocked with snow more than 24 hours.

The evidence in the transcript also shows that Irolene Blevins must travel this disputed road alone for almost two miles to and from school. It is also in evidence that there are no homes she would pass on her way to and from school for 1¼ miles; and that there are no other children living in the west part of this school district that would accompany her to and from school.

The transcript of the evidence further shows that for several years it had been the custom of the school board of Burrell Township to pay either transportation or tuition in the Decatur City schools for the children of parents who lived on the farm now owned by Mr. Blevins; and that since 1918 Mr. Blevins had sent his children to the Decatur school, and the board had paid their tuition.

A careful examination of the evidence in the transcript fails to substantiate the contention of the board that there are so many children living over two miles from school in Burrell Township that it would be financially impossible to grant the request of Mr. Blevins. The law contemplates that each child shall have as nearly equal school advan-

tages as possible and the school board has not exhausted its powers nor abused its prerogative until it has furnished such school advantages. The law has always construed in favor of the child.

There are certainly conditions concerning the distance children must travel to and from school where a refusal on the part of the board to arrange for transportation or to furnish other school advantages would be a violation of the discretionary power vested in school boards. What constitutes an unreasonable distance would depend on the condition of the road to be traveled, the natural obstacles to be encountered, the kind and amount of traffic thereon, the number and location of the homes along the road, the dangers of many kinds to be met, and the size, age and number of the children that would travel the road together, as well as the distance to be traveled.

Section 4375 of the Code provides:

"When the board is released from its obligations to maintain a school, or when children live at an unreasonable distance from their own school, the board may contract with boards of other school townships or independent districts for the instruction of children thus deprived of school advantages, in any school therein, and the cost thereof shall be paid from the general fund."

The fact that it is within the discretion of the board to contract with other boards for the instruction of children in other schools or that it is within the discretion of the board to provide transportation for pupils living an unreasonable distance from school in their own corporation, does not justify the board in its refusal where such instruction or transportation should be furnished.

In the case of *Worden and Porter v. Cass Township*, School Law Decisions, 1925, Page 324, it was held that "When pupils live an unreasonable distance from school over a road obstructed by natural obstacles the board MUST furnish transportation." This same decision holds that 2 1/10 and 2 7/10 miles are unreasonable distances. The report of the Attorney General, 1923-24, Page 363, contains this opinion:

"When a school board finds that children are required to travel an unreasonable distance, it SHALL allow parents compensation for transporting them to such school."

In view of the action of former boards of directors in and for Burrell Township, Decatur county, Iowa, in paying tuition or allowing compensation for transportation to children residing on the Blevins farmstead for many years past as shown in the transcript of the evidence in this case, we are forced to believe that these boards considered the distance from the Blevins home to the schoolhouse in that district as an unreasonable distance. This belief is strengthened by the fact that two different county superintendents on two separate occasions have so held.

We have read the transcript and examined the exhibits offered as evidence in this case with unusual care, and have carefully considered the effects of this decision from every angle. We have tried to get at all the facts concerning this road by a critical examination of all the evidence pertaining thereto and by an inspection thereof on three different occasions. Our natural desire is to uphold the board in the exercise of its discretionary powers and the county superintendent in his decision

sustaining the board. Yet in view of all the facts gathered from the transcript of the evidence and from the inspections made, we are forced to conclude that this road from the Blevins home to the schoolhouse in his district is unfit and unsafe for a child to travel to and from school; that, although some work has been done to improve the condition of this road as shown by the evidence and inspection it is not yet sufficient to change materially the conditions under which this child has to go to school; that so long as these conditions exist the distance is unreasonable and Mr. Blevins is entitled to the relief prayed for.

It is, therefore, decreed that the board of education in and for the school township of Burrell, Decatur county, Iowa, shall either pay T. J. Blevins a reasonable compensation for the transportation of the said Irolene Blevins to and from school or pay the tuition of the said Irolene Blevins in the Decatur City, Iowa, school as prayed in his affidavit of appeal.

The decision of the county superintendent of Decatur county in this case is, therefore, REVERSED, and the costs of this action are assessed against the school township of Burrell, Decatur county, Iowa.

REVERSED

AGNES SAMUELSON
Superintendent of Public Instruction

Des Moines, Iowa, June 25, 1927

T. L. TEGLAND v. INDEPENDENT SCHOOL DISTRICT OF HARDY
Appeal from Humboldt County

TRANSPORTATION. Transportation in independent districts, except when required by definite statute is clearly discretionary with board, but in the exercise of such discretion there must be no discrimination among patrons.

This case comes before the Superintendent of Public Instruction on appeal from the decision of Clarence Messer, county superintendent of schools, Humboldt county, Iowa, who upheld the schooi board of the Hardy Independent District in its refusal to furnish transportation to and from school for the five minor children of T. L. Tegland under a contract which required the driver of their school bus to transport "all the children required by law."

The transcript submitted for consideration comprises seventy-one (71) typewritten pages. Numerous exhibits were offered as evidence, able oral arguments were made and written arguments filed in behalf of the interested parties.

In his affidavit of appeal to the county superintendent, the said T. L. Tegland states for cause of action that he has five children of school age attending school in the town of Hardy, Humboldt county, Iowa; that the Independent School District of Hardy maintains a bus for the transportation of children to and from said school; that for the past four years and up until the school year of 1926-27 his children have been furnished such transportation; that the said school is more than two miles from his place of residence; that at the present time the said Independent School District of Hardy is not providing transportation for any of the children of this appellant although the school district

still maintains a school bus which passes the residence of said appellant for the carriage of other children to and from school; that the driver is under contract to operate said school bus in the sum of five hundred sixty dollars ($560.00); that for thirty dollars ($30.00) more the said driver, with the board's consent would transport the five children of this appellant to and from school for the school year; that the said board has refused to give this consent and to pay the additional thirty dollars ($30.00) in salary to the said driver to transport the five children of this appellant to and from school as is done for the children of his neighbors; that upon the refusal of the school board at Hardy to grant his children transportation as had been their custom the said appellant was given permission by the school board in Lake Township to send his children to the Nervig school in Lake Township, if the board at Hardy would pay their tuition therein; that the said Nervig school is less than one and one-half (1½) miles from the home of this appellant; that no agreement was made and entered into by and between the school board of the Independent School District of Hardy and the school board of Lake Township to pay the tuition of the said Tegland children in Lake Township as provided in section 4274, Code 1924.

Pursuant to this affidavit of appeal, a hearing was had before Clarence Messer, county superintendent of schools in and for Humboldt county, Iowa, and a decision denying the appellant the relief asked for was made under date of May 6, 1927.

From this decision of the said Clarence Messer the said T. L. Tegland appealed in regular and due form to the Superintendent of Public Instruction in and for the state of Iowa, setting forth in substantially the same language the issues involved in the hearing before the county superintendent and citing certain alleged errors on the part of the said county superintendent in arriving at his decision to sustain the school board in its refusal to grant the relief prayed for by this appellant.

On the issues thus joined a hearing was had before the said State Superintendent of Public Instruction in her office at Des Moines on the 22nd day of July, 1927.

The evidence shows that the Independent School District of Hardy was organized in 1901 and contains approximately nine and one-half (9½) government sections of land. At the time of its organization a one-room schoolhouse was located on the northwest (N.W.) corner of section seven (7) in said district where a school was maintained until closed by the board of education of the Hardy Independent District in 1919, and the building sold by said board in 1921. This one-room school was maintained for the accommodation of the children of the Tegland neighborhood and the Tegland children attended school therein until about 1918, when they entered the graded school in the town of Hardy, being transported thereto at the expense of the parent. From the opening of school in September, 1922, and for four years thereafter, the school board of Hardy furnished transportation to all of the children formerly served by this one-room school including the Tegland children. The board of the Hardy Independent School District still operates a school bus at public expense that daily passes the Tegland home. The regular school bus has comfortable seats for from twelve (12) to fifteen (15) children,

three of whom were children of the driver, who, according to the stipulation of facts, lives less than a mile and a quarter from the schoolhouse in Hardy. But the board refuses transportation to the five children of Mr. Tegland on the ground that the law did not require the board to furnish such transportation.

