

THE ADMINISTRATIVE FUNCTIONS OF THE
DEPARTMENT OF PUBLIC INSTRUCTION
IN IOWA

BY
HERBERT CLARE COOK

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY IN THE GRADUATE
COLLEGE OF THE STATE UNIVERSITY OF IOWA
JULY 1926

PUBLISHED AT IOWA CITY IOWA IN 1929 BY
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*It should be kept in mind
that this study was completed
in 1926, over 15 years ago and that
many changes have come into the law
particularly in the Code 1939 which would
change many of the author's conclusions
were he writing
this today!*

AUTHOR'S PREFACE

THIS dissertation deals with that agency of State government and administration which is engaged in the general administration of education in the public elementary and secondary schools: it deals primarily with the political activities and functions of that agency of government known as the Department of Public Instruction. An historical survey of the development of administrative functions and the administrative relationships is followed by a discussion of the composition and organization of the Department of Public Instruction.

A chapter is devoted to each of the principal administrative functions showing the nature and extent of the authority exercised. The work of the Department of Public Instruction is administrative and judicial in character; technically speaking, it is regarded as ministerial. The administrative powers of outstanding interest are the powers of direction and supervision, ordinance power, financial power, and judicial powers. It is chiefly through the exercise of these powers that development of the central school system has taken place and control of new functions is acquired. Through the power of direction and supervision, the educational factors of the State are directed; through the ordinance power, rules and regulations are prescribed for the government of the Department and the minor school officials; through the financial powers, inspection and supervision has in turn led to virtual control of certain educational activities; and through the judicial power, a body of subsidiary administrative law has been established.

In preparing the dissertation it was found necessary to

7-16-70 Dept. of Pub. Instruction gpl

make a detailed study of the statutes, the reports and decisions of the Superintendent of Public Instruction; opinions of the Attorney General of Iowa as well as the leading treatises on administration. Furthermore decisions of the Supreme Court of Iowa have been studied and a number of citations made to clear doubtful points. For the purpose of gaining first-hand information regarding the actual work of the Department of Public Instruction, city superintendents, county superintendents of schools, and the officials of the Department were visited.

Though education is regarded as a unit function of the State, in Iowa it is administered by a decentralized disintegrated administrative system. A principle which is now well recognized is that free public education is a matter of such vital importance to the general welfare and interests of the State as a whole that it can not be safely left to the mere voluntary action of the localities but must be under the supervision of State authority. Following such guiding principles the author has ventured to suggest a more highly centralized and integrated system of State administration of education.

The writer wishes to express his obligations to the many individuals who have furnished information, to the staff of the Department of Political Science at the State University of Iowa, to the staff of the State Historical Society of Iowa, and to the staff of the Department of Public Instruction of Iowa. Especially does he wish to thank Dr. Benj. F. Shambaugh at whose suggestion the work was undertaken and whose inspiration made the work possible, and to Dr. Frank E. Horack under whose guidance and direction this study was prepared.

HERBERT CLARE COOK

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THE ADMINISTRATIVE FUNCTIONS OF THE DEPARTMENT OF PUBLIC INSTRUCTION IN IOWA

I

DEVELOPMENT OF THE DEPARTMENT OF PUBLIC INSTRUCTION

A common feature of our American State school systems is the election or appointment of a chief State school official. This office is a relatively recent addition to the educational machinery in American government. The creation of this office seems to have been taken from the Prussian system of government which was founded upon the principle "that every State needs a separate officer of Public Instruction, and that there should be nothing to divert the attention of that officer who has the general supervision of the peoples' education". New York provided for this official in 1812, by appointing a "Superintendent of common schools". After nine years, however, New York abolished the office, and no such office existed there until 1854, when the office of Superintendent of Public Instruction was created. The Superintendent of Public Instruction was succeeded by an appointed Commission of Education in 1904. The first State to maintain continuously such a State official was Michigan, which created the office of Superintendent of Common Schools in 1829. In 1836 the title was changed to Superintendent of Public Instruction, and as such has remained to the present time. Iowa was the twelfth State to establish the office, creating it in 1841. The eleven States which

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established this office previous to Iowa were: (1) New York, 1812; (2) Maryland, 1826; (3) Michigan, 1829; (4) Louisiana, 1833; (5) Pennsylvania, 1834; (6) Tennessee, 1836; (7) Ohio, 1837; (8) Massachusetts, 1837; (9) Kentucky, 1838; (10) Connecticut, 1838; (11) Missouri, 1839. Iowa was the fourth State to name the officer, "Superintendent of Public Instruction", being preceded by Maryland, Michigan, and Tennessee, respectively.¹

Education had its beginnings in what later became the Territory of Iowa as early as 1830. From October to December of that year Berryman Jennings taught the first school in what is now Galland, in Lee County.² The first schools were for the most part private institutions, conducted by some person who undertook the instruction of such pupils as were sent to his school, receiving his compensation usually in kind from the parents and others who believed sufficiently in schools to subscribe to their support. Though the people were under the administration of the Michigan Territorial law of June 28, 1834, they took little heed of the school laws. Schoolhouses were built and schools were conducted, but were apparently without supervision. No apparent change was made in the status of schools in the Iowa country from July 3, 1836, when it was attached to the Wisconsin Territory, to July 4, 1838, when the Iowa Territorial government was organized. Following the organization of Iowa Territory successive changes took place in school administration.³

¹ *Biennial Report of the Superintendent of Public Instruction*, 1850, p. 55; Cubberley's *Public School Administration*, pp. 27-29; Reeder's *The Chief State School Official* (Bureau of Education, Bulletin No. 5, 1924), pp. 10, 17, 18; Kalbach and Neal's *Organization of State Departments of Education* (Bureau of Education, Bulletin No. 46, 1920), p. 23.

² *Iowa Normal Monthly*, Vol. XII, pp. 267-270.

³ *Iowa Official Register*, 1923-1924, p. 17; Organic Law of Wisconsin, Organic Law of Iowa, as found in the *Code of 1851*, pp. 516, 524; *Iowa Normal*

The history of Iowa school administration has been one of development in both local and central authorities. The chief powers of school government are, and have always been, in the hands of local school officers. The central authority has, however, exercised a great influence and that influence has been exercised through channels of effective control. There have been significant additions of power to the central school administration in the State. These gains in authority have not usually been at the expense of the local agencies, but have come rather from the development of new functions. When new functions have been suggested to the legislature the tendency has been for that body to confer them upon the State rather than upon the local agencies. This tendency is revealed clearly in later sections of this study.

The relation of the central authority to the schools began soon after the organization of the Territorial government. Interest was shown in the schools from the first by the central government. Governor Lucas, in addressing the First Legislative Assembly of Iowa Territory, sought to promote the interests of the schools by encouraging adoption of a system of general education. He said, "There is no subject to which I wish to call your attention more emphatically, than the subject of establishing, at the commencement of our political existence, a well digested system of common schools". This recommendation seems to have been somewhat in advance of the times. It appears that the avowed purpose which Governor Lucas had in mind was to encourage immigration to Iowa. He is alleged to have said, "it was still necessary to inaugurate a system, and upon a proper (township) basis, and *especially so as to inform our eastern friends* that we meant to start out right

Monthly, Vol. XII, pp. 267-270; Aurner's *History of Education in Iowa*, Vol. I, pp. 3-5.

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and build up a good system as fast as the population and wealth of the territory would warrant."⁴

Though there was apparently little need of a school system, the Legislative Assembly enacted an elaborate law for a system of school officers and school organization. The law enacted at the first session made no provision for central or county control. It instituted a system of local decentralization. Districts were organized. At the head of the district organization was a board of trustees, consisting of three members who were to superintend the schools within their respective districts, to examine and employ teachers, and to lease all land belonging to the district. Although there was little or no limit to their authority, they were required to report to the county commissioners.⁵

The law of 1838 was not very satisfactory. On January 3, 1839, a resolution was adopted in the House of Representatives authorizing the appointment of a special committee to collect information relative to the amount and mode of instruction and the cost and plan of organization of a system of public schools. Although it does not appear that the committee as a whole ever submitted a formal report, the fact that its chairman, Governor Lucas, made a definite recommendation at the opening of the next Legislative Assembly in November, 1839, and that the bill proposed later received such unanimous approval seems to warrant the conclusion that careful consideration had been given to the instructions of the legislature. Referring to the subject in his second annual message, Governor Lucas observed that "the act passed at the last session, is too limited in its provisions to serve as a foundation for a well

⁴ Shambaugh's *The Messages and Proclamations of the Governors of Iowa*, Vol. I, p. 78; Macy's *Institutional Beginnings in a Western State* in *Johns Hopkins University Studies in Historical and Political Science*, Vol. II, pp. 366, 367.

⁵ *Laws of the Territory of Iowa, 1838-1839*, p. 181.

regulated system. I would therefore, recommend its revision, and call your attention to the school law of the State of Michigan, as worthy your attention, and from which useful information may be obtained."⁶

Acting as it appears in accordance with the Governor's recommendations, the Legislative Assembly of 1839-1840 took over the Michigan School Law of 1838, adopting it section by section. So closely did the Legislative Assembly follow the Michigan law that in many instances the title, Superintendent of Public Instruction, appeared in the Iowa law as adopted. In Michigan this officer had been provided for in the Constitution, but no provision had been made for such official in the government of the Territory of Iowa. Yet, with the adoption of the new law, the Superintendent of Public Instruction was mentioned in several instances.⁷

By the act of January 16, 1840, a complete change was brought about. The establishment of districts became a township function, and township school inspectors were provided for to whom were transferred several of the more important functions previously enjoyed by the district school directors. The township inspectors had such administrative and supervisory functions to perform as organizing districts, handling school money, apportioning school and library money, examining teachers, and visiting and supervising schools. The powers vested in the township school inspectors were, in part, original to the office, and in a slight measure conferred at the expense of the county commissioners, and in a large measure at the expense of the school districts and the school directors. The district officials were: a moderator, a director, and an assessor. These officials constituted the district board. Each of these

⁶ *Journal of the House of Representatives, 1838-1839*, p. 171; Shambaugh's *The Messages and Proclamations of the Governors of Iowa*, Vol. I, pp. 99, 100.

⁷ *Aurner's History of Education in Iowa*, Vol. II, Appendix A.

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officials had individual duties to perform, designated in each case by the title of the individual office. As a board they were to levy assessments, equalize assessments, provide a school house and site, and employ teachers.⁸

The creation of the office of a township school inspector was of considerable significance for it meant that the school system was not destined to local autonomy, but that a way was to be left open for what might develop into a degree either of semi-local or State administration. This eventually led to the former, that of county administration. From 1840 to 1847 the township inspector was permitted to function more or less as an autocrat in his field. He was under no supervision save that of the Territorial legislature.⁹

It was not until January 13, 1841, that the office of Superintendent of Public Instruction was created in Iowa. It was then provided that the Superintendent of Public Instruction should be appointed by the Governor "by and with the advice and consent of the Council". His term of office was made three years and his salary two hundred and fifty dollars per year. The powers of the Superintendent of Public Instruction were few. The principal function assigned to him appears to have been the care and disposition of the school fund, a fund that was practically nonexistent at that time. The Superintendent of Public Instruction was also to issue instructions for the organization and government of the public schools, prepare forms for school officials and report to the Legislative Assembly. In the hands of the first Superintendent of Public Instruction these weak powers were used to advantage and the schools began to make progress.¹⁰

⁸ *Laws of the Territory of Iowa, 1839-1840, Ch. 73.*

⁹ *Laws of the Territory of Iowa, 1839-1840, Ch. 73; Laws of Iowa, 1846-1847, Ch. 99, Secs. 8 ff.*

¹⁰ *Laws of the Territory of Iowa, 1840-1841, Ch. 46; Report of the Superin-*

The work needed at this time was organization of the school districts and instruction in and interpretation of the school laws. In many places school districts had failed of organization, in many townships school inspectors had not been elected, all because the law was not known to exist, or if known, not understood. Moreover, the district officers, from want of proper means of knowing its objects, failed to make their reports, upon which all others were to be founded. All this had a significant effect upon the permanence of the office of Superintendent of Public Instruction.

Though there was considerable optimism felt for the system of public instruction, some friends of the system felt anxious about the office of Superintendent of Public Instruction. Assistance was desired for the remedying of the defects in the carrying to completion school organization, and authority was asked to carry the work forward. A committee in the Council urgently advocated a continuation of at least the existing organization, but the House Committee on Public Instruction deemed the office of Superintendent of Public Instruction "unnecessary" and recommended that it should be abolished. From the report it would appear that the salary of two hundred and fifty dollars per year paid the Superintendent of Public Instruction was deemed an extravagance. The office was thereupon abolished.¹¹

Following the session of 1841-1842 the clerks of the board of county commissioners in the several organized counties were required to make annual reports of data filed with

tendent of Public Instruction, as found in the Journal of the Council, 1841-1842, pp. 278-288.

¹¹ *Report of the Superintendent of Public Instruction, 1841-1842, as found in the Journal of the Council, 1841-1842, p. 81; Journal of the Council, 1841-1842, Appendix, pp. 291-293; Journal of the House of Representatives, 1841-1842, pp. 132, 280; Shambaugh's The Messages and Proclamations of the Governors of Iowa, Vol. I, p. 256.*

them by the township school inspectors to the Legislative Assembly. With no responsible central authority to whom these county officers were accountable, it was quite certain that information relative to general school administration and supervision would be neglected. Such was the status of school legislation relative to central administration up to the establishment of the State of Iowa.¹²

The effect of the adoption of such policy was not so much that of decentralization as it was of demoralization. The greatest harm that resulted was the check it gave to school organization. At a time when every effort should have been made to direct the work of organization, the central school official, who was to act as director of organization, was removed. The results of this were felt throughout the entire school system, and in message after message the common complaint of the Governors was that, because of inattention of school officers, the permissive character of the laws, or the failure to understand them, it was "mortifying to see how little interest the important subject of education" excited. The later Territorial Governors, apparently giving up in disgust, failed to mention the subject of education in their messages. The legislature, however, began to acquire interest in the matter, and by the time the State was being organized the framers of the Constitution were willing to make provision for the State superintendency.¹³

With the adoption of the Constitution of 1846 and the admission of Iowa into the Union, the office of State Superin-

¹² *Laws of the Territory of Iowa, 1841-1842*, p. 93.

¹³ Shambaugh's *The Messages and Proclamations of the Governors of Iowa*, Vol. I, pp. 256, 266, 275; *Journal of the House of Representatives, 1845*, pp. 23, 57, 71, 96, 149, 157, 188, 194, 197, 200, 208, 216; *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1844*, pp. 27, 164, 166, 168, 200; *Journal of the Convention for the Formation of a Constitution for the State of Iowa, 1846*, pp. xv, 30, 46, 49, 50, 51.

tendent of Public Instruction was reëstablished. This time it was by provision of the fundamental law stating that "The General Assembly shall provide for the election, by the people, of a Superintendent of Public Instruction, who shall hold his office for three years, and whose duties shall be prescribed by law". The policies in education and the handling of school lands were to be determined by the legislature, but practically all administration of these policies was to be left with the Superintendent of Public Instruction. It seems very probable that the framers of the Constitution of 1846 intended the Superintendent of Public Instruction to function primarily in the field of fundamental educational principles rather than to function as a financial agent. The Constitution of 1846 looked toward a general supervision not only of primary schools but of the State University, of colleges, high schools, academies, and all other schools, public and private. The principle upon which this single function was based was that the State needed a separate officer of public instruction and there should be nothing to divert his attention. His whole time should be given over to the educational interests of the State. The field laid out was conceived by the framers of the Constitution to be "sufficiently responsible and arduous; sufficiently vast and comprehensive in all its bearings to engage every moment of his time and consideration; to employ the entire thought and labor of one man, in devising the means" of perfecting the educational system of the State.¹⁴

The First General Assembly of the State of Iowa convened at Iowa City, on November 30, 1846. Its first act, approved on December 14th, was to provide for the school fund.

¹⁴ *Journal of the Convention for the Formation of a Constitution for the State of Iowa*, 1846, p. xv; Shambaugh's *Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846*, pp. 139, 140; *Biennial Report of the Superintendent of Public Instruction*, 1850, pp. 55-57.

Another act, entitled "Common Schools", approved on January 24, 1847, declared in its title that it was to be supplemental and amendatory to that of January 16, 1840, and provided in detail for the organization of the office of Superintendent of Public Instruction and for a new body of school officers called county school fund commissioners. It abolished the township board of three inspectors, substituting therefor one inspector, and a district board of directors. The board of directors was required to provide schools, elect teachers, provide rules and regulations for the government of the schools, and take the school census. The inspector was financial agent, organizer, examiner, and supervisor for the schools within his township. These manifold duties were to be performed without any guiding legislation. Each inspector was somewhat of a law unto himself. He was required to report to the county school fund commissioner. The county school fund commissioner was provided primarily for the handling and management of local school funds and school lands. And until the discontinuance of the office of school inspector in 1849, when the functions of that office were in a large measure conferred upon him, the county school fund commissioner was little more than a financial administrator. The financial functions of the Superintendent of Public Instruction were quite as pronounced as those of the county school fund commissioner. So he might well have been called State school fund commissioner.

Theoretically the relation of the school fund commissioner and that of the Superintendent of Public Instruction was that of agent and director. The act of January 24, 1847, in theory at least, provided for a centralized school system. Practically, however, the new statute confused the duties of the various school officials in a manner not at all conducive to the rapid development of a work-

ing school system.¹⁵ So pronounced was the confusion of the duties of the Superintendent of Public Instruction and those of the school fund commissioners that legislative interference became imperative.¹⁶

Apparently the legislature had deserted the cause for which the office of Superintendent of Public Instruction was established. The Constitutional Convention of 1846 had sought primarily to establish a State educational officer, while the legislature provided largely for a financial officer. The successive Superintendents of Public Instruction protested against the system of administering the school funds, and against the continuance of their financial functions, as giving them little time for proper attention to other school duties. With the enactment of a new school law, on January 15, 1849, the duties of the Superintendent of Public Instruction virtually swamped the office. At that time his duties were as follows: to receive and file all papers, reports, and public documents; to supervise and see that the school system was put into operation as early as practicable; to visit every county at least once during his term of office; to confer with school officers and give advice to them; to examine and recommend text-books; to prepare, have printed, and transmit suitable forms for reports; to make all rules and regulations for carrying the school law into effect; to conduct the official correspondence; to deliver

¹⁵ *Laws of Iowa*, 1846-1847, Chs. 99, 111, 1848-1849, Ch. 80, Secs. 43-75.

¹⁶ As a single illustration, the Superintendent of Public Instruction was designated as the proper authority for the receipt of the five per cent school fund, and though he was enjoined to apportion it to the counties immediately, and not to allow it to remain in his hands, he did not always do this. The endeavor on the part of one Superintendent of Public Instruction to loan the fund for his own benefit was perhaps instrumental in putting an end to the system. Also, in some cases the proceeds of the county school taxes had been loaned. To correct the results of this misunderstanding the Superintendent of Public Instruction was empowered in all such cases to order that the moneys be refunded.—*Laws of Iowa*, 1848-1849, Ch. 59.

a public lecture to the teachers and people of each school district; to organize the university and normal schools, and control the branch of the university at Dubuque; to perform generally such duties as may tend to advance the interests of education, and to make a report to the General Assembly at each regular session. These were intended as school functions. They were performed without the aid of a deputy and perhaps with little clerical assistance. Furthermore the Superintendent of Public Instruction must make selection and sale of school lands, apportion the school fund, make adjustment of land titles, perform duties in the investment of school funds, and make periodical examination of the accounts of the school fund commissioners.¹⁷

This situation in school legislation did not go unchallenged. Not only were the school officials dissatisfied with the school law, but the Governor, also, and the legislature as well were highly dissatisfied and sought to get the school law simplified and based solely on the fundamentals of education.¹⁸

¹⁷ *Laws of Iowa*, 1846-1847, Ch. 99; Constitution of Iowa, 1846, Art. X, Sec. 1, as found in *Laws of Iowa*, 1846; *Laws of Iowa*, 1848-1849, Chs. 59, 70, 78, 80, 115, 117, 121, 123; *Biennial Report of the Superintendent of Public Instruction*, 1850, p. 55; *Journal of the Senate*, 1849, p. 324.

¹⁸ Referring to this matter of revision of the school law Governor Grimes, in addressing the extra session of the General Assembly, on July 3, 1856, observed that it "is to be regretted that the joint resolutions, passed by the House of Representatives, at each of its two last sessions . . . failed to receive the approval of the Senate. No one, who gives the subject a moment's consideration, can doubt the necessity for a thorough revision of the whole subject. With a large and constantly increasing school fund, our school system is without unity and efficiency, and is, in my conviction, discreditable to the State. It reaches so many interests, it runs into so many details, and it is so important in its influences, that it seems to me impossible for the General Assembly to perfect the necessary amendments and reduce them to a harmonious system, in the limited period of fifty days—and I, therefore, recommend that three competent persons be selected to revise all the laws on the subject, and submit their revision to the next General Assembly." In accordance with an act passed on July 14, 1856, meeting this request, Governor

Out of this dissatisfaction came the most constructive school legislation in the history of school administration in Iowa. In 1856, a "Commission for the Revision of the School Laws" made a report pointing out many suggestions for betterment. This Commission in taking up the problem of organizing an adequate school system for the State observed: "Here, for the first time, a great State . . . demands a system of public instruction adequate to the full development of its great physical resources, and of the intellect and moral power of its people. Such a system can only result from organization so perfectly constituted as never to conflict with each other; so harmonious in action as ever to furnish mutual aids; and so entire and complete as that one spirit shall pervade the whole." The Commissioners based their report for their proposed school system chiefly on the following principles: "(1) That every youth in Iowa is entitled to receive an education in the elements of knowledge; that every one desiring it is entitled to have facilities afforded for a further progress; and that those originally endowed with large capacities should be stimulated to improve them by the cheering prospect of having their education furnished as a reward of their merit, scholarship, and good behavior, provided that the State might thereafter secure to itself the benefit of their services. (2) That education, to be successful, must become a distinct and separate pursuit and business, having its own laws and principles; its own means and agencies; its own pervading spirit. That the human mind, although a living, spiritual organization, possessing inherent active tendencies, re-

Grimes appointed Horace Mann, of Ohio; Amos Dean, President of the State University of Iowa; and F. E. Bissell, of Dubuque, to serve on such committee.—Shambaugh's *The Messages and Proclamations of the Governors of Iowa*, Vol. II, pp. 19, 20; *Report of the Commissioners of Revision of the School Laws*, 1856, pp. 3, 12; Aurner's *History of Education in Iowa*, Vol. I, p. 30.

quires, nevertheless, to be tutored and trained in accordance with method and system, to produce the full and complete development of all its powers and capacities. (3) That as property, material wealth, owes its existence to mind, it ought, in return, to furnish adequate means by which the intellect and moral power of the State can be brought out and developed in all their varieties of application. (4) That to complete a perfect system of education, three elements are necessary. These are the organizing, the financial, and the educational. The first two mentioned are only important as they affect the last, and the first is wholly expended in the advancement of the other two."