It is further shown that the one-room school in section seven (7) which provided school advantages for the Tegland neighborhood was closed in 1919 by the action of the Hardy school board, not for lack of pupils but as an experiment by the board presumably to save expense and to secure increased educational advantages to the children and youth of that part of their school district. The Hardy board, as a part of this experiment, transferred the teacher to the town of Hardy and furnished and maintained a school bus to accommodate the pupils of this one-room school and transported these pupils to the central school in the town of Hardy. For four years prior to September 1, 1926, the children of Mr. Tegland were transported to the school in Hardy at the expense of the school district in a school bus operated and maintained by the Hardy school board, as were the other children formerly served by the one-room school in section seven (7).

During the first two years of this time the children of Mr. Olson, a member of the Hardy school board at the time this action was brought, walked eighty rods across the Tegland farm and boarded the school bus at the Tegland home. Then Mr. Olson purchased a right of way just south of the Tegland farm and opened a lane to his residence which was slightly over a quarter of a mile from the nearest public highway running along the east side of the Tegland farm. This increased the distance Mr. Olson's children had to travel to and from school. In order to avoid snowdrifts and obtain access to his residence on higher ground Mr. Tegland relocated his lane at a slight increase in the distance his children had to travel to and from school.

But in 1926, while still furnishing and maintaining the school bus, and transporting pupils of the Tegland neighborhood, the board denied such transportation to the Tegland children on the theory that the law did not require the board to transport children who live two miles or less from school as provided in section 4233, Code 1924. This contention of the board was sustained by the county superintendent in his decision.

The graded school in the town of Hardy offers better educational opportunities than are possible in any one-room ungraded school. Therefore, the board was justified in closing the one-room school and furnishing transportation to the pupils as provided in section 4376, Code 1924, which is in substance the same as section 2774 school laws of 1915.

Distance to and from school should be measured from the residence to the schoolhouse by the nearest traveled road and the lane through which ingress and egress is gained to and from the residence should be a part of the nearest traveled road. See Note nine (9), under section 2803 School Law 1915.

Section 4274, Code 1924, provides: "A child residing in one corporation may attend school in another in the same or adjoining counties if the two boards shall so agree. In case no such agreement is made the county superintendent of the county in which the child resides and the

board of such adjoining corporation may consent to such attendance, if the child resides nearer a schoolhouse in the adjoining corporation and one and one-half miles or more from any public school in the corporation of his residence."

The Attorney General, in an opinion written under date of January 29, 1926, in explanation of the above section, uses this language:

"A reading of this section will readily disclose that the legislature contemplated the place of the child's 'residence'. A child resides in a house and not at the roadside. Were the statute to be construed as meaning that the distance from the school house was to be measured from the public highway, or a point on the highway where transportation is offered, numerous injustices would immediately follow.

The language of the section quoted is plain and we are of the opinion that the statute means what it says when it refers to the place of a child's 'residence,' and that the distance is to be measured from the residence or house and not roadside."

The distance from the Tegland residence to the schoolhouse in Hardy, as shown in the transcript, thus measured, is a few feet over two miles. Under no circumstances are children to be required to travel through pastures and across fields in order to shorten the distance to the schoolhouse.

The testimony of Mr. Saverude, a member of the school board at the time, and the findings of the county superintendent, show that this one-room school was not closed for lack of attendance, section 4233, Code 1924 does not govern this case. But assuming that 4233 is applicable as contended by the county superintendent, Mr. Tegland would be entitled to transportation since there is no direct evidence to contradict his testimony that he lives a few feet over two miles from the schoolhouse in Hardy.

It is the evident intent of the law that equal school facilities shall be provided for every child so far as possible. We agree with two of the witnesses in this case "that it didn't look quite right for the school bus to pass the Tegland children on the road and not stop to take them in. This is particularly true when, as the transcript shows, these children must travel slightly more than two miles to school, and the three children of the school bus driver who lives less than one and one-fourth (1¼) miles from the same school were being transported. This savors of discrimination and lends color to the thought that the child, who constitutes the pivotal reason for the school, is being forgotten in the controversy.

The furnishing of transportation in independent districts except under sections 4179 and 4233, is purely discretionary with the board, but in the exercise of this discretion there must be no discrimination against any patron or patrons of the school. The mere matter of a few feet in the distance to school will not warrant a school board's refusal of transportation when a school bus provided at the expense of the school district travels regularly past the residence of children who attend its school. Neither equity nor reason can justify such refusal by the school board. This department has consistently held that where the distance to be

traveled to and from school is unreasonable, the board should make provision for transportation.

It is with great reluctance that we must ever reverse the decisions of the local school authorities who are residents of the community and should know local conditions and all of the extenuating circumstances involved in each case. But the evidence in this instance as set out in the transcript indicates that, knowingly or unknowingly, some discrimination has been made and some partiality shown, either of which is contrary to both the letter and the spirit of our public school law, which is always to be construed in favor of the child.

Therefore, having carefully studied the transcript of evidence and given serious consideration to the arguments advanced to support the contentions of both sides in this controversy, we are forced to the conclusion that the action of the school board at Hardy was so unreasonable and discriminatory as to amount to abuse of the discretion vested in it by law, and that the decision of Clarence Messer, county superintendent of Humboldt county, sustaining its action should be reversed.

The costs of this case are assessed against the Independent School District of Hardy, Iowa.

REVERSED

AGNES SAMUELSON
Superintendent of Public Instruction

Des Moines, Iowa, September 6, 1927

A. G. LOHMAN v. WOODLEAF INDEPENDENT SCHOOL DISTRICT, INDEPENDENCE TOWNSHIP

Appeal from Hamilton County

LOCATION OF SCHOOLHOUSE. Purchase and ownership of school site is preferable to lease.

Physical features as well as geographical location to be considered in determining suitability of school site.

This matter is now before us on appeal from the decision of the Hamilton county superintendent of schools, who affirmed the action of the school board of the Woodleaf Independent District in voting to move its schoolhouse to a leased site. In 1923 the electors of this district voted to build a new schoolhouse, to be located near the northwest corner of section 20 of this township. Accordingly the board located and purchased a site some 100 rods east of said corner on an east and west public highway. The new schoolhouse was then built, and there it now stands. In June, 1927, the board decided to move this schoolhouse to a new site located some 20 rods south of the corner on the west side of Primary Road No. 60, which road runs north and south through the district. This new location is said to be more nearly the center of the school population of the district.

Being aggrieved by this decision of the board to move the schoolhouse from its present site purchased and owned by the district to another plot of ground which it has arranged to lease, A. G. Lohman, a taxpayer and director, under and in accordance with section 4298, Code of Iowa, 1927, appealed therefrom, urging several grounds therefor. These we will now consider under two main heads—as follows:

1. Was this action of the board legal?

2. Was it for the best interests of the school, all things considered?

Was this board action legal? The first legal step in changing any school site is to locate and purchase a suitable plot of ground for such new location. The law as set out in section 4359, Code of Iowa, 1927, charges the board with this duty of purchasing suitable sites, but not until the electors have, by proper action as provided for in section 4197, Code of Iowa, 1927, authorized the necessary funds with which to make such purchase.

The records in this case are silent as to any action on the part of the board looking toward the purchase of a new site or any action on the part of the electors toward voting, or otherwise legally providing, the necessary funds with which to make such a purchase. Neither is there any evidence indicating that this Independent School District was to become the owner of such new site by gift or otherwise. In fact it is established by the entire record, and admitted by the board, that the school district had not purchased or otherwise acquired ownership of the ground selected for the new site, but had only rented same under an ordinary form of lease providing for the payment of a stipulated annual rental, with the customary penalties for default in such payment or other violations of its terms. Therefore, this action of the board in voting to move its schoolhouse to a new site without first having legally acquired such site is, to say the least, open to the criticism that it is irregular, premature, unwise, and not such as can receive the approval of this department.

It was admitted by the board that their action contemplated the moving of the schoolhouse from a site which it now owns to another location which it has arranged to lease. We find no legal authority for such procedure, and cannot approve the wisdom of such a practice. Under our statutes school districts are corporations created for a specific purpose and with only the powers expressly granted to them and those that are necessary to accomplish the objects for which they are created. In the discharge of their duties and the exercise of the powers granted they are governed and restrained by the provisions of the law creating them. Section 4123, Code of Iowa, 1927, provides that each school district shall exercise all powers granted by law. Nowhere in the statutes of Iowa have we found any authority for leasing school sites on which to build schoolhouses; the school board has cited no such authority in justification of its action. It is significant to note that the statutes contain several provisions authorizing and providing for the purchase of school sites, while nowhere in them do we find any reference to the leasing of such a site. Under a familiar and long established rule of statutory construction, the enumeration of certain specific powers is construed to mean the elimination of other powers not so specified. (*Vale v. Messenger*, 184 Iowa 553.)