The Commissioners were desirous "of making a liberal provision for adequate common school instruction." They "organized the district, the county, the State, and the special organizations." The most salient recommendations made were those for a county superintendent of schools, for free schools, and a township district system. The first two of these measures were realized within two years. The township district system was not adopted, as recommended, but was modified, making the original school districts sub-districts of the larger township unit. A single director was elected in each of the sub-districts and these constituted the township board.¹⁹

With the adoption of the Constitution of 1857 a reorganization of the school system resulted. The Constitution of 1857 provided that "the financial agents of the school fund shall be the same that, by law, receive and control the State and County revenue, for other civil purposes, under such regulations as may be provided by law." Thus the educational function was permanently separated from the financial administration of schools. Furthermore the educa-

¹⁹ *Report of the Commissioners of the School Laws, 1856; Laws of Iowa, 1858, Ch. 52.*

tional interests were to undergo another change. A new organ of government, called the State Board of Education, was created. This body was a separate and distinct legislature for educational matters. The State Board of Education took over the educational functions of the State, established the office of Secretary of the Board of Education, clothed him with the functions performed by the State Superintendent of Public Instruction, and abolished the office of Superintendent of Public Instruction.²⁰

The State Board of Education was composed of the Lieutenant Governor, who was the presiding officer, one member elected from each of the eleven existing judicial districts in the State, and the Governor who was an *ex officio* member.²¹ The sessions of the Board of Education were to be held annually and were not to continue longer than twenty days. The Governor was authorized to call special sessions. The Board of Education was given "full power and authority to legislate and make all needful rules and regulations in relation to Common Schools, and other educational institutions, that are instituted, to receive aid from the School or University fund of this State; but all acts, rules, and regulations of said Board may be altered, amended, or repealed by the General Assembly; and when so altered, amended, or repealed they shall not be re-en-

²⁰ Constitution of Iowa, 1857, Art. IX; *Acts, Resolutions and Forms Adopted by the State Board of Education*, First Session, 1858, Act No. 9, as found in the *Journal of the Board of Education*.

²¹ Constitution of Iowa, 1857, Art. IX, Sec. 1. In the original report made to the Convention of 1857, in which the board was projected, provision was made for a Chancellor "who should have jurisdiction over all questions that may arise under the laws, rules, and regulations of the board, and from all decisions and judgments of said Chancellor, an appeal may be taken to the Supreme Court". But on February 27, 1857, motion was made by Mr. Hall of the Committee on Education and School Lands to strike out the section providing for the Chancellor. The motion was put and agreed to.—*The Debates of the Constitutional Convention of the State of Iowa*, Vol. I, p. 78, Vol. II, p. 837.

acted by the Board of Education." The Board did not, however, have the power "to levy taxes, or make appropriations of money."²²

The Board of Education was experimental and temporary.²³ So a way was left open for retreat. It was provided that after 1863 the General Assembly should have the power to abolish or reorganize the Board of Education, and "provide for the educational interest of the State in any other manner that to them shall seem best and proper."²⁴

The purpose of establishing the Board of Education, as stated by J. C. Hall of the Committee on Education and School Lands in presenting the Committee's majority report, was to take education entirely out of the power of the General Assembly, and to put it "in the hands of another body, who will better represent the interests of the people". Furthermore, he said, "I am for putting it into the hands of a body that shall have no control over the funds, and which cannot possibly be influenced by party considerations. . . . and their whole and individual attention will be given to the benefit and improvement of the educational interests of the State."²⁵

Though the ambitions and efforts of the framers of the Constitution were praiseworthy, the results of their labors were not to be lasting. The Board of Education was hardly organized before conflicts arose between that organization and the General Assembly. The Board of Education en-

²² Constitution of Iowa, 1857, Art. IX.

²³ It was recognized by members of the Constitutional Convention that imagination or pure reason, and not precedents were the fabrics from which the new creation was made, and that the experiment might fail. One of the members of the Convention referred to it as a "new-fangled scheme".— *The Debates of the Constitutional Convention of the State of Iowa*, 1857, Vol. II, p. 943.

²⁴ Constitution of Iowa, 1857, Art. IX.

²⁵ *The Debates of the Constitutional Convention of the State of Iowa*, 1857, Vol. II, p. 751.

joyed administrative centralization to the limit. It exercised judicial, executive, and legislative powers. The fact that the Board of Education exercised judicial powers subjected it to the ire of the courts should it trespass upon their jurisdiction. And the executive and legislative powers were both subservient to those of the legislature, for that body could overrule, amend, or repeal the acts of the Board of Education. Moreover, the Board of Education was dependent upon the support of the legislature for appropriations and for support by taxation.

The legislative power of the Board of Education was soon exercised. In 1858 it provided a new school law which took the place of the unconstitutional act of the Seventh General Assembly. Features pertinent to school administration were the provision for the hearing of cases of appeal, and the provision for the State Board of Educational Examiners. Both of these were later destined to be of considerable interest in subsequent school administration.

The Board of Education was not itself an executive body, but through its Secretary the Board might execute its will, for according to provision of the Constitution this officer was to "perform such duties as may be imposed upon him by the Board, and laws of the State." Furthermore, the Board gave the Secretary a large ordinance making power by providing that "The Secretary of the Board of Education may make all needful rules and regulations to give efficiency" to the school law. It was also provided that he should make regulations fixing the powers and duties of any subordinate officer or board, when their duties were not sufficiently defined.²⁶

The Board of Education conferred judicial authority

²⁶ *Educational Laws of the State of Iowa*, passed by the Board of Education, December 24, 1859, Pts. VIII, XIII, XIV, as found in the *Journal of the Board of Education*; Constitution of Iowa, 1857, Art. IX.

upon its executive agent by providing that "An appeal may be taken from the decision of the County Superintendent to the Secretary of the Board of Education And the decision, when made, shall be final." Disputes involving "judgment for money" were, however, left to the courts.²⁷

With the exercise of such a broad scope of powers as have been briefly indicated, and with the Board of Education almost entirely dependent upon the legislature for approval, it is not difficult to understand that friction and discord with the other departments of the government might result from the Board's actions. Such was the case, for the General Assembly was especially jealous of the Board of Education. Neither was there always complete harmony among the members of the Board itself. Furthermore, many believed that the Board was no longer needed and should be abolished.²⁸

By an act approved on March 19, 1864, the Tenth General Assembly abolished the Board of Education and established the office of Superintendent of Public Instruction. The chief functions given to the Superintendent of Public Instruction were: the keeping of records; general supervision of all county superintendents, and all the common schools of the State; recommendation of text-books; publication and distribution of the school law and school blanks; hearing of appeals; giving of opinions; and reporting to the General Assembly.²⁹ The General Assembly had re-

²⁷ *Educational Laws of the State of Iowa*, passed by the Board of Education, December 24, 1859, Pt. XIII, as found in the *Journal of the Board of Education*.

²⁸ *Proceedings of the Pioneer Lawmakers' Association of Iowa*, 1898, p. 75; *Report of Thomas H. Benton*, pp. 3, 4, 7, in the *Iowa Legislative Documents*, 1864, Vol. I; Shambaugh's *The Messages and Proclamations of the Governors of Iowa*, Vol. III, pp. 7, 8.

²⁹ *Laws of Iowa*, 1864, Ch. 52.

gained the control of the schools and apparently was satisfied to allow them to care for themselves for a time. The intended development of the integrated township system was checked and local decentralization gained favor. The powers of the Superintendent of Public Instruction, though similar to those exercised by the Secretary of the Board of Education, were not commensurate with them.³⁰

On the whole, until the year 1870, the General Assembly appears to have been indifferent to matters of education. In that year a new interest began in education and since 1870 there has been a continuous growth in the county and State agencies administering education, especially the latter. The accessions of new powers by the State Superintendent of Public Instruction have kept pace with those of the other State agencies. Though the increase in the administrative factors has been great, it has not kept up with the growing needs of the Department of Public Instruction nor with the needs of education in general.

The most important accessions to the power of the Superintendent of Public Instruction during the period 1870 to 1929 which add greatly to his administrative control have been in the nature of financial powers. Thus the Superintendent of Public Instruction exercises control over standardized schools, mining camp schools, normal training high schools, and consolidated schools. A notable exception to the gaining of administrative control through the grant of financial powers is the recent (1927) grant to the Superintendent of Public Instruction of direction and supervision of junior colleges. The Superintendent of Public Instruction also exercises influence in Vocational Education Service and Rehabilitation Service provided by

³⁰ *Educational Laws of the State of Iowa*, passed by the Board of Education at its first and second sessions, Pts. VIII, XIII, XIV, as found in the *Journal of the Board of Education; Laws of Iowa*, 1864, Ch. 52.

Some of the chief duties of these inspectors are as follows: (1) visiting the public schools of the State; (2) checking up the equipment of these schools; (3) examining their courses of study and their records; (4) preparing courses of study suited to the needs of these schools; (5) visiting the classroom work of the teachers employed there; (6) conferring with the superintendents and teachers; (7) providing standards; (8) issuing bulletins and manuals; (9) answering correspondence; (10) holding individual conferences with superintendents and members of the boards of education; (11) advising with and assisting school boards in maintaining the types of schools justified by local conditions; and (12) collecting information and compiling statistics.³⁵

The work of examination and certification of teachers can hardly be said to be a single united function. Furthermore, it is not exclusively the work of the Department of Public Instruction. Through the inspector of the normal training high schools the Superintendent of Public Instruction has charge of the normal training high school graduates desiring to teach. But the greater part of the work of examination and certification of teachers in Iowa, that of examination for and the granting of State and county certificates, is performed by the State Board of Educational Examiners. The Superintendent of Public Instruction is, however, president and executive officer of the Board of Educational Examiners. So the work of examination and certification is carried on largely in connection with the Department of Public Instruction and under the direction of the Superintendent of Public Instruction. In addition to this work of examination and certification of teachers, the Chief Clerk of the Department of Public Instruction

³⁵ *Biennial Report of the Superintendent of Public Instruction, 1920-1922*, pp. 64, 65.

handles all the work of the department dealing with the administration of county examinations.³⁶

The work concerning vocational education and civilian rehabilitation is carried out under the direction of the Board for Vocational Education. The relation of this service to the Department of Public Instruction is both personal and functional. The Superintendent of Public Instruction is, by virtue of his office, chairman of the Board for Vocational Education and as such assists in administering the Civilian Rehabilitation Service. As chairman of this Board the Superintendent of Public Instruction, with the approval of the Board for Vocational Education, appoints such assistants as may be necessary to carry on the provisions of the Federal and State acts for vocational education and rehabilitation service. Also the reports of these services are made by the Director for Vocational Education through the Department of Public Instruction.³⁷

The Legal Division of the Department of Public Instruction.—The work of the legal division includes the hearing of appeals, the making of decisions thereon, and the giving of written advisory opinions to school officers on questions of law. The Deputy Superintendent of Public Instruction has charge of the work of the legal division, but the work of hearing appeals and making decisions must be handled by the Superintendent of Public Instruction personally. His deputy can neither represent him nor take his place.³⁸

³⁶ *Code of 1927*, Secs. 3832, 3858, 3861, 3863, 3910; *Biennial Report of the Superintendent of Public Instruction*, 1920-1922, p. 31, 1926-1928, pp. 17-20.

³⁷ *Code of 1927*, Secs. 3852, 3853, 3854; *Outlines of Plans for Vocational Education and Civilian Rehabilitation in the State of Iowa*, 1923-1927, p. 3; *Biennial Report of the Superintendent of Public Instruction*, 1926-1928, pp. 20, 21.

³⁸ *Abrams v. Ervin*, 9 Iowa 87, 90; *Biennial Report of the Superintendent of Public Instruction*, 1920-1922, pp. 40-46, 1926-1928, p. 6.

Professional Qualifications.—Iowa legislators prior to 1913 had no thought that the State Superintendent of Public Instruction ought to have special qualifications and training for the service he was to perform; professional qualifications were not required. The Iowa Educational Commission in 1908 recommended that the Superintendent of Public Instruction should be the holder of an “unlimited state certificate”. But it was largely due to the agitation of the Better Schools Commission that the Thirty-fifth General Assembly in 1913 provided that the Superintendent of Public Instruction should 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.” The professional qualifications required at the present time are the same as those provided by the Thirty-fifth General Assembly.³⁹

Political Qualifications.—Legal qualifications for the office of Superintendent of Public Instruction have been required since the time of the first Territorial provision for the office. The Superintendent of Public Instruction at that time was required to give a bond of two thousand dollars. In the establishment of the office under the first State Constitution the bond was made twenty-five thousand dollars. The reason for such a large bond was no doubt due to the fact that the duties of the Superintendent of Public Instruction were largely financial. This bond requirement remained effective until the abolition of the office of Superintendent of Public Instruction in 1858. With the reestablishment of the office in 1864, the bond requirement was

³⁹ *Laws of Iowa*, 1913, Ch. 103; *Report of the Iowa Educational Commission*, 1908, p. 7; *Biennial Report of the Superintendent of Public Instruction*, 1912-1914, pp. 87-97; *Proceedings of the Fifty-eighth Annual Session of the Iowa State Teachers Association*, pp. 78-80.

lowered to two thousand dollars. This was probably due to the fact that almost all the financial responsibilities previously borne by the Superintendent of Public Instruction had been transferred to the State's financial officers. This bond requirement remains the same to date, though the financial responsibilities of the Superintendent of Public Instruction since that time have considerably increased. The Superintendent of Public Instruction must take an oath to support the Constitutions of the United States and of the State of Iowa, and to perform the duties of his office faithfully and impartially as required by law. He must be twenty-one years of age and a citizen of the State of Iowa.

The process of qualifying for office after election must be completed by noon of the second secular day in January of the first year of the term for which the Superintendent of Public Instruction was elected, unless he is prevented by inclement weather, unavoidable absence, or casualty, in which case an extension of ten days is granted. When the election is contested the successful candidate must complete his qualifications within ten days after the decision of the contest has been rendered.⁴⁰

Selection and Tenure.—The office of Superintendent of Public Instruction as first provided for in the Territorial government was appointive by the Governor for a term of three years. By provision of the Constitution of 1846 the office was made elective for a term of three years, and remained so until its abolition by the Board of Education in 1858. With the restoration of the office in 1864, it was provided that a Superintendent of Public Instruction "shall be elected by the General Assembly to serve until January 1866, and thereafter a Superintendent of Public Instruction

⁴⁰ *Laws of the Territory of Iowa*, 1840-1841, Ch. 46; *Code of 1851*, Secs. 326, 328; *Laws of Iowa*, 1864, Ch. 52, 1913, Ch. 103; *Code of 1873*, Sec. 678; *Code of 1927*, Secs. 526, 540, 544, 655-a1, 1045, 1047, 1048, 1063, 1070, 1073, 1077.

shall be elected by the people every two years." The office remained elective biennially until 1913, when an attempt was made to remove it from politics. In that year it was made appointive for a term of four years. It was provided that the Governor shall "nominate and with the consent of two-thirds of the members of the senate in executive session, appoint a superintendent of public instruction". With but one term's trial of this method of selection the Thirty-seventh General Assembly enacted a law again making the office elective.⁴¹

Candidates for the office of Superintendent of Public Instruction may be nominated by the regular primary, by convention, or by petition signed by five hundred qualified voters of the State. If an individual desires to be nominated as a member of a political party as defined in the Iowa law he must seek nomination at the primary. The law also provides that political organizations which are not political parties may nominate a candidate for this office by convention. If a person desires to run independent of any party organization he may seek nomination by petition.⁴² The law provided that the Superintendent of Public Instruction should "be elected at the general election in (1926) and each fourth year thereafter."⁴³

Compensation.—During the greater part of the time since the establishment of his office, the Superintendent of Public Instruction has received a comparatively small salary. The act creating the office under the Territorial government provided that the Superintendent of Public Instruction should receive two hundred and fifty dollars per

⁴¹ *Laws of the Territory of Iowa*, 1840-1841, Ch. 46; *Code of 1851*, Secs. 239, 240, 1076; *Laws of Iowa*, 1864, Ch. 52, 1913, Ch. 103, 1917, Ch. 318.

⁴² *Code of 1927*, Secs. 528, 529, 655-a1, 655-a17; *Laws of Iowa*, 1925, Ch. 27.

⁴³ *Code of 1927*, Sec. 515.

year.⁴⁴ This amount was raised to twelve hundred dollars with the establishment of the office by the First General Assembly in 1846.⁴⁵ In 1864 the salary of the Superintendent of Public Instruction was raised to \$1300; in 1866 it was raised to \$1500; and in 1870 it was increased to \$2200. The Thirty-fifth General Assembly, in adopting the recommendations of the Better Schools Commission in 1913, provided a salary of \$4000 per annum for the Superintendent of Public Instruction.⁴⁶

In 1868 the General Assembly created the office of Deputy Superintendent of Public Instruction. The compensation allowed the Deputy Superintendent of Public Instruction, like that of the Superintendent, has been subject to many changes. These changes are as follows: in 1870, \$1200; in 1886, \$1500; in 1907, \$1800; in 1913, \$2500; in 1923, \$2700; and in 1927, \$2850.

The General Assembly has from time to time also made additions to the staff of the Department of Public Instruction, involving increased compensation expenditures. These have been as follows: (1) in 1911, an Inspector of Normal Training High Schools at a salary of \$2000 per annum; (2) in 1913, a Chief Clerk at \$1500 per year, and three additional inspectors at \$2000 each; and (3) in 1919, a Director of the Teachers' Placement Bureau, at \$1200.⁴⁷

The present schedule of salaries allowed annually for the staff of the Department of Public Instruction is: (1) Superintendent of Public Instruction, \$4000; (2) Deputy Superintendent, \$2850; (3) each of four inspectors, \$2400; and (4)

⁴⁴ *Laws of the Territory of Iowa*, 1840-1841, Ch. 46.

⁴⁵ *Laws of Iowa*, 1846-1847, Ch. 99.

⁴⁶ *Laws of Iowa*, 1864, Ch. 52, 1866, Ch. 67, 1870, Ch. 112, 1913, Ch. 103, 1927, Ch. 275, p. 258.

⁴⁷ *Laws of Iowa*, 1868, Ch. 115, 1870, Ch. 112, 1886, Ch. 118, 1907, Ch. 2, 1911, Ch. 131, 1913, Ch. 103, 1919, Ch. 298, 1923, Ch. 334, 1927, Ch. 275; *Iowa Official Register*, 1921-1922, p. 150.

Chief Clerk, \$1800. The inspector of normal training schools is paid from the fund provided for normal training schools, and his salary is fixed by the Superintendent of Public Instruction.⁴⁸

Vacancies.—A vacancy in the office of the Superintendent of Public Instruction may occur upon: (1) failure to elect; (2) failure to qualify; (3) termination of residence in the State; (4) resignation; (5) decision of the Polk County District Court declaring the office vacant; (6) conviction of the incumbent of an infamous crime, or of any public offense involving the violation of his oath of office; (7) suspension by the District Court of Polk County; or, (8) upon the death of the incumbent. All cases of vacancies are filled by appointment by the Governor. The succeeding official serves only until the removal of the disqualifications from the regular Superintendent of Public Instruction; or in case of vacancy occurring as the result of resignation, removal from the State, or death, the appointed official serves until the next regular election, and the qualification of the newly elected Superintendent of Public Instruction.⁴⁹

Removal.—The Superintendent of Public Instruction may be removed from office as the result of action brought in the Polk County District Court. Action may be brought because of: (1) wilful or habitual neglect; (2) wilful misconduct or maladministration in office; (3) corruption; (4) extortion; (5) conviction of a felony; and (6) intoxication, or because of having been convicted of being intoxicated.

⁴⁸ *Biennial Report of the Attorney General*, 1925-1926, pp. 128-130; *Iowa Official Register*, 1927-1928, p. 142; *Laws of Iowa*, 1927, Ch. 275, p. 258. The Forty-second General Assembly in making the appropriation for the Department of Public Instruction did not provide for the Director of the Teachers' Placement Bureau.—*Laws of Iowa*, 1927, Ch. 275, p. 258.

⁴⁹ *Code of 1927*, Secs. 1091, 1092, 1107, 1146, 1152, 1155.

Petition for removal may be filed in the office of the Clerk of the Polk County District Court by the Attorney General of the State or by not fewer than twenty-five qualified electors of the State of Iowa.

The petition for removal must be filed in the name of the State of Iowa and the accused shall be named as defendant. When the petition is filed by the qualified electors it must be verified. Upon the filing of a petition, notice of such filing and of the time and place of hearing shall be served upon the accused. The time of hearing shall not be less than ten days nor more than twenty days after completion of the serving of notice. The Superintendent of Public Instruction may then be suspended from office by the Polk County District Court or by the judge thereof during trial. "The proceeding shall be summary in its nature, shall be triable as an equitable action, and may be heard either in vacation or term time." Change of venue may be had by application to the Supreme Court. In such case the Supreme Court will appoint a judge, in place of the regular Polk County District Court judges, to sit in the case. If judgment of removal is rendered by this court, the Governor appoints a successor to fill the vacancy. Appeal to the Supreme Court of the State of Iowa may be had by the defendant, but such appeal and the filing of supersedeas bond shall not operate to stay the proceedings of the District Court, or judge, or restore the defendant Superintendent to office pending appeal.⁵⁰

In addition to providing for the removal of the Superintendent of Public Instruction from office, the General Assembly has also provided that he may be suspended by judicial or court order. A suspension is not, strictly speaking, a removal; it is not even a temporary removal, for the suspended official is still treated as an officer. Although

⁵⁰ *Code of 1927*, Ch. 56.

this is true, suspension of officials may properly be treated, at least in this particular connection, as a phase of removal from office.⁵¹

By the suspension act the Governor is authorized to appoint a commission of three competent accountants to examine and inspect the books, papers, vouchers, moneys, securities, and documents under the control of the Superintendent of Public Instruction. Such accountants are required to make out a full, complete, and specific statement of the transactions of the Superintendent of Public Instruction, with, for, or on behalf of the State, and report the same to the Governor, with such suggestions as they may think proper. If he finds from the examination of the report that sufficient grounds for removal exist, the Governor may lay a copy of the report before the Attorney General, and direct that officer to file petition for removal against the Superintendent of Public Instruction in the Polk County District Court.⁵² Upon the filing of this petition with the clerk of the Polk County District Court, and the presentation of the petition to the judge, the Court or judge may suspend the accused Superintendent of Public Instruction from office. When suspended from office the Superintendent of Public Instruction may not attempt to exercise any of the functions of his office. Revoking of the suspension acts to reinstate the Superintendent in office.⁵³

Staff.—During the early history of the office one of the greatest needs of the Superintendent of Public Instruction seems to have been an adequate staff. It was during this time that the Superintendent of Public Instruction enjoyed real power, but because of the lack of assistance in his office

⁵¹ *Code of 1927*, Ch. 57; *Brown v. Duffus*, 66 Iowa 193, at 199.

⁵² *Code of 1927*, Secs. 1119, 1120, 1122, 1123.

⁵³ *Code of 1927*, Secs. 1092, 1094, 1097.

he was obliged to function in only a limited portion of the educational field, and to neglect other important phases of school administration.⁵⁴

The First General Assembly in making provision for the office of Superintendent of Public Instruction provided the Superintendent with power to appoint a deputy, but the Superintendent of Public Instruction had to pay the deputy out of his own salary. The Twelfth General Assembly in 1868, however, allowed the Superintendent of Public Instruction a deputy.⁵⁵ In 1911 an Inspector of Normal Training High Schools was added to the staff.⁵⁶ And in 1913, the Thirty-fifth General Assembly provided for three additional inspectors of schools: an Inspector of Rural and Consolidated Schools, and two Inspectors of State Graded and High Schools. The Thirty-fifth General Assembly also provided for a Chief Clerk as a member of the staff of the Department of Public Instruction.⁵⁷ In response to the need for teachers brought about by war conditions, the Thirty-eighth General Assembly provided for a Bureau of Teachers' Placement in the Department of Public Instruction and established a Director at the head of this Bureau.⁵⁸ At the present time, the staff of the Department of Public Instruction consists of the Superintendent of Public Instruction, the Deputy Superintendent of Public Instruction, the Chief Clerk, and five inspectors as follows: (1) Inspector of Consolidated Schools, (2) Inspector of Mining Camp Schools, (3) Inspector of Normal Training High Schools,

⁵⁴ Aurner's *History of Education in Iowa*, Vol. II, p. 12.