After a careful examination of the statutory law applicable to this case we must conclude that the board has exceeded its authority in the matters herein complained of.

Good business and practical experience upholds the long established policy of the legislature to provide for the purchase and ownership of

school sites rather than for the leasing of same. As said by our Supreme Court:

"It is the purpose of the legislature that the public schools in the so-called common school district of the state should be exclusively conducted in buildings which are not only controlled by, but which are owned by, the public. * * *

The rule thus announced is not only good law but it has also the best foundation in the nature and policy of our common school system."

It appears from the record, and at the hearing, that this action of the board contemplates paying out of its general fund all of the expenses of moving the schoolhouse, digging a basement, reconstructing and repairing this schoolhouse upon its new site. If all of this expense can properly be classified as "repairs," we cannot say that such contemplated expenditure would be illegal, but the wisdom of drawing thus heavily upon this general fund is open to serious question. In this connection we quote the following paragraphs from an early decision of our own Supreme Court:

"Applying these provisions and the views above expressed, it follows that if these contracts were made for "repairs", they were payable out of the "contingent fund" and hence were binding. Whether they were "repairs",—such improvements as come within the meaning of the term —is a question of fact to be determined by the proof. The board could not, under the name of "repairs", make contracts involving the rebuilding, or an addition, in no just sense a repair, and charge it to the "contingent fund." If this could be done, then without a vote of the people they could remodel, and even rebuild, and the power given to the electors would exist in name merely. The theory of the system is to require all matters to originate with the people when a tax of any considerable amount is to be raised. Here is the source of power, and prudence, and the best interest of the schools, demand that it be appealed to when there is doubt, rather than that the board shall assume doubtful powers, to be settled and recognized perhaps only at the end of a needless and unprofitable litigation. Experience demonstrates that there is more danger in extending, by construction, the powers of the board or officers than of the people." (*Williams v Peinny*, 25 Iowa 436.)

Another objection urged by appellant was the undesirable character of the ground and its immediate surroundings. The records show that the site is low. On two sides run deep gullies which drain the nearby hog and feed lots, thus making it insanitary and offensive from barnyard environment. Such nearby gullies and waterways are always a fascination to school children, attracting them into places of danger, dirt, and insanitation. Dr. Wildish, a practitioner of Webster City, was one of the witnesses. He testified that the proposed site which had been leased by the board was the last place he would pick out for a home, and expressed the opinion that a school site where children run and play should be selected with the same care as one would exercise in locating his home. We cannot approve the judgment of the board in its selection of this immediate location, especially since other more desirable sites from the standpoint of sanitation and geographical loca-

tion can be acquired by the district only a short distance further south from the one selected.

For each and all of the foregoing reasons we are compelled to disapprove of the specific action of the board here complained of. However, this ruling is not to be understood as deciding more than the specific questions presented by this appeal, or as interfering with any subsequent action of the board consistent with this decision.

The decision of the county superintendent in affirming the action of the board is hereby reversed. REVERSED

AGNES SAMUELSON
Superintendent of Public Instruction

Des Moines, Iowa, February 1, 1928

SCHOOL DISTRICT OF BANKS TOWNSHIP v. RUBY SERVOSS
Appeal from Fayette County

DISCHARGE OF TEACHER. Teacher may not be discharged for acting in self-defense when attacked by an unruly pupil.

This case comes before the Superintendent of Public Instruction on appeal from the decision of L. G. Meyer, county superintendent of schools, in and for Fayette county, Iowa, who reversed the board of education of Banks Township, said county, in its decision to discharge Ruby Servoss, the teacher of a rural school in said township, on the grounds that she illegally punished Eula Pierce, a pupil in her school. From this decision of the said county superintendent, the said board in due and legal form appealed to the Department of Public Instruction. A hearing of the said case on this appeal was held before the Superintendent of Public Instruction on November 19, 1927, at Des Moines, Iowa, and is now before us for decision on this appeal.

The points to be determined in this case are: (1) Did the teacher misuse her authority in the punishment of Eula Pierce or was her act one of self-defense? (2) Did the school board err in the discharge of the teacher? In other words, was the stove poker used as an instrument of punishment or for the defense of the person and authority of the teacher? If for defense, was the board justified in discharging the teacher?

The transcript of evidence submitted in this case shows that the defendant and appellee is a nineteen-year-old inexperienced girl, teaching her first year of school; that the said Eula Pierce, a girl past fourteen years of age, was enrolled as a pupil in her school; that on the day of the alleged illegal punishment the said pupil seemed to have entered upon a determined course of insubordination; that she apparently defied the teacher by a course of conduct just the opposite of that requested of her by this teacher; and that she disobeyed every command of her teacher to such an extent that it is hard to believe that Eula Pierce on the day this alleged illegal punishment was inflicted, was not an insubordinate and refractory pupil.

Upon the teacher's approach to this pupil's desk to remonstrate with her to correct her conduct, said pupil in defiance began first to kick the teacher, then to pull her hair and gradually force her head to the floor. In the course of the struggle, the teacher seized the stove poker and

struck the refractory pupil, calling upon her to desist from her attack. The testimony of the other pupils, while somewhat conflicting, more nearly corroborates the teacher's version of what actually happened. Under such circumstances it seems probable that extreme measures were justifiable both in self-defense and to maintain the authority of the school.

It is a well established principle of law that a teacher is responsible for the discipline of her school, and for the conduct and progress of her pupils, and is empowered to secure faithful performance of the legitimate school tasks, to enforce obedience to her lawful commands, and to require civil deportment on the part of the pupils at all times. The evident intention of the teacher was to act in accordance with this principle of law.

We are convinced that she did not use the poker as an instrument of corporal punishment, but as the only available means of defense in freeing herself from the pupil's attack, and of upholding the authority of the school. In view of this conclusion, after having carefully and painstakingly studied all of the evidence submitted in this transcript, it is our firm conviction that the board erred in its discharge of the teacher; that such discharge was not for the best interests of the school, in that it minimized the authority of the teacher and failed to uphold the discipline of the school. We believe that the findings of the county superintendent are just and that they should be sustained.

The decision of the county superintendent is therefore affirmed, and the costs in this case are assessed to the Banks Township School Corporation.

AFFIRMED

AGNES SAMUELSON
Superintendent of Public Instruction

Des Moines, Iowa, February 20, 1928

CYRIL WHITMER v. BOARD OF DIRECTORS OF THE INDEPENDENT SCHOOL DISTRICT OF WHITE PIGEON IN SUGAR CREEK TOWNSHIP
Appeal from Cedar County

JURISDICTION. TRANSFER OF TERRITORY. The legality of a transfer of land from one rural independent school district to another can be determined only in the courts. The department of public instruction has no jurisdiction over such matters.

The board of directors of the Independent School District of White Pigeon in Sugar Creek Township, Cedar county, Iowa, refused to admit the children of Cyril Whitmer. From this refusal Cyril Whitmer appealed to the county superintendent, Jane McCormick. She decided that the issue was whether the land on which said Whitmer lives is in the White Pigeon School District or in the Pleasant Hill School District, and not whether said board had abused its discretion in refusing to admit his children to the White Pigeon School. She dismissed the appeal on the grounds that the county superintendent had no jurisdiction over the matter involved. From this dismissal Cyril Whitmer appeals to the Superintendent of Public Instruction.

The controlling facts in this case as set forth in the transcript are: On September 16, 1878, the board of directors of the White Pigeon Inde-

pendent School passed a resolution purporting to set over to the Pleasant Hill Independent School District the forty-acre tract of land upon which appellant Whitmer now resides. Since that date said tract has been intermittently assessed in the White Pigeon and in the Pleasant Hill School Districts, the children residing on said tract have intermittently attended the White Pigeon and the Pleasant Hill School District, and the appellant Whitmer has voted in the school elections of neither district. On July 1, 1927, at the annual board meeting, the White Pigeon School Board voted to deny school privileges to the children of Cyril Whitmer and on August 22, 1927, gave notice to said Whitmer of this denial. On August 30, 1927, the children of Whitmer were refused admission to the White Pigeon School on the grounds that they belonged to the Pleasant Hill School District. To review this order appellant instituted his appeals to the county superintendent and to the Superintendent of Public Instruction.