⁵⁵ *Laws of Iowa*, 1846, p. 133, 1868, Ch. 115.

⁵⁶ *Laws of Iowa*, 1911, Ch. 131.

⁵⁷ *Laws of Iowa*, 1913, Ch. 103; *Biennial Report of the Attorney General*, 1913-1914, pp. 148, 149; *Biennial Report of the Superintendent of Public Instruction*, 1912-1914, p. 1.

⁵⁸ *Laws of Iowa*, 1919, Ch. 298; *Biennial Report of the Superintendent of Public Instruction*, 1918-1920, pp. 84, 85.

(4) Inspector of Graded and High Schools, and (5) Inspector of Rural Schools.⁵⁹

III

THE ADMINISTRATIVE POWERS OF THE
SUPERINTENDENT OF PUBLIC
INSTRUCTION

In exercising the functions of his office the Superintendent of Public Instruction is largely independent of any other educational administrative agency. These functions are numerous and varied in nature. They may be grouped into two classes. First, the Superintendent of Public Instruction has certain mandatory powers and duties, that is, those powers and duties which are imposed upon him by law. As head of a department which has been created by the State legislature, the Superintendent of Public Instruction derives all his authority from that source. Though the scope of his authority is quite clearly worked out by statute, the realm in which he is compelled by law to act seems much less clearly indicated. Whether a certain statute is mandatory or not may be determined only by the courts. It might appear from a reading of the words "shall" and "must" or "may" that the character of his duties would be easily determined, but the word "may" is often construed as meaning "must", or "shall" to mean "may".⁶⁰ Furthermore the courts have held that even where the law imposing a duty upon an officer is not mandatory in form, it will be regarded by them as mandatory where it has been adopted with the idea of affording protection to the individual.

⁵⁹ *Biennial Report of the Superintendent of Public Instruction*, 1926-1928, p. 3; *Biennial Report of the Attorney General*, 1925-1926, pp. 128-130; *Laws of Iowa*, 1927, Ch. 275, p. 258.

⁶⁰ Goodnow's *The Principles of Administrative Law of the United States*, pp. 295, 296; Van der Zee's *Form and Language of Statutes in Iowa*, as found in the *Iowa Applied History Series*, Vol. III, pp. 379, 380.

What an official is empowered to do for a third person shall be done.⁶¹

Among the mandatory duties of the Superintendent of Public Instruction the following may be cited as examples: (1) he shall prepare "and supply questions for the examination of applicants of teachers' certificates and pupils completing the eighth grade in the rural schools", and fix the time for holding such examinations; (2) he shall appoint at least one and not more than two county educational meetings or institutes to be held annually; (3) he shall make such regular reports to the Auditor of the State and the Governor respectively as are prescribed by law; (4) he must submit a comprehensive program of proposed expenditures for mining camp schools to the Executive Council for its approval before money can be spent. This last duty admits of considerable discretionary authority, but it is mandatory in that the report must be made before approval of the Executive Council can be secured.

Secondly, the Superintendent of Public Instruction has authority to exercise certain discretionary powers. These may be referred to as his directory duties. The Superintendent of Public Instruction in executing his discretionary duties is not liable for the way in which he executes them, nor may he be forced by the courts to execute them in any particular manner. Concerning this power the English courts have said: "Discretion is to discern between right and wrong, and therefore whoever hath power to act at discretion is bound by the rule of reason and law."⁶²

It is to this class, that is, to his discretionary duties, that almost all of the duties of the Superintendent of Public

⁶¹ *French v. Edwards*, 13 Wallace (U. S.) 506; *Supervisors v. United States*, 4 Wallace (U. S.) 435, 446, 447.

⁶² Freund's *Cases on Administrative Law*, p. 61; *Bayley v. Ewart*, 52 Iowa 111, 112; *Code of 1927*, Ch. 190; *Laws of Iowa, 1927*, Ch. 275; Goodnow's *The Principles of the Administrative Law of the United States*, pp. 295, 296.

Instruction belong. The courts have held that they "are, and ought to be, slow to interfere with the conduct of public business by public officers; and this is especially true of public business committed to the administration of officers or boards not learned in law, and unaccustomed to the observance of strict, legal formalities. If they manifest good faith, and show substantial compliance with the law prescribing their duties, their acts should be sustained against the hostile attack grounded on technical defects and omissions occasioning no prejudice to public interests."⁶³ Illustrative of the discretionary powers or duties of the Superintendent of Public Instruction are the following: (1) examining and determining appeals; (2) classifying and defining the various schools under his supervision; (3) formulating suitable courses of study; (4) inspection of the various schools of the public school system; (5) prescribing reports, forms, blanks; (6) obtaining and furnishing information so as to assist in securing positions for teachers; (7) designating and approving high schools for normal training work, and approving consolidated and standard schools for State aid; and (8) directing and approving county and town institutes.

This study is not primarily concerned with a technical analysis of each of the many functions and duties of the Superintendent of Public Instruction, nor with the making of a rigid classification of the many detailed duties involved in the administration of the Department of Public Instruction. It aims rather to point out in general the features of the administrative powers involved in the work of the Department, how they are actually carried out, and the general effects upon the public school system. The remaining chapters are therefore given to discussion of these chief administrative powers, that is, the power of appointment,

⁶³ Crawford v. School Township of Beaver, 182 Iowa 1324, 1334.

power of removal, power of direction and supervision, ordinance power, deciding appeals, powers of financial control, and *ex officio* powers.⁶⁴

IV

POWER OF APPOINTMENT

Appointment has been defined as consisting of the "choice by the appointing authority of the person appointed." There can be no appointment to office in the public service without legal authority. For any department of government to exercise the power of appointing its subordinates is in legal theory a distinctive feature of its independence.⁶⁵

The First General Assembly of Iowa conferred the power of appointment upon the Superintendent of Public Instruction by providing that he might appoint a deputy. Since the office of Superintendent of Public Instruction now has a statutory basis, it necessarily follows that the Superintendent of Public Instruction is dependent upon the legislature for his power of appointment. This power may be altered or entirely taken away by that body at any time. The function of appointment has been extended by the General Assembly on several instances by the addition of new divisions to the Department. But since there is no hierarchy of school officers in Iowa, the power of appointment of the Superintendent of Public Instruction is comparatively limited. The Thirty-fourth General Assembly in 1911 created within the Department of Public Instruction the position of Inspector of Normal Training High Schools, and provided that he should be appointed by the Superin-

⁶⁴ *Code of 1927*, Ch. 190, 194, 209, 222, Secs. 4108, 4111, 4112.

⁶⁵ Goodnow's *The Principles of the Administrative Law of the United States*, pp. 37, 38, 253; McQuillin's *A Treatise on the Law of Municipal Corporations*, Vol. II, p. 1004.

tendent of Public Instruction.⁶⁶ In 1913, the Thirty-fifth General Assembly added to the appointive power of the Superintendent of Public Instruction by creating the offices of Chief Clerk and three additional inspectors, which offices were to be organized at the discretion of the Superintendent of Public Instruction. The offices of inspectors now provided are: Inspector of Graded and High Schools, Inspector of Consolidated Schools, Inspector of Rural Schools, Inspector of Mining Camp Schools, and Inspector of Normal Training Schools.⁶⁷ The Thirty-eighth General Assembly empowered the Superintendent of Public Instruction to organize the Teachers' Placement Bureau and establish a Director at its head.

The appointive authority of the Superintendent of Public Instruction within the Department is complete in all cases excepting in case of the Deputy Superintendent of Public Instruction and the Inspector of Mining Camp Schools. In the case of the appointment of the Deputy Superintendent, the Superintendent of Public Instruction must have the approval of the Governor; also the qualifications for the Deputy Superintendent must be the same as those required of the Superintendent of Public Instruction.⁶⁸ In the case of the Inspector of Mining Camp Schools, the Superintendent of Public Instruction must secure special authorization of the Executive Council to make the appointment.⁶⁹

The Superintendent of Public Instruction as executive officer of the State Board for Vocational Education "shall with its approval, appoint such assistants as may be neces-

⁶⁶ *Laws of Iowa*, 1846-1847, p. 133, 1911, Ch. 131.

⁶⁷ *Laws of Iowa*, 1913, Ch. 103, 1927, Ch. 275, p. 258; *Biennial Report of the Superintendent of Public Instruction*, 1926-1928, p. 3; *Biennial Report of the Attorney General*, 1913-1914, p. 149, 1924-1926, pp. 128-130.

⁶⁸ *Code of 1927*, Sec. 3835; *Biennial Report of the Superintendent of Public Instruction*, 1920-1922, p. 66.

⁶⁹ *Iowa Official Register*, 1925-1926, p. 659.

sary". Since this Board serves as the administrative board in charge of civilian rehabilitation, the Superintendent of Public Instruction also appoints the necessary officials to carry out that work, but here again he must have the approval of the Board in making appointments.⁷⁰

V

POWER OF REMOVAL

The removal of a public official is the act of depriving a person of a government office. It may take place at any time within the term for which the official is serving, whether his commission be definite or indefinite. The removal, however, must be within the term for which the person has been chosen. The expiration of a tenure of office is not technically a removal. This method of control over governmental agents does not involve the violation of any constitutional or legal rights; the right to a public office is not a property or a contractual right — indeed, it is not an absolute right of any kind. In fact the right to office is merely a privilege. To be sure, an office holder may have certain rights; he has the legal right, for example, to protect himself against unlawful removal.⁷¹

Although appointive officials are usually subject to removal by impeachment, they have been more effectively controlled by summary removal. In addition to removal by impeachment and summary removal, removal for cause is also common. That is to say, there is another distinct method of removal for cause other than by impeachment; it applies to both elective and appointive officers in Iowa.⁷²

⁷⁰ *Code of 1927*, Secs. 3839, 3852.

⁷¹ *Butler v. Pennsylvania*, 10 Howard (U. S.) 402, pp. 415-417; Ashley's *Removal of Public Officials* in McLaughlin and Hart's *Cyclopedia of American Government*, Vol. III, pp. 177, 178.

⁷² Goodnow's *The Principles of the Administrative Law of the United States*, p. 462; *Code of 1927*, Secs. 1091, 1114.

The subordinate officials of the Department of Public Instruction may be removed by either of two methods, namely: (1) by summary removal, or (2) by removal for cause. On the other hand the General Assembly may abolish any one of the offices within the Department with the incidental result of terminating the official relation of the incumbent.⁷³ Summary removal, that is, removal without cause, or dismissal at the discretion of the Superintendent of Public Instruction may be effected by formal discharge or by the appointment of a successor to the incumbent. This method of removal is based on the principle that the power of removal is incident to the power of appointment and is applicable in case of the subordinate officials of the Department of Public Instruction only because each of the offices is held at the pleasure of the Superintendent of Public Instruction and a definite term is not fixed by law.⁷⁴

The subordinate officials of the Department of Public Instruction may be removed for cause by judicial process as provided for the removal of the Superintendent of Public Instruction and described under the topic of removal in Chapter II. Furthermore, the Governor shall, when of the opinion that the public service requires such action, appoint a commission to examine such officials and, upon return of an unsatisfactory report by this commission, he shall lay a copy of this report before the Executive Council. The Executive Council may use such report as the basis for removal or it may upon the direction of the General Assembly begin investigation proceedings. The Executive Council may remove any one of the subordinate officials of the Department of Public Instruction for the following causes:

⁷³ *Biennial Report of the Attorney General*, 1923-1924, p. 370.

⁷⁴ McQuillin's *A Treatise on the Law of Municipal Corporations*, Vol. II, pp. 1205-1207; *Biennial Report of the Attorney General*, 1909-1910, p. 67; Goodnow's *The Principles of the Administrative Law of the United States*, p. 312; *Code of 1927*, Sec. 3835; *Ex Parte Hennen*, 13 Peters (U. S.) 230-262, at 259.