The appellant contends that the action of the White Pigeon School Board, in setting over the forty-acre tract of land upon which appellant resides into the Pleasant Hill School District, was illegal. This is the sole issue in this case.

The county superintendent ruled that she did not have jurisdiction to decide the issue. This calls into question the extent and kind of judicial jurisdiction vested in the county superintendent and in the Superintendent of Public Instruction under the statutes of the state. In the *Security National Bank v. Bagley,* 202 Iowa 701, our Supreme Court held:

"If the act complained of is beyond the authority of the board, the courts have the power to grant relief from the illegal and unauthorized act. But if within the authority of the board and only a question of abuse of discretion is involved, a review of such abuse is by appeal to the county superintendent and through him to the State Superintendent."

The statutes name certain things that a school board must do; in many other matters it is vested with large discretionary powers. If boards attempt to act in an administrative way beyond the authority given them by law, the remedy lies in the courts. *Knowlton v Baumhover,* 182-891. Various decisions of our Supreme Court seem to have established the rule that where discretion is granted a board by a statute the board's action within such statute can be reviewed only by appeal to the county superintendent; but where a board acts without jurisdiction and beyond its statutory powers, the court, not the county superintendent, is the proper tribunal for review and correction.

In attacking the legality of the change in the boundaries of said school district as made by the board in 1878, appellant questions the authority of the board to make such change of boundaries and denies its legal right to make such change under the then existent statute. The relief sought by this appellant is a judicial review of the proceedings in the re-establishment of the boundary lines of said district in 1878, and a determination under the law then in force of the authority of the school board to make such change of boundaries, and whether such change of boundaries was made in accordance with the law if the board had such authority.

The Department of Public Instruction is an administrative tribunal

possessing only quasi-judicial powers. It cannot determine judicially the legality or illegality of the acts of school boards. The Superintendent of Public Instruction is of the opinion that the county superintendent was right in holding that she had no jurisdiction to determine the legality of the action of a board in changing the limits of the school district. This is a question for the courts. Since this case involves the interpretation of a statute under which the authority of school boards to act is questioned, and not an abuse of any discretionary power vested in such boards, we believe the case should be tried on its merits in the courts where all issues can be judicially determined in strict accordance with the law.

Since this appeal must be dismissed for lack of jurisdiction, it is needless to discuss other points raised such as the appellant's request for an order authorizing the appellant's children to attend school at White Pigeon. For the Superintendent of Public Instruction or the county superintendent to issue a peremptory order directing the said White Pigeon School District to admit these children to school privileges pending the decision in the case would be to exercise a power neither officer possesses. For this reason the county superintendent was correct in denying the applicant the order prayed for.

After a careful study of the evidence submitted and the merits of the case as presented by the counsel for appellant, and of the statutes and Supreme Court rulings bearing on the matter, we are forced to conclude that the Department of Public Instruction has no power to grant the relief prayed for, and the appeal must accordingly be dismissed for lack of jurisdiction. The decision of the county superintendent is therefore affirmed and the appeal dismissed.

DISMISSED

AGNES SAMUELSON
Superintendent of Public Instruction

Des Moines, Iowa, April 23, 1928

M. J. KELLEY, GUARDIAN OF EARL HERMANSON v. WATERVILLE CONSOLIDATED SCHOOL DISTRICT
Appeal from Allamakee County

EXPULSION OF PUPIL. Pupil may be expelled for violation of a reasonable rule or regulation of the board. Proof of actual violation is necessary to warrant expulsion of pupil.

Earl Hermanson, a member of the senior class of the Waterville Consolidated High School, was expelled by the board on the grounds that he had violated a rule of the board forbidding pupils to attend a public dance evenings preceding school days.

From the decision of the board M. J. Kelley, as guardian of Hermanson, appealed to W. L. Peck, county superintendent of schools, Allamakee county, Iowa, who reversed the decision of the board. Appeal was then taken to the Department of Public Instruction, and the case is now before us for decision.

It appears from the record that the board had adopted a rule "that school children shall not attend public dances on evenings preceding school days." The sole issue in this case is whether or not Earl Hermanson violated said rule.

Before we can decide whether or not he violated this rule, we need to analyze it in order to arrive at the legislative intent of those who enacted same. It may be assumed that the board saw some objection to pupils participating in public dances on evenings preceding school days and sought to correct the situation by the adoption of the rule. To accomplish this result would not make it necessary to make every one who happened to be within sight, or vicinity of a public dance, a violator of the rule. This was evidently in the mind of the board when adopting this language because we find that they specifically use the word "attend", thus indicating that they had in mind participation in the dance. The language used by the board in formulating this rule indicated a distinction between the pupil who deliberately attended and participated in the dance, and some other pupil who for other reasons may have been in the vicinity where a public dance was taking place.

Statutes are construed strictly and their language never given a strained and unreasonable construction which would give a different meaning than originally intended. It would be giving the language a strained interpretation to say that the board had anything else in mind than the prohibiting of actual participation in a public dance on the prohibited evenings. We cannot believe that the board would use language in formulating the rule which would make guilty every pupil who happened to be in the public park at a time when others were participating in a public dance.

Let us now come to the facts as set forth in the record in order to determine whether or not Earl Hermanson in fact violated the rule of the board, when reasonably interpreted, as heretofore done.

It appears from such record that the people of Waterville held their annual Labor Day Celebration in a public park and picnic grounds on the first Monday in September, 1927. The celebration was largely attended by the local people, each group having its particular form of amusement. One of the various features of the entertainment consisted of dancing on a pavilion in the park, and some of those present participated in this form of amusement.

Earl Hermanson, a Waterville high school senior, was regularly employed at the Municipal Light Plant from the closing hour of school in the afternoon until ten P. M. On this particular day he went directly home from school, changed his school clothes to working overalls and jacket, after which he reported at the Light Plant for duty, all as was his usual practice.

After supper at his home and before returning to his work and still dressed in his working clothes, he and a young man by the name of James Wyse drove to the park where the Labor Day festivities were being held. After mingling with the crowd for some fifteen minutes, they took a short automobile ride into the country. As they returned from the ride, they stopped to buy some pop and other refreshments at a stand in the park. Both his stops at the park consumed less than thirty or thirty-five minutes. Earl then returned to the Light Plant where he worked until ten P. M., his usual quitting time. He then went directly home to bed. At no time did he buy a dance ticket, enter the dance pavilion, take part in the dancing, or show any interest in the dance. He was dressed in overalls for his work at the Light Plant.

Careful consideration of the testimony in this case and of the briefs submitted by counsel force us to the conclusion that Earl Hermanson did not attend a public dance within the meaning of this rule of the school board. Since the record fails to establish any such violation the decision of the county superintendent is hereby affirmed. AFFIRMED

AGNES SAMUELSON
Superintendent of Public Instruction

Des Moines, Iowa, May 10, 1928

JAMES QUIGLEY v. SCHOOL BOARD OF THE INDEPENDENT SCHOOL DISTRICT OF INDIAN CREEK NO. 2

Appeal from Story County

TRANSPORTATION. Must be furnished if distance is unreasonable. Condition of roads, age, sex, health of the children, natural obstacles encountered, and dangers to be met are factors in determining unreasonable distance.

The school board of rural independent school district No. 2 Indian Creek Township, Story county, Iowa, refused to pay transportation to and from school for the two small children of James Quigley. From the action of this said school board James Quigley appealed to George H. Kellogg, county superintendent in and for Story county, Iowa, who, after hearing the said cause issued an order directing the said board of directors to do one of the following two things, to-wit:

1. Furnish him transportation for his children to and from school in District No. 2, Indian Creek Township, and in doing so, said school board may employ Mr. Quigley and pay him a reasonable amount for transporting his children, or they may employ anyone else not a member of the school board of said district to transport said children, or

2. They, the said school board, may take advantage of section 4376 and arrange to send Mr. Quigley's children to Shipley Consolidated School at Shipley, Iowa.

From this order of the county superintendent an appeal was taken to the State Superintendent of Public Instruction and the case is now before us for decision.

The transcript of evidence shows that the distance to be traveled to and from the Quigley residence to the schoolhouse in the said district by the nearest traveled road is slightly more than 2¼ miles; that James Quigley is the father of two girls, aged eight and nine years; that the road over which these children must travel to and from school is a side road that frequently is in bad condition and sometimes impassable; that the mail route has been changed because of the condition of this road; that one patron is sending his child to another school because of this road; that Indian Creek over which these children must cross, at times overflows its banks; and that one patron living approximately 2¼ miles from the school involved in this case is having the tuition paid in another school by District No. 2 of Indian Creek Township; that a school bus to the next nearest school goes past the Quigley residence each day school is in session during the school year.

The question at issue then is whether 2¼ miles under the circumstances

involved in this case is an unreasonable distance for these children to walk to and from their home school.

The law nowhere specifically defines an unreasonable distance. On several occasions this department has ruled on this matter, taking into consideration in each case the conditions pertaining thereto. In each of these rulings the distance to be traveled, the condition of the roads, the natural obstacles to be encountered, the age and health of the children and the dangers to be met have been important factors in the determination of the case at bar. Throughout the history of this department it has been held consistently that the welfare of the child in matters of both health and education must receive first consideration and that no school board has exhausted the power vested in it by statute until it has provided, as nearly as may be, equal educational advantages for all the children of school age living within its school district. Such is the tenor of the decisions in cases of *Strike v. Leland, Shea v. Pilot, and Severeid v. Fieldberg,* School Laws of 1925.

A careful study of the above opinions; the facts as established in the evidence relative to the condition of the road, the age and sex of the children, and the fact that the board has arranged with another patron similarly situated for the tuition expenses of his child in an adjoining school district, together with the arguments submitted by counsel, and our further investigations of the merits of this case compel us to conclude that, because of the conditions herein involved, the distance these children must walk to and from their home school is unreasonable; and that under the provisions of sections 4375 and 4376 of the Code of Iowa, 1927, and the decisions of this department heretofore made in similar cases, James Quigley is entitled to the relief prayed for in his petition.

The decision and order of the county superintendent is, therefore, affirmed.

AFFIRMED

AGNES SAMUELSON
Superintendent of Public Instruction

Des Moines, Iowa, June 14, 1928

EDWARD ESPESETH v. THE BOARD OF SCHOOL DIRECTORS OF LINCOLN TOWNSHIP, SCHOOL DISTRICT NO. 1, WINNESHIEK COUNTY, IOWA

Appeal from Winneshiek County

In March, 1927, the electors of Lincoln school township voted to erect a new school building in subdistrict No. 1. The following July the township board of subdirectors, on petition of twenty voters of subdistrict No. 1, adopted a resolution to erect the new building on a new site one-half mile east of the present site. The township board at a special meeting held April 18, 1928, rescinded the action of the former board and adopted a resolution to erect the new building on the old site. April 27th an appeal was taken to the county superintendent by Mr. Espeseth, a resident of subdistrict No. 5. The county superintendent overruled a motion of the board to dismiss the appeal, reversed the decision of the board, and ordered that the new building be erected on the new site. The township board appealed from the decision of the county superintendent of public instruction and the case is now before us for decision.

This appeal presents the following questions: (1) May any person

aggrieved by the decision of a board of directors of a township school corporation in a controversy arising in a subdistrict appeal from the decision when the aggrieved person is a resident of the township, but not of the subdistrict in which the controversy arose; (2) Was the county superintendent correct in reversing the action of the board?

The answer to the first question is found in the statute. Section 4298, Code of Iowa, 1927, does not require that the person aggrieved by any decision of the board of directors live in the subdistrict in order to file an appeal with the county superintendent. The record shows that Mr. Espeseth is a taxpayer of the township, and a patron of the school in subdistrict No. 1 for the reason that either school site in subdistrict No. 1 is closer to his home than the school site of the district of which he is a resident. The new site moves the school one-half mile nearer his home. The decision of the school board in rescinding the new site constitutes a grievance from which he has the legal right to appeal. The county superintendent was correct in refusing to dismiss his appeal.

The second point is more complicated; it involves the correctness of the county superintendent's decision in reversing the action of the board. In a school township like Lincoln where the topography precludes the possibility of roads at regular intervals, where, on account of meandering streams and other natural obstacles, roads are infrequent and expensive to establish or maintain, subdistricts must of necessity be irregular in shape. Under such conditions questions concerning the proper location of schoolhouses are not easy of solution.

The school board contends that the old site is more satisfactory for two reasons: (1) the presence of a spring; (2) the fact that there are more homes west of the old site than east of it.

The first argument has no weight. The evidence shows that the spring opens on the surface and becomes inundated during high water. This possibility of pollution from surface water, or from children playing about it, would make it a questionable water supply.

The second argument is the whole meat of the controversy. The number of homes on one side or another of a line of demarcation is not the controlling factor in the establishment of a school site. The location is controlled by the comparative distances from the schoolhouse to the homes of all the patrons served by the school.

The county superintendent, in her decision, sets out these salient facts very succinctly; she lists each family to be served by the school in subdistrict No. 1; under each name, in vertical columns, she enters the distance to both sites. Since the correctness of her findings concerning distance to school were not disputed at the hearing before the Department of Public Instruction by either party to this appeal, we assume that they are correct, and if correct, they are conclusive proof that the new site will more nearly equalize distances to school when all the patrons of the school are taken into consideration without, at the same time, seriously inconveniencing any other family served by this school.

After diligent study of the entire record, the briefs and arguments submitted by counsel, we are of the opinion that the county superintend-

ent was correct in overruling the board and her decision is therefore affirmed.

AFFIRMED

AGNES SAMUELSON
Superintendent of Public Instruction

August 14, 1928

DOROTHY MCMAKIN v. CONSOLIDATED SCHOOL DISTRICT OF SUTHERLAND
Appeal from O'Brien County

GUARDIANSHIP. Guardianship establishes residence for school purposes. Guardianship papers offered in evidence to support claims of residence must be accepted as having been executed in good faith; they cannot be attacked in a collateral proceeding.

In August, 1926, Dorothy McMakin, a girl 16 years of age whose parents are residents of the state of Montana, came to the home of her aunt, Mrs. T. E. Doling of Sutherland, Iowa, and entered the Sutherland Consolidated School where she attended during that school year and paid tuition. On September 9, 1927, Mrs. T. E. Doling, a resident of the consolidated school district of Sutherland, was appointed guardian of the person of Dorothy McMakin. During the school year of 1927-1928 no tuition was asked and no tuition was paid. On September 17, 1928, the board of the consolidated school district of Sutherland passed a resolution declaring Dorothy McMakin a non-resident of the Sutherland Consolidated District, denying her school privileges until a tuition of $90.00 for the preceding year had been paid. From this decision of the board Mrs. T. E. Doling appealed to the county superintendent under date of September 24, 1928.

October 6, 1928, a hearing was had on this appeal in the office of Margaret Mann, county superintendent of schools of O'Brien county. On the 19th day of January, 1929, the county superintendent rendered a decision overruling and reversing the decision of the board, and assessing the costs of the appeal to the defendant board. From this decision of the county superintendent the said board appealed to the superintendent of public instruction under date of February 13, 1929. A hearing was had on this appeal in the office of the superintendent of public instruction April 8, 1929, both parties being represented by counsel.

The issue and the facts in this case are clear. The sole question is whether or not the county superintendent was correct in deciding Dorothy McMakin to be a resident of the Sutherland Consolidated School District and therefore not liable for tuition.

Under section 12576, Code of Iowa, 1927, a minor over 14 years of age and in sound mind, may select a guardian, subject to the approval of the District Court. This record shows that the minor was not living with her parents in Montana; that she was over 14 years of age. A certified copy of the records of the district court shows that the minor chose Mrs. T. E. Doling as her guardian, and the court approved the minor's selection and appointed Mrs. T. E. Doling as guardian, fixing the amount of the bond. Under the code, the court had the power to make this approval and appointment. The department of public instruction can and must assume that the court acted in good faith in making this appointment and approval. The mental competency of the minor, the place of residence of the minor, and the qualifications of the guar-

dian are facts inherent in the decree of the court and cannot be questioned by this department.