(1) habitual or wilful neglect of duty, (2) any disability preventing a proper discharge of the duties of his office, (3) gross partiality, (4) oppression, (5) extortion, (6) corruption, (7) wilful misconduct or maladministration in office, (8) conviction of felony, (9) a failure to produce and fully account for all public funds and property in his hands at any inspection or settlement, and (10) becoming ineligible to hold office.⁷⁵

Also in view of the principle that appointive officers without a definite term may be removed by the appointing authority because the power of removal is regarded as incident to the power of appointment, the Superintendent of Public Instruction, it would seem, is authorized to remove those officials appointed by him in the Vocational Education Service.⁷⁶ Thus the Superintendent of Public Instruction is empowered to remove all those subordinate officials serving within his own Department and all those subordinate officials serving in the administration of vocational education.⁷⁷

VI

THE POWERS OF DIRECTION SUPERVISION AND CONTROL

In the administration of the public schools of Iowa almost all duties are performed by officers elected by the people. Only the small group of officials and assistants in the Department of Public Instruction really has direct administrative responsibility. Practically all the public school officials of the State are independent of any effective

⁷⁵ *Biennial Report of the Attorney General, 1923-1924*, pp. 271, 272; *Laws of Iowa, 1921*, Ch. 158; *Code of 1927*, Secs. 1114, 1119, 1122, 1123.

⁷⁶ *McQuillin's A Treatise on the Law of Municipal Corporations*, Vol. II, pp. 1229, 1230.

⁷⁷ *Code of 1927*, Sec. 3839.

direction or supervision from the Department of Public Instruction, except as they obligate themselves in accepting State aid for their schools. The Superintendent of Public Instruction has general power to ascertain "by inspection or otherwise, the conditions, needs, and progress of the schools under the supervision and control of his department", and to "classify and define the various schools under the supervision and control of his department". The powers of the Superintendent of Public Instruction appear to be directory and supervisory more in theory than in practice.⁷⁸ Almost all administrative matters affecting the public schools of the State are performed by local officers who are really quite independent of central supervision; although there is no branch of the public school system over which the Superintendent of Public Instruction has not some influence. The Department of Public Instruction sends to local school officials instructions as to how they should execute the law relative to their schools.⁷⁹ This does not appear to be the result of any change in the responsibility of these local officials, but is due rather to the making of special classifications of their schools and the giving of grants and aids. Thus the Superintendent of Public Instruction is enabled to direct, supervise, and control to some degree almost all the public elementary and secondary schools of the State.

THE DEPARTMENT OF PUBLIC INSTRUCTION

As head of the Department of Public Instruction the Superintendent of Public Instruction may exercise the powers of direction, supervision, and control within the Department apparently in an effective, almost complete and

⁷⁸ *Code of 1927*, Sec. 3832; Bowman's *Problems in the Administration of Iowa*, p. 53.

⁷⁹ Bowman's *Problems in the Administration of Iowa*, pp. 53, 55.

independent manner.⁸⁰ In the work of the Department in connection with the mining camp schools, however, the Superintendent of Public Instruction must coöperate with and act under the advisement of the Executive Council in matters relating to the distribution of funds to these schools.⁸¹ The Superintendent of Public Instruction is enabled to make effective his powers of direction and supervision for he apparently has full power to remove any member of his staff.⁸²

The Deputy Superintendent of Public Instruction and the supervisors and inspectors of the Department of Public Instruction are all under the direction of, and subject to, the supervision of the Superintendent of Public Instruction in carrying out their particular functions. The Department of Public Instruction handles approximately \$500,000 annually, distributing this sum to consolidated schools, normal training schools, mining camp schools, and standardized schools. The distribution of these funds is made upon the basis of reports and statistics compiled by the inspectors or supervisors and approved by the Superintendent of Public Instruction. Moreover, the Superintendent of Public Instruction must approve all bills for the distribution of these funds, the necessary traveling expenses of the inspectors and the salaries of the clerical help. In addition, the Superintendent of Public Instruction edits and writes a large number of bulletins and reports in connection with the work of the Department.⁸³

⁸⁰ *Biennial Report of the Superintendent of Public Instruction, 1920-1922*, p. 12.

⁸¹ *Biennial Report of the Superintendent of Public Instruction, 1920-1922*, p. 66; *Laws of Iowa, 1927*, Ch. 275.

⁸² Patton's *Removal of Public Officials in the Iowa Applied History Series*, Vol. II, p. 394.

⁸³ *Laws of Iowa, 1927*, Ch. 275, p. 258; *Biennial Report of the Superintendent of Public Instruction, 1920-1922*, pp. 12, 13, 46-59, 60-65, 66.

THE COUNTY SUPERINTENDENT AND RURAL SCHOOLS

The Superintendent of Public Instruction makes use of the county superintendents of schools as a means of communication between the Department of Public Instruction and the "various school officers and instructors" of the counties, and in transmitting and delivering "all books, papers, circulars and communications designed for them".⁸⁴

In matters concerning the "standard schools", the Superintendent of Public Instruction has "general supervisory and plenary powers." A standard school is legally defined as "Any school located in a district, other than a city independent or consolidated district, not maintaining a high school, which has complied" with the law governing such schools.⁸⁵ Directions are given to the county superintendents of schools and to the local school officials relative to standard conditions for the certain type of school, involving the schoolhouses, grounds, equipment, heating, lighting, ventilation, seating, water supply, library, fire protection, and teacher requirements. Detailed specifications are made to county superintendents, school officials, and teachers to serve as directions in determining whether a school is ready for standardization, and for guidance in selecting and purchasing materials and supplies together with the general improvement of the school. The Superintendent of Public Instruction may at any time he deems necessary prescribe additional requirements.⁸⁶

⁸⁴ *Code of 1927*, Sec. 4106.

⁸⁵ *Biennial Report of the Attorney General*, 1923-1924, p. 369; *Code of 1927*, Sec. 4329.

⁸⁶ *Code of 1927*, Secs. 4329, 4330; *Biennial Report of the Superintendent of Public Instruction*, 1918-1920, pp. 60, 61. The Superintendent of Public Instruction issues an official rating card to be used by the county superintendent of schools in scoring a school desirous of becoming standardized or for a guide to a standardized school in maintaining or raising its status. The chief features outlined in this score card are: (1) grounds and outbuildings, 120 points; (2) the schoolhouse, 190 points; (3) equipment and care of school-

Each county superintendent of schools is required by law to make an annual report on or before June thirtieth, of the conditions of the standardized schools within his county. Upon the receipt from the county superintendent of schools of a satisfactory report showing that any certain rural school has fulfilled the requirements of a standard school, the Superintendent of Public Instruction issues a requisition upon the State Auditor for the amount due the rural school district entitled to State aid for the past school year. The State Auditor, thereupon, draws a warrant upon the State Treasurer payable to the secretary of the school corporation entitled to State aid. The amount that can be secured by any standard school is six dollars for each pupil who attended the school in question at least six months of the previous year. The Superintendent of Public Instruction is required to furnish a standard school with a "door plate or mark of identification".⁸⁷

The Superintendent of Public Instruction may direct the county superintendents of schools in making reports, both as to the manner of making them and the contents of the reports. He may require that the county superintendents make reports additional to those specified by law concerning standard schools.⁸⁸ Annually, on the last Tuesday in August, the county superintendent of schools in each county is required to make a report upon all the schools within his county. This report is an abstract of the reports made to him by secretaries and treasurers of school corporations,

room, 190 points; (4) library and supplementary readers, 90 points; (5) the teacher and the school, 290 points; and, (6) community and school activities, 120 points. Total 1000 points. To become standardized a rural school must have a rating of 800 points on this score card for the first year, 850 points for the second year, and 900 points for every year thereafter.—*Standardization of Rural Schools*, 1928, pp. 5-8, 9-37.

⁸⁷ *Code of 1927*, Secs. 4331, 4332, 4334, 4335.

⁸⁸ *Code of 1927*, Sec. 4331.

and in addition shows to what extent the requirements of the law for instruction in physiology and hygiene are observed. This report must also show such other matters as the Superintendent of Public Instruction has instructed the county superintendent of schools to include.⁸⁹ It is in respect to the making of reports that the Superintendent of Public Instruction may really exercise his supervisory powers over the county superintendents. Upon failure to report satisfactorily to the Superintendent of Public Instruction, a county superintendent of schools may be made to forfeit the sum of fifty dollars to the county school fund and bear the expense of having a satisfactory report made.⁹⁰

The Superintendent of Public Instruction may also instruct any other officer or person who has any authority or duties in connection with public school affairs, or who now has or has had the custody or control of public school funds or property, to make reports to him. The failure of local officials to make the required report is a misdemeanor and punishable as such.⁹¹

The Superintendent of Public Instruction directs the county superintendent of schools in holding county institutes for the teachers. He appoints at least one and not more than two county teachers' institutes in each county each year, and designates the time and place for holding them. The county superintendent of schools makes out the program and selects the instructors and lecturers, but the program and instructional staff must be approved by the Superintendent of Public Instruction. Any school corporation employing regularly twenty-five or more teachers may hold a teachers' institute separate from that of the regular county institute. In case a school corporation does hold a

⁸⁹ *Code of 1927*, Sec. 4106.

⁹⁰ *Code of 1927*, Sec. 4107.

⁹¹ *Code of 1927*, Sec. 3834.

separate institute for its teachers, the county superintendent must coöperate with the city superintendent in arranging the program and selecting the staff. Arrangements or plans for professional meetings in such districts are, however, subject to the approval of the Superintendent of Public Instruction.⁹²

DIRECTION SUPERVISION AND CONTROL OF THE GRADED AND HIGH SCHOOLS

The general supervision and control of the schools of the State vested in the Department of Public Instruction is not wholly a new responsibility. The Tenth General Assembly in 1864 charged the Superintendent of Public Instruction with the general supervision of all the common schools of the State. It remained, however, for the Thirty-fourth General Assembly and the Thirty-fifth General Assembly to provide the machinery for the constructive supervision and control of the public graded and high schools of the State.⁹³

The Department of Public Instruction defines the term, "graded and high schools", as including all public schools of the State with graded elementary work and with one or more years of high school work. This includes such schools as are approved and those not yet standardized and approved by the Department of Public Instruction. It does not include rural schools, except those that are consolidated, and others that employ more than one teacher.⁹⁴

The chief factor that brings these schools under effective supervision of the Department of Public Instruction is the provision that every school corporation that does not provide a four years' high school course shall pay the tuition

⁹² *Code of 1927*, Secs. 3840, 4108, 4111, 4112.

⁹³ *Laws of Iowa*, 1864, Ch. 52, 1911, Chs. 131, 146, 1913, Chs. 103, 239.

⁹⁴ *Biennial Report of the Superintendent of Public Instruction*, 1916-1918, p. 47.

of its pupils of school age, who have completed the course as approved by the Department of Public Instruction for such corporation, if they choose to attend an approved high school.⁹⁵

The work of inspection and supervision of the graded and high schools of the State consists of work in the office of the Department of Public Instruction and field work which involves more than ten thousand miles of travel annually in visiting schools. This work is in the immediate charge of the Inspector of Graded and High Schools. In performing this work he is under the direction of the Superintendent of Public Instruction. The chief duties of the Inspector of Graded and High Schools in supervising the schools are: (1) visiting the schools of the State, (2) checking up material equipment; (3) examining the course of study and records; (4) visiting classroom work of the teachers; (5) conferring with superintendents, teachers, and boards of education; (6) advising local school authorities relative to the type of school which should be maintained by them; (7) making itemized written reports of the results of inspection and requirements needed by each particular school; (8) preparing and sending out report blanks at the beginning of each school year; (9) examining reports sent to him and making recommendations relative to the same, to each school; (10) providing standards for graded and high schools; (11) preparing courses of study; and (12) issuing bulletins and manuals. About one-half of the time of the Inspector of Graded and High Schools is spent in checking reports, preparing literature and bulletins, answering correspondence, and doing other forms of office work. So that on the average a school can not be inspected more than once every two and one-half years. Usually schools are inspected when applying for approval, but sub-

⁹⁵ *Code of 1927*, Secs. 4275, 4277.

sequent maintenance of that standard is checked largely by the Inspector of Graded and High Schools from reports turned into the Department of Public Instruction.⁹⁶

Schools desiring to be standardized and approved by the Department of Public Instruction, and those desiring to maintain that status must meet reasonable requirements in the way of the following: (1) material equipment, including buildings, fixtures, and grounds; (2) organization; (3) curriculum, consisting of an elementary course of eight years and a high school course of one, two, three or four years, each of which must have a well arranged course of study, well balanced and coördinated; (4) instruction; and (5) spirit. Schools may be approved for one year, two, three, or four years of high school work.⁹⁷

DIRECTION SUPERVISION AND CONTROL OF NORMAL TRAINING HIGH SCHOOLS

The normal training high school was established in Iowa by the Thirty-fourth General Assembly as a local institution for training teachers for rural schools.⁹⁸ The Superintendent of Public Instruction may designate the schools which may take advantage of this provision and establish departments of normal training in their high schools. The Superintendent of Public Instruction is also given discretion in the matter of deciding which schools shall be selected as normal training high schools. It is expected, however, that in deciding which schools shall be selected, the Superintendent of Public Instruction will take into account the usefulness of the high school under consideration in supplying

⁹⁶ *Biennial Report of the Superintendent of Public Instruction, 1920-1922*, pp. 64, 65.

⁹⁷ See *Summary of Standards and Equipment for Approved Graded and High Schools; Biennial Report of the Superintendent of Public Instruction, 1920-1922*, pp. 63, 65.

⁹⁸ *Laws of Iowa, 1911, Ch. 131.*

trained teachers for the rural schools of the community, also the likelihood of the schools in question maintaining the required standards. Using this as a basis, the Superintendent of Public Instruction may discriminate in favor of a consolidated school over a city high school in the same locality, even though the city high school may be better equipped to do the work. Private and denominational schools may also be approved by the Superintendent of Public Instruction for establishing normal training departments, but such schools do not thereby become eligible to receive State aid as is provided for public normal training high schools. Thus four types of schools come under the direction, supervision, and control of the Department of Public Instruction, namely: approved high schools, consolidated schools, and private and denominational schools.⁹⁹ The Superintendent of Public Instruction may approve any of these types of schools with any sized enrollment, but State aid can be secured only in a school maintaining a normal training department and having had a class of ten members the preceding semester. In order that State aid may be secured by an approved, public, normal training high school it must present a satisfactory report to the Superintendent of Public Instruction at the close of each semester. To receive the annual apportionment of State aid the normal training high school must receive the approval of the Department of Public Instruction each year. Upon the receipt of such satisfactory report the Superintendent of Public Instruction must issue a requisition upon the State Auditor for the amount due the school.¹⁰⁰

Public high schools desiring recognition as normal training high schools are instructed to make formal application

⁹⁹ *Code of 1927*, Secs. 3899, 3901.

¹⁰⁰ *Normal Training High Schools in Iowa*, 1925, p. 35; *Code of 1927*, Secs. 3900, 3902, 3903, 3904.

to the Department of Public Instruction for such. Personal inspection by a member of the staff of the Department of Public Instruction is necessary before a normal training department can be established in any approved high school or consolidated high school. The Superintendent of Public Instruction has provided that when any school, designated as a normal training high school, fails to maintain an enrollment of ten students in its normal training department for two consecutive semesters, that school forfeits its recognition as such until it has again been inspected and designated as a normal training high school. No high school is entitled to the privileges of a normal training high school until it has been officially designated as such by the Superintendent of Public Instruction.¹⁰¹

Normal training high schools are personally inspected by the Inspector of Normal Training High Schools, but every act of that official is subject to the supervision of the Superintendent of Public Instruction. The instructions given by the Superintendent of Public Instruction to normal training high schools deal with: (1) general organization; (2) number and qualification of teachers; (3) normal training classes; (4) professional training of normal training students; (5) high school grades, examinations, and certificates; and (6) normal training club work.¹⁰²

Relative to general organization, the Superintendent of Public Instruction designates the standards that must be maintained in the administration of the normal training schools; the conditions of the buildings, laboratories, libraries, and other physical equipment.¹⁰³

In regard to the number and qualifications of teachers

¹⁰¹ *Normal Training High Schools in Iowa*, 1925, pp. 12, 13.

¹⁰² *Normal Training High Schools in Iowa*, 1925, pp. 12, 14, 19, 22, 26, 36.

¹⁰³ *Normal Training High Schools in Iowa*, 1925, pp. 12, 13; *Normal Training High Schools in Iowa*, Circular No. 2, 1928, pp. 9-13.

in normal training schools, the Superintendent of Public Instruction gives instructions relative to the experience, training, and professional qualifications of the superintendent of schools; and the experience, professional qualifications, training, and responsibilities of the normal training critic. The Superintendent of Public Instruction designates the type of work to be taught by the critic teacher, the maximum number of teaching periods daily, the minimum number of free periods daily for conference with the students, the critic teacher's responsibility for criticism, and the manner in which the critic teacher should coöperate with the county superintendent of schools, grade teachers, and normal training students. The Superintendent of Public Instruction also gives instructions regarding the experience, professional qualifications, and training of high school teachers, home economics teachers, agriculture teachers, normal training teachers, music teachers, commercial teachers, physical education teachers, grade teachers, and primary teachers. The Superintendent of Public Instruction likewise specifies that no high school class enrollment in normal training schools should exceed thirty pupils, and that no high school teacher should be required to conduct more than six recitations daily.¹⁰⁴

As to the normal training class, the Superintendent of Public Instruction specifies: (1) that students may be admitted only when having at least an average high school standing; (2) that the enrollment must be filed both in the school and in the Department of Public Instruction; and (3) that applicants for enrollment must be approved by the local superintendent of schools and the normal training critic. After the individual enrollments are approved and signed by these two officials they must be sent to the Department of Public Instruction for final approval and filing

¹⁰⁴ *Normal Training High Schools in Iowa*, 1925, pp. 14-17.

in the Department by the Inspector of Normal Training High Schools. No student may enter the normal training course without permission of the local superintendent of schools, the critic, and the Department of Public Instruction. The Superintendent of Public Instruction also prescribes the course of study which the high school student must follow the first two years of his high school course in preparation for the normal training course, the course of study for the last two years of the normal training student's high school course, and a course of study for post-graduates taking the normal training course.¹⁰⁵ Relative to professional training, the Superintendent of Public Instruction designates the nature and amount of professional work and practice teaching as well as the observation of teaching to be done by the normal training students.¹⁰⁶

Pertaining to high school grades, examinations, and certificates, the Superintendent of Public Instruction prescribes the rules, regulations, and conditions governing the students in preparation for examination, and requirements for graduation from the normal training department of the high school. Graduation from a normal training department does not, however, entitle the student to teach. He must take an examination prescribed by the State Board of Educational Examiners, but he is exempted from taking examination in certain subjects passed satisfactorily in his normal training course. If a normal training graduate passes the examination prescribed by the State Board of Educational Examiners successfully and is recommended for a normal training teacher's certificate, the Superintendent of Public Instruction issues such certificate.¹⁰⁷

¹⁰⁵ *Normal Training High Schools in Iowa*, 1925, pp. 18-21; *Normal Training High Schools in Iowa*, Circular No. 2, 1928.

¹⁰⁶ *Normal Training High Schools in Iowa*, Circular No. 2, 1928, pp. 10-12.

¹⁰⁷ *Normal Training High Schools in Iowa*, Circular No. 2, 1928, pp. 22-30.

DIRECTION SUPERVISION AND CONTROL OF
CONSOLIDATED SCHOOLS

The consolidated school was established in Iowa on April 5, 1906, by the Thirty-first General Assembly, for the purpose of vitalizing the school life of the rural school pupil, and to make it possible for the rural school pupil to get a first class high school education.¹⁰⁸ It is now provided that "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". Consolidated school corporations may be established and organized independently of the Department of Public Instruction, and they may continue to be independent of the Department of Public Instruction, but they do not usually choose to do this.¹⁰⁹ The consolidated school becomes subject to the supervision and direction of the Department of Public Instruction in the following ways: (1) by preparing to meet the requirements so as to secure State aid as provided for consolidated schools; (2) by preparing to meet the requirements of the Department of Public Instruction for approval and certification as approved high schools eligible to charge tuition; and (3) by maintaining a normal training department in its high school and thereby gaining the benefits of a normal training high school and securing the State aid as provided for such

¹⁰⁸ *Laws of Iowa*, 1906, Ch. 141.

¹⁰⁹ *Code of 1927*, Secs. 4154, 4184; *Biennial Report of the Superintendent of Public Instruction*, 1922-1924, pp. 6, 32. Of the 386 consolidated schools in operation during the school year closing June 30, 1928, none received equipment aid. Three hundred and fifty-one were approved for tuition and State aid. Twenty-four consolidated schools maintained approved normal training departments in their high schools. Six consolidated schools were approved for tuition purposes only. Three of the 386 consolidated schools were approved for tuition and State aid for but two years of high school work, and one was approved for three years of high school work. One of the six con-

schools.¹¹⁰ Consolidated school corporations usually seek to gain the approval of the Department of Public Instruction as a standard high school thereby enabling them to charge tuition and to offer their students the benefits of standard high schools. They also usually attempt to meet the requirements for State aid to consolidated schools.¹¹¹

A consolidated school maintaining an approved normal training department and eligible to receive State aid for approved consolidated schools, may, however, decline such State aid and accept in lieu thereof, State aid as provided for normal training high schools. It can not, however, secure both State aid as granted to consolidated schools and State aid as granted to normal training high schools.¹¹² A consolidated school maintaining a normal training department is under a three-fold responsibility to the Department of Public Instruction. It is subject to the supervision and direction as a consolidated school, as an approved high school, and as a normal training high school; that is, in order to maintain a normal training department, a consolidated school must first meet the requirement of the Department of Public Instruction for approved high schools.¹¹³

Provision is made in the school law for the organization of consolidated school corporations, for the amount of territory for the building of the school plant, and equipping of the same, for the location of the school site, and for the

consolidated schools approved for tuition purposes only was approved for but two years of high school work. Three hundred and eighty-one consolidated schools maintained approved four year high schools.—*Biennial Report of the Superintendent of Public Instruction, 1926-1928*, pp. 39-45.

¹¹⁰ *Code of 1927*, Secs. 3899, 3902, 4184, 4275.

¹¹¹ *Biennial Report of the Superintendent of Public Instruction, 1918-1920*, pp. 51, 52.

¹¹² *Code of 1927*, Sec. 4185.

¹¹³ *Normal Training High Schools in Iowa, 1925*, p. 12; *Code of 1927*, Secs. 3899, 4275.

transportation of pupils. But almost all the factors concerning the organization and administration of the consolidated schools are left to the direction and supervision of the Superintendent of Public Instruction.¹¹⁴

In order that a consolidated school may receive State aid and be approved for tuition purposes, it becomes subject to the approval of the Superintendent of Public Instruction relative to the following matters: (1) organization; (2) suitability of grounds; (3) suitability of building and plant; (4) laboratories and equipment for teaching agriculture, home economics and manual training; (5) course of study; (6) agricultural experiment plot; (7) qualified and certificated teachers to teach agriculture, manual training, and home economics; and (8) qualifications of all grade and high school teachers.¹¹⁵

New consolidated schools often face many strange and difficult problems in organization. The chief function of the Department of Public Instruction in assisting these schools is that of holding counsel and advising with their school boards and superintendents, and instructing them in the plan of procedure to be followed.¹¹⁶

The Superintendent of Public Instruction requires any consolidated school wishing to receive State aid to provide a five-acre site. Furthermore, the site selected must be approved by the Department of Public Instruction. The factors taken into consideration by the Inspector of Consolidated Schools in approving a school plot are: (1) an area of not less than one acre for agricultural purposes; (2) sufficient space for segregated and properly located play

¹¹⁴ *Code of 1927*, Secs. 4154, 4179.