In its appeal to the Superintendent of Public Instruction the appellant sought to get before this department new matter outside the record made before the county superintendent, to the effect that in October, 1928, the appellant had made an application to the court to have the guardian show cause why the order of her appointment should not be set aside. This evidence cannot be considered by this appellate tribunal but, even though taken into account, would not warrant a different ruling than that rendered herein, since the evidence does not show any action of court nullifying or setting aside the original decree, and it must be assumed that the original appointment of Mrs. Doling as guardian still stands. The guardian was judicially appointed and until the same is vacated by proper judicial procedure this department must accept as valid the guardianship proceedings as set out in the court record submitted.

Under the record it has been judicially determined that Dorothy McMakin is a resident of the Sutherland Consolidated School District and being such a resident is entitled to school privileges therein. This matter is controlled by adjudicated facts and not by discretion. The decision of the county superintendent must therefore be affirmed. The costs of the case are assessed to the Consolidated School District of Sutherland, Iowa.

AFFIRMED

AGNES SAMUELSON
Superintendent of Public Instruction

Des Moines, Iowa, June 13, 1929

ARTHUR WILLER v. MOVILLE INDEPENDENT DISTRICT
Appeal from Woodbury County

The issue in this case is whether Mr. Arthur Willer, the appellant, is an actual resident of the Moville independent school district and entitled to free school privileges therein as provided in section 4273, or whether he is merely sojourning temporarily in said district and, according to section 4268, entitled to school privileges therein only on such terms as the Moville board may determine.

The appellant owns a 160-acre improved farm immediately adjoining the independent district of Moville. The entire property with the farm home is in the school township of Arlington. He is the father of nine children, six of whom attend school—four in the grades and two in the high school. For a number of years Mr. Willer's children have attended the grade school of Moville instead of the rural school in his own township. Upon completing the eighth grade in Moville they attended the Moville high school at the tuition expense of their home district.

Repeated efforts on the part of the Moville board to induce Mr. Willer to pay the tuition of his children while enrolled in the grades have been unsuccessful. Pursuant to a resolution adopted by the Moville board excluding from school all non-resident grade children whose tuition was in arrears, until such time as the back tuition was paid, all the appellant's children except the two high school boys were barred from entering the Moville school.

Two weeks after the Moville school opened in September, 1929, the appellant rented a three-room house in Moville and took up his abode in said house with his wife and the four grade children, leaving the two high school boys at the farm home where an older sister keeps house for them and a hired man. Mr. Willer goes back and forth to the farm each day, a distance of about one and a quarter miles, to carry on his farming operations. As a consequence of this move Mr. Willer claims actual residence in the Moville district with free school privileges therein for the four grade children; he also claims that Arlington school township is responsible for the high school tuition of the two older boys by virtue of their residence at the farm home in Arlington township. Acting on this claim he enrolled the four grade children in Moville. On September 24 the Moville board adopted a resolution excluding them from school, claiming that they were merely sojourning temporarily in the Moville district. Mr. Willer hereupon appealed to the county superintendent who sustained the board; Mr. Willer now appeals to the superintendent of public instruction.

Whether Mr. Willer is an actual resident of the Moville independent district so as to entitle him to free school privileges therein is a question of fact which shall have to be determined from the evidence submitted in this case.

Counsel for the appellant quotes from the decision of the supreme court in the case of *Mt. Hope v. Hendrickson*, 197 Iowa 191; 191 NW, at page 48, February 5, 1924, as follows:

"In the acquisition of a school domicile, two facts concur—actual residence and intention. The principle of free education is the richest legacy of our Puritan civilization, and a liberal construction of our statute must be given, in order that its benefits may inure to those who claim its privileges."

While it is true that the statutes relating to residence for school purposes should be liberally construed, especially where a strict construction would deprive an orphan child of all school advantages, or any child of school advantages who on account of the poverty of his parents is compelled to make his own way outside the parental home, yet they must not be so liberally construed as to amount to an imposition upon the taxpayers of one district for the sole purpose of affording better school privileges to the child of a taxpayer whose children have school facilities available to them from the parental home and in the district where their father's property is taxed. The case on which counsel for the appellant relies to support his plea for a liberal construction of the statutes involved two boys whose mother had died and whose father had placed them in the home of relatives, quoting from the same decision,

"In order to have a woman's care and enjoy the comforts of the ordinary home; it was not the primary purpose, but only incidental, on their part to secure the advantages of educational facilities."

What constitutes actual residence entitling children to free school privileges is very clearly set out in a note appearing in 26 Law Reports Annotated, at page 581, in the following language:

"So far as a rule can be deduced from the cases upon this subject it seems to be that a child is entitled to the benefit of the public schools

in the district in which it lives if it has gone there in good faith for the purpose of acquiring a home and not for the purpose of taking advantage of school privileges. But that it will not be permitted to go into a district chiefly for the purpose of getting school advantages."

Appellant argues that his physical residence within the Moville district, with his expressed intent that such residence is permanent, is determinative of his actual residence for school purposes as required in section 4273. Since intent is but a mental state it cannot ordinarily be shown by direct proof and the declaration of intent will not exclude other evidence. Intent is a purpose formed to do or not to do something and may be inferred from the acts done, the nature and character of the acts, and from the manner in which or the circumstances under which they are done. We think it proper in this connection, therefore, to inquire as to the occasion and the purpose of his physical residence in Moville with only that portion of his family for whose tuition he could in any way be responsible.

The testimony of Mrs. Willer throws light not only on the occasion of the move to town but also on the purpose of such move. On cross examination she testifies in substance that they did not move to Moville, or attempt to move, until after the four grade children had been excluded from school pending the payment of tuition; that said move was a business proposition to save tuition; that had tuition not been demanded there would have been no object in moving; and that had the Moville board promised free tuition she "did not know as they would have thought of moving." This testimony established beyond peradventure that leaving the commodious farm home and moving to a three-room house in town was for the sole purpose of free school privileges in the Moville schools.

Which of the two residences claimed by Mr. Willer is to control? Is it the one at the farm home in Arlington township from which the two minor children attend the Moville high school at the tuition expense of Arlington township, or the three-room home in the Moville district from which he wishes the four children to attend the grades in Moville without tuition expense? Of these two claimed residences we are convinced from all the evidence in this case that the former is determinative; that Mr. Willer's actual and bona fide residence is in Arlington school township; that he is merely sojourning temporarily in the Movile independent school district as a subterfuge in an attempt to avoid tuition; and that the Moville board is within its statutory rights in demanding tuition. The decision of the county superintendent is therefore affirmed.

AFFIRMED

AGNES SAMUELSON

Superintendent of Public Instruction

February 3, 1930

OSCAR BIGELOW *et al* v. CLEAR CREEK SCHOOL TOWNSHIP

Appeal from Johnson County

This appeal relates to the refusal of the Clear Creek township board of Johnson county to fix the boundaries of a proposed independent school district and to call an election therein to determine the question of the establishment or formation of such independent district on the petition

of the required number of voters of the incorporated town of Tiffin and certain territory adjacent thereto as provided in section 4141. The grounds on which the board based its refusal were that said petition was presented August 6 instead of prior to August 1, the limit date fixed in section 4149 for the organization of such an independent district.

From this refusal an appeal was taken to the county superintendent who rendered a decision fixing the boundaries of the proposed independent district and directing the Clear Creek township board to call an election to determine the establishment of the proposed independent district. From this decision the Clear Creek township board appeals to the superintendent of public instruction. Two main issues are raised:

(1) Does the time limitation in section 4149 control the first step to be taken in the establishment or formation of an independent district under the provisions of section 4141?

(2) Did the county superintendent abuse his discretion when fixing the boundaries of the district?

It is our opinion that the establishment or formation of an independent district as provided in section 4141 and its organization as provided in section 4149 are two separate and distinct steps. The district is established or formed by a favorable vote of the electors of the proposed territory; it is organized by the election or appointment and organization of a board of directors. The petition to the board of Clear Creek township to fix the boundaries and call an election was the first step toward the establishment or formation of the proposed independent school district. The appointment by the county superintendent or the election by the people of the board of directors would be the first step toward the organization of the proposed independent school district. The establishment or formation of the district is governed by section 4141; the organization is governed by section 4149.