¹¹⁵ *Iowa's Consolidated Schools*, 1922, p. 6; Annual Report Cards for Consolidated Schools as supplied by the Department of Public Instruction.

¹¹⁶ *Biennial Report of the Superintendent of Public Instruction*, 1920-1922, p. 46.

grounds; (3) parking area; and (4) landscaped area in the foreground of the school plot.¹¹⁷

A consolidated school building to be approved by the Department of Public Instruction must meet the specifications of the Department relative to ventilation, heating, lighting, and janitorial care.¹¹⁸

The Department of Public Instruction makes specifications, rules, and regulations relative to the personal and professional qualifications, training, and experience of the superintendent, high school teachers, grade teachers, and special teachers of the consolidated schools. For example, the Department of Public Instruction requires the superintendent to be a high school graduate, also a college graduate or the equivalent of a college graduate, to possess an Iowa State certificate, and to have had at least two years of teaching experience. High school teachers must have completed at least two years of training in an approved college. At least one-half of the high school teachers in any high school must have completed four years of training in an approved college. Grade teachers must be high school graduates, must have had at least twelve weeks' training in an approved college, and they must possess proper certificates as specified by the Department of Public Instruction. The Department of Public Instruction also specifies the minimum training for the teachers of agriculture, home economics, normal training, and physical training.¹¹⁹ The supervision and direction of consolidated schools is made effective through inspection by the Inspector of Consolidated Schools. This inspection by the Department of Public Instruction must be made annually. The Inspector of

¹¹⁷ *Iowa's Consolidated Schools*, 1922, pp. 8, 9.

¹¹⁸ *Iowa's Consolidated Schools*, 1922, pp. 13, 15, 17.

¹¹⁹ *Iowa's Consolidated Schools*, 1922, pp. 18-21; pamphlet of the Department of Public Instruction: *Teacher Qualifications for Approved Schools*, 1924-1925, pp. 2, 3.

Consolidated Schools may visit the schools under his supervision in person and inspect and approve them for State aid, or he may investigate the required annual reports of these schools and approve them. Following the inspection of each consolidated school a detailed report in letter form is addressed to the president of the local board of directors. A copy of this report is also sent to the local superintendent and a copy to the county superintendent of schools. The annual reports made to the Department of Public Instruction by the consolidated schools consist of reports of: (1) teachers' qualifications, training, experience, and certification; (2) transportation; (3) program of study; (4) general equipment; and (5) general statistics. The Inspector of Consolidated Schools may also approve consolidated high schools for one, two, three, or four years of high school work. Information relative to such approval may also be secured by either personal inspection or from the annual reports. Such approval entitles the consolidated school to charge non-resident pupils tuition. When a consolidated school is approved for tuition a certificate of approval is issued to the school by the Department of Public Instruction.¹²⁰

DIRECTION SUPERVISION AND CONTROL OF MINING CAMP SCHOOLS

The Thirty-eighth General Assembly of Iowa appropriated \$50,000 for the biennium beginning July 1, 1919, to be used by the Department of Public Instruction under the direction of the Superintendent of Public Instruction to improve the conditions in mining camp schools. Subsequent General Assemblies have each provided a biennial appro-

¹²⁰ *Biennial Report of the Superintendent of Public Instruction, 1922-1924*, pp. 13, 46-48; documentary material (annual certificate of approval issued by the Department of Public Instruction); letter from the Inspector of Consolidated Schools, dated February 18, 1926; *Code of 1927*, Sec. 4275.

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priation of \$100,000 for this work. In addition to this regular State aid fund the Forty-second General Assembly provided for an annual emergency fund of \$10,000. The regular fund of \$50,000 for each year is to be used by the Superintendent of Public Instruction, but "with the approval of the executive council and under its direction". The Superintendent of Public Instruction must first submit a "comprehensive program" to the Executive Council showing the entire proposed expenditure of the appropriation for the year under consideration. The emergency fund of \$10,000 per year is set aside to be disbursed by the Superintendent of Public Instruction only upon the consent of the Executive Council. This fund is allotted to schools only in case of emergency. Any portion of the emergency fund remaining undistributed after April first of each year of the biennium is to be allocated as provided for the regular fund. Thus the powers of direction and supervision of the Superintendent of Public Instruction in connection with mining camp schools are somewhat limited.¹²¹

Mining camp schools are not defined by law. The question of determining what constitutes a mining camp school is solely one of fact and is to be determined by the Superintendent of Public Instruction "with the approval of the Executive Council." The facts and circumstances in each case are to be considered by the Superintendent of Public Instruction "in determining whether or not such school district is in fact one in a mining camp".¹²²

The inspectional and supervisory work carried on by the Department of Public Instruction is under the immediate charge of the Inspector of Mining Camp Schools.¹²³ Defi-

¹²¹ *Laws of Iowa*, 1919, Ch. 373, 1921, Ch. 295, 1925, Ch. 218, p. 223, 1927, Ch. 275, p. 259.

¹²² *Biennial Report of the Attorney General*, 1923-1924, pp. 361, 362.

¹²³ *Biennial Report of the Superintendent of Public Instruction*, 1922-1924, p. 5.

nite rules and regulations governing these schools are not made by the Department of Public Instruction. Mining camp schools are conducted in the same way as other schools, but frequently conditions in the mining camps are such as to demand special supervision and administration.¹²⁴ The Superintendent of Public Instruction distributes the State aid where the school facilities are poorest rather than where the tax levies are highest. This need is found by personal visits and consultations of the Inspector of Mining Camp Schools with the local boards of school directors and the county superintendent of schools. The State aid expended under the direction of the Department of Public Instruction is used for: (1) the erection of buildings and additions; (2) the purchase of schoolroom furniture; (3) painting of schoolrooms; (4) supplies; (5) teachers' salaries; (6) payment of tuition; and (7) the purchase of heating plants.¹²⁵

DIRECTION SUPERVISION AND CONTROL OF JUNIOR COLLEGES

The Forty-second General Assembly in 1927 recognized the public junior college as an expansion of the public school system, and placed the direction and supervision of them under the Department of Public Instruction. Thus the Superintendent of Public Instruction has direct administration over junior colleges and does not exercise control over them by means of financial powers. In regard to the

¹²⁴ Letter from the Inspector of Mining Camp Schools, dated February 13, 1926; *Biennial Report of the Superintendent of Public Instruction, 1920-1922*, p. 66. In many of the mining camps, in order to maintain a school, the district is obliged to tax itself beyond the tax of the surrounding districts, thus making the burden of taxation unequal. The tax levy has ranged from a few mills to 322 mills (Mystic for 1922).—*Biennial Report of the Superintendent of Public Instruction, 1920-1922*, p. 66.

¹²⁵ *Biennial Report of the Superintendent of Public Instruction, 1922-1924*, pp. 13, 14.

public junior colleges it is specified that the 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." The Superintendent of Public Instruction directs the organization of the junior colleges and approves them when they meet the standards established by him, and he personally inspects them.¹²⁶

EXAMINATION AND CERTIFICATION

As president and executive officer of the Board of Educational Examiners, the Superintendent of Public Instruction appoints the time and place for the meetings of the Board and presides over these meetings. He has general direction of the Board's activities and performs the administrative work of the Board, supervising and directing the holding of teachers' examinations, providing for the grading of examination papers, and issuing and signing teachers' certificates.¹²⁷ This work is done in the Department of Public Instruction.

The questions used in the teachers' examinations are furnished and caused to be printed by the Superintendent of Public Instruction. Examinations for teachers' certificates are conducted by county superintendents of schools in the various counties of the State. When the examinations are completed the county superintendent forwards to the Superintendent of Public Instruction a list of all applicants examined with a standing of each in didactics and oral reading, an estimate of each applicant's personality and general fit-

¹²⁶ *Code of 1927*, Sec. 4267-b1; *Biennial Report of the Superintendent of Public Instruction*, 1926-1928, pp. 15, 16; *Public Junior Colleges*, 1928 (Preliminary Bulletin issued by the Superintendent of Public Instruction).

¹²⁷ *Biennial Report of the Superintendent of Public Instruction*, 1920-1922, p. 31.

ness for teaching, and the answer papers written excepting those in didactics.¹²⁸ The manuscripts are read by readers selected by the Board of Educational Examiners from such persons as have the necessary qualifications and experience for doing the work. Certificates are issued by the Board of Educational Examiners to those persons found to be qualified. They are signed by the Superintendent of Public Instruction as President of the Board of Educational Examiners for State certificates, and by the county superintendent of schools in case of "Uniform County Certificates".¹²⁹ The Superintendent of Public Instruction also prepares and supplies questions for the examination of pupils completing the eighth grade in rural schools and fixes the time for such examinations.¹³⁰

NORMAL TRAINING CERTIFICATES

In connection with the certification of persons completing the normal training high school course the Superintendent of Public Instruction exercises almost complete and independent control over certification. The Board of Educational Examiners prescribes the rules and regulations for conducting examinations of candidates for normal training certificates, but the Superintendent of Public Instruction prescribes the regulations governing the examination of those candidates for certificates who have failed in one or more subjects in the regular normal training examinations. The county superintendent of schools in whose county an approved high school maintaining an approved normal training department may be located "shall be designated as the conductor" of the normal training examination. An

¹²⁸ *Code of 1927*, Secs. 3873, 4106.

¹²⁹ *Biennial Report of the Superintendent of Public Instruction, 1922-1924*, pp. 17, 18; *Code of 1927*, Sec. 3859.

¹³⁰ *Code of 1927*, Sec. 3832 (15).

examination for graduation from the normal training course is conducted in each school maintaining the course.¹³¹ If more than one normal training high school is located in a county the county superintendent of schools may secure such assistance as is necessary to aid in giving the examination. It is not expected, however, that he will secure anyone connected with the school to conduct the examination in that school.¹³² When examinations are completed, the preliminary blanks, eligibility reports, and the answer papers in each subject, except pedagogy, for each candidate are sent to the Department of Public Instruction. Credits earned in the normal training course may be submitted and thus free the candidate from examination in certain subjects. For this reason the city superintendent must file a transcript of the candidate's records of grades with the Department of Public Instruction after each semester, not later than five days after the close of the first semester, and not later than three days after the close of the school year. The examination papers are graded under the direction of the Board of Educational Examiners. Returns of examinations are made to the county superintendents for the May and July examinations, and directly to the city superintendents for the January examinations. Original grade sheets and transcripts of high school records are filed in the Department of Public Instruction.¹³³ Normal training certificates valid for two years are issued by the Superintendent of Public Instruction and may be renewed by him for a period of three years.¹³⁴

In addition to these duties as a member of the Board of Educational Examiners, the Superintendent of Public In-

¹³¹ *Code of 1927*, Sec. 3906.

¹³² *Normal Training High Schools in Iowa*, 1925, p. 27.

¹³³ *Normal Training High Schools in Iowa*, 1925, pp. 26, 30, 33, 34, 35.

¹³⁴ *Code of 1927*, Sec. 3910.

struction also makes the annual report for this Board, giving detailed account of all money expended with a list of all those receiving certificates or diplomas. He also certifies to the State Board of Audit the "authorized expenditures of the Board of Educational Examiners", which with the accounts of the Board are published in the Report of the Superintendent of Public Instruction.¹³⁵

VOCATIONAL EDUCATION AND CIVILIAN REHABILITATION

The Vocational Educational Service and Civilian Rehabilitation Service are not directly under the supervision and direction of the Department of Public Instruction. The Superintendent of Public Instruction is, however, *ex officio* chairman and executive officer of the Board for Vocational Education.¹³⁶ By virtue of this fact he is authorized by act of Congress and by the laws of Iowa to be chairman and executive officer of the Board for Civilian Rehabilitation.¹³⁷

As the administrative officer of the Board for Vocational Education