It is our opinion that the specification as to time appearing in section 4149 does not control the formation or establishment of a district under the provisions of section 4141. To provide the district with funds is the reason for the appearance of the time limitation in section 4149. Necessarily the directors must be installed and the district organized in time to certify the tax levy to the board of supervisors before the first Monday in September. The district may be formed or established at any time and therefore no time limitation appears in section 4141. As a practical matter, the first step toward the formation or establishment of a district should be taken so as to provide sufficient time to organize the district after its establishment before the next August. In this case the first step was taken on August 6, 1929, which left plenty of time in which the district could be organized before August 1, 1930. Clearly the time limitation in section 4149 has no application to the time of forming or establishing a district under section 4141.

For the above reasons the board was in error in relying upon section 4149 for its refusal to act upon the petition presented August 6, 1929.

As to the second issue we are confronted with the question as to whether or not the county superintendent abused his discretion when fixing the boundaries of the proposed district. The only objections raised to the boundaries determined upon by the county superintendent

were to including in the district four forty-acre tracts on the southern boundaries. The board based its objection upon the inconvenience of the children to school. The record is silent on this point and the arguments of counsel relied entirely upon the first issue. Because of this fact and for the additional reason that the county superintendent is familiar with the situation and must be presumed to have weighed all the facts and circumstances to be taken into consideration we are of the opinion that he acted in the best interests of all concerned when fixing the boundaries. Certainly the objection raised by the board which is not argued is not of sufficient importance to establish an abuse of discretion on the part of the county superintendent. The decision of the county superintendent is therefore affirmed.

AFFIRMED

AGNES SAMUELSON
Superintendent of Public Instruction.

February 17, 1930.

H. N. BARNES v. ELDON INDEPENDENT SCHOOL DISTRICT
Ruling on Motion to Dismiss Appeal

The sole issue in this case is the motion of the appellee to dismiss this appeal. The question is the construction of section 4302 which reads as follows:

"An appeal may be taken from the decision of the county superintendent to the superintendent of public instruction in the same manner as provided in this chapter for taking appeals from the board of a school corporation to the county superintendent, as nearly as applicable, except that thirty days' notice of the appeal shall be given by the appellant to the county superintendent, and also to the adverse party. The decision when made shall be final."

The facts in the case are clear. Under date of August 26, 1929, Celia M. Bell, superintendent of Wapello county schools, sustained an appeal by Mr. H. N. Barnes, superintendent of schools, Eldon, Iowa, who had been discharged by the Eldon school board. The board under date of September 24, 1929, served notice of appeal on said county superintendent and also upon the adverse party, Mr. Barnes, a purported affidavit being attached to said notice. Under date of December 13, 1929, more than thirty days after the county superintendent's decision was rendered, Miss Bell, at the request of the Eldon board, filed said notice with the attached purported affidavit and certain exhibits in the office of the superintendent of public instruction. Five typewritten volumes were left on January 27, 1930, at the office of the superintendent of public instruction by the wife of the attorney for the board. On the date of February 14, 1930, Mr. Barnes through counsel filed motion to dismiss the appeal on the grounds that the superintendent of public instruction had no jurisdiction since no affidavit of appeal was filed in the office of the superintendent of public instruction within thirty days after the rendition of the county superintendent's decision.

Section 4302 has been interpreted by the department of public instruction in each issue of the school laws since 1874 to mean that the basis of an appeal to the superintendent of public instruction shall be an affidavit filed with the superintendent of public instruction within thirty days after the rendition of the decision by the county superintendent.

The procedure is set forth in the interpretation of section 1835, page 60, Iowa School Laws and Decisions, 1874-80, and page 179, School Laws of Iowa, 1929.

This section provides that an appeal to the superintendent of public instruction shall be in the same manner as an appeal to the county superintendent from the school board, except that notice of such an appeal shall be filed with the county superintendent and with the adverse party within thirty days after the county superintendent's decision. This is in addition to the procedure followed in the lower tribunal. The filing of a notice of appeal with the county superintendent and with the adverse party does not relieve the appellant from the obligation of completing the appeal with the superintendent of public instruction by filing an affidavit with that officer. This affidavit is the basis of the appeal and without it the superintendent of public instruction is without jurisdiction in the case. While section 4302 specifically requires the appellant to file notice of appeal with the county superintendent and with the adverse party, there is nothing in the law directing the county superintendent to transmit said notice to the superintendent of public instruction nor would such transmission have the effect of perfecting the appeal to the superintendent of public instruction. The appellant has followed the procedure for perfecting an appeal in a criminal action rather than the law as provided for perfecting an appeal to the superintendent of public instruction under section 4302.

To give jurisdiction on this appeal an affidavit of appeal should have been filed by the school board with the superintendent of public instruction within thirty days after the county superintendent's decision. Since this was not done we are without jurisdiction to hear this appeal, and it is therefore dismissed.

DISMISSED

AGNES SAMUELSON
Superintendent of Public Instruction

March 7, 1930

HENRY ALBRECHT v. INDEPENDENT SCHOOL DISTRICT OF FAIRBANK

Appeal from Buchanan County

This appeal is from the decision of the county superintendent in upholding the board of the Independent School District of Fairbank whereby it refused transportation to the children of Henry Albrecht. From the record it appears no testimony was taken before the county superintendent; the facts in the matter must be gleaned entirely from the affidavit of appeal. The appellant states that he is the father of four children of school age and that he lives 2.3 miles from the schoolhouse.

Appellant sets out seven grounds for complaint against the decision of the board—namely, (1) that a decision of former superintendent A. M. Deyoe constitutes an irrevocable adjudication of the facts warranting transportation in the district; (2) that the former decision constitutes a contract between the patrons of the district and the school board; (3) that appellant has a vested property right as a result of the former decision; (4) that the action of the board is invalid and void for the reason that it constitutes an impairment of a contract and is therefore unconstitutional; (5) that the former decision throws the burden upon the board to show that conditions have changed to warrant a

repudiation of the decision; (6) that the distance of over two miles is too great for the children to walk; and (7) that the board violated a valid judgment and decree of the state superintendent of public instruction.

To support his grounds for complaint appellant sets out a decision rendered by Honorable A. M. Deyoe as superintendent of public instruction on August 23, 1916. In that appeal the question before the superintendent concerned the relocation of the schoolhouse in the district. Mr. Deyoe decided the question before him and ruled that "the board of directors had the best interests of the school in mind in selecting the new site." After deciding the matter Mr. Deyoe makes the following ruling: "It is hereby ordered that the board of directors of the independent school district of Fairbank make suitable provision for the transportation of children attending the public school or that a reasonable allowance be made to Mr. Dietz and all other patrons in the district residing more than two miles from school in said district who desire such assistance." Mr. Albrecht alleges that he lives on the premises occupied by Mr. Dietz at the time of the former appeal.

Although clothed with quasi-judicial powers, the superintendent of public instruction is not a judicial officer, nor a part of the judicial department of our government. The superintendent of public instruction does not have the power to decide questions raised by appellant—such as, the existence of a contract; its validity or interpretation, if one exists; the question of res judicata; and the judicial determination of the legal rights, if any, that may have been acquired by Mr. Albrecht, who was not a party to the former appeal decided by Mr. Deyoe.

It is clearly within the power of the superintendent of public instruction to review the action of the board in denying transportation and of the county superintendent in upholding the board's ruling, but in reviewing these actions the superintendent of public instruction is interested solely in the question of whether or not the board and the county superintendent abused their discretion in denying transportation. In the matter presented here there is no complaint by the appellant that either the board or the county superintendent abused discretion nor is there any testimony or evidence whereby we can intelligently review their actions. In appeals presented the superintendent has the right to presume that the officers whose acts are reviewed, in the absence of proof to the contrary, acted in good faith and within the scope of their powers prescribed by law. In the matter before us there is not only an absence of proof that the officers abused their discretion but no such complaint was even made. In the past the superintendent of public instruction, when determining unreasonable distance, has given consideration to the age and physical condition of the children, the degree of isolation of the road they must travel to school and its physical condition, the ability of the district to meet the added financial burden if all other children of the district similarly situated are to be given transportation. We cannot intelligently pass upon the question of unreasonable distance when the only allegations made are the abstract distance to the schoolhouse and the age of the children.

Since the appellant did not submit facts upon which we might make

an intelligent decision, but relied wholly upon allegations of a judicial character that the superintendent of public instruction has no power to determine, we must therefore rely upon the presumption that the officers acted in good faith and within the scope of their powers prescribed by law. The decision of the county superintendent is therefore affirmed.

AFFIRMED

AGNES SAMUELSON
Superintendent of Public Instruction

August 5, 1930

CHARLES F. CARMAN v. HICKORY GROVE SCHOOL DISTRICT
Appeal from Woodbury County

This appeal relates to the right of exercising the duties of secretary and treasurer of a school district by reason of appointment by the board to fill an alleged vacancy attributed by a majority of the board to a question concerning the qualification of previous appointees. The minority member of the board of three appealed to the county superintendent who reversed the board. The board then appealed to this office.

During the proceedings before the county superintendent the following motion was filed:

"Comes now the defendant, the Independent School District of Hickory Grove, and moves that the appeal of the above entitled action be dismissed, and as grounds therefore states:

"1. That this appeal involves a dispute over the right to hold the offices of secretary and treasurer in said school district, and involves the question as to who are the duly elected and qualified secretary and treasurer of said district, and presents a matter solely for a determination by the courts of this state, and that the county superintendent of schools has no jurisdiction to hear and determine this appeal, or make any ruling or decision involving the legality of the action of the directors of said district in regard to said two offices."

The county superintendent overruled this motion and made a decision based upon the merits of the case. The school district appealed from his ruling on the motion and from his decision. Since we are of the opinion that the motion should have been sustained, nothing will be gained by discussing the relative claims made on behalf of the individuals to the offices of secretary and treasurer.

It has been the uniform holding of the department of public instruction that it is without jurisdiction to determine the rights of exercising a public office. In *Miner v. District Township of Cedar*, 1929 School Laws, page 314, the claim was made that Miner failed to qualify for the office of subdirector. The county superintendent rendered a decision based upon the merits of the case. Upon appeal to the superintendent of public instruction the decision was reversed and the case was dismissed. A portion of this decision reads as follows:

"The case presented by these facts is similar to that of *Ockerman v. District Township of Hamilton*, page 77, School Law Decision of 1868, and must be governed by the same principles. It was there held that the only proper way of determining a contested election or the right of exercising any public office or franchise is by an action in the nature of quo warranto brought in the district court. It seems unnecessary to

repeat the arguments there used. Reference is made to that case, as well as to the 19 Iowa 199; 18 Iowa 59; 16 Iowa 369; 17 Iowa 365; and the other cases there cited. The principle involved in the preceding references was recognized by the county superintendent, when he said in his decision that 'the board of directors has no jurisdiction to inquire into the legality of the election of its members.' When this just conclusion was reached the case should have been dismissed, for the county superintendent can do on appeal only what the board itself might legally have done."

In *Dow v. Independent District of Stockport,* appellant claimed that he was deprived of his right to hold office of director by the action of the board in declaring his election illegal. The county superintendent dismissed the case and this action was affirmed by the superintendent of public instruction, in which he said:

"Motion to dismiss the case was filed with the county superintendent by attorney for appellee on the grounds that the county superintendent was without jurisdiction in cases involving the legality of school elections and any action of a school board with respect thereto.

"We can see no particular advantage to be gained, neither can we see that the settlement of questions similar to the case at bar will be facilitated by an appeal to the county superintendent, in the light of the decisions of the courts and the rulings of the Department of Public Instruction. The courts have invariably ruled that when title to office is the avowed or real subject in controversy, the quo warranto is the exclusive legal remedy. It has been the ruling of the Department of Public Instruction all along that all questions in dispute concerning school elections, and any action of a school board with respect thereto, are matters for the courts to determine and that an appeal would not lie with the county superintendent. *Miner v. District Township of Cedar.* S. L. Decisions, 1911, page 205."

Chapter 531, section 12417, provides that quo warranto proceedings may be brought against any person unlawfully holding or exercising any public office within this state.

When a dispute involving the right to hold a school office has been presented to the supreme court in this state, that tribunal has always held quo warranto to be the exclusive remedy. In *Independent School District v. Miller,* 189 Iowa 123, (1920) the appellant contended that he was the duly qualified school treasurer and that his office had been illegal and declared vacant by the board. There the supreme court of Iowa said:

"Nothing is better settled than that title to a public office may not be adjudicated in application for a write of mandamus . . . . A proceedings in quo warranto is appropriate for attesting title to office. *Vette v. Byington,* 132 Iowa 487. See also *Nelson v. Consolidated School District,* 181 Iowa 424, for a late discussion on this subject. See *Young v. Huff,* 209 Iowa 874, (1930)."

We are of the opinion that the county superintendent should have sustained the motion to dismiss. For that reason the decision is reversed and the case dismissed.

REVERSED AND DISMISSED
AGNES SAMUELSON
Superintendent of Public Instruction

December 7, 1931

Gerald Kruse v. School Township of Hale

Appeal from Jones County

This appeal comes from an attempt to organize the village of Hale into an independent school district under the provisions of sections 4141 to 4143, inclusive.

Sections 4141 and 4142 provide that upon petition of ten voters of a village of over one hundred inhabitants to the board of the school corporation, the board shall establish the boundaries of a proposed independent district in accordance with given specifications and call a meeting of the voters upon the territory included within contemplated independent district to vote upon the proposition. Section 4143 permits a subdistrict containing a village with a population of seventy-five or more to organize into an independent district under the provisions of the two preceding sections.

The Hale township school board dismissed the petition on the grounds that the village of Hale did not have the prerequisite population of over one hundred as required by section 4141. The county superintendent affirmed the board's action holding that the prerequisites required under sections 4141 and 4143 had not been met. Her interpretation of section 4143 that the subdistrict would have to act as a unit and only the territory of said subdistrict could be taken into consideration was correct.

The question to be determined, therefore, is whether the refusal of the board to call an election under section 4141 was an error. The answer to this question depends wholly upon the population of Hale. The issue is whether or not the village of Hale has over one hundred residents.

The record is far from convincing. The petitioners submitted as evidence an atlas purporting to contain the federal census of 1930, in which the village of Hale is listed as having a population of one hundred fifty-five. Said atlas cannot be relied upon for the reason that it carries 1920 as its latest copyright date. Its figures are of doubtful authenticity for the further reason that unincorporated villages such as Hale were not made separate units in the federal or state census enumeration. Residents of the district testified that the figures given in the atlas were substantially correct and that the present population of said village was over one hundred.

The board relied upon the count made by memory by one of its members from the township, who testified that he knew personally all the people living in the village and that only sixty-seven people lived there.

Either there are or there are not one hundred residents in said village. The record fails to establish the facts on this point. For that reason, it is deemed necessary to remand this case to the county superintendent with instruction to order the parties to procure from the proper county officer an authorized plat of the village and make an actual count duly authenticated of the bona fide residents living on such platted area at the time petition was filed, said count to be used by her as the basis of making a decision upon the merits of the petition. This appeal is, therefore, dismissed and the case is remanded to the county superintendent with aforesaid instructions.

Dismissed and Remanded

AGNES SAMUELSON

Superintendent of Public Instruction

April 3, 1933

INDEX TO SCHOOL LAWS

The arabic numerals following an index item, unless otherwise indicated, refer to section numbers in this volume as well as to section numbers in the 1935 code. Roman numerals refer to articles of the Constitution of Iowa.

Boards, officers, offices, and subjects, when detailed as a main heading in bold-face caps, are listed alphabetically under the noun of the title or subject, rather than a descriptive adjective—for example,

Under the subject heading ERECTION OF BUILDINGS, is listed under Roman I the procedure to be followed in the erection of a building from funds on hand or from funds derived from the proceeds of a tax authorized by the voters, and under Roman II the procedures to be followed where a building is to be financed from the proceeds of the sale of indebtedness bonds, A being the procedure when the indebtedness is *not* in excess of 1¼% of the actual value of the taxable property of the district, and B when it *is* in excess of that amount. The provisions of law under each of these procedures are listed as nearly as possible in the order the board will need to give them attention. This arrangement is in addition to their alphabetical arrangement under various headings throughout the index as a whole.

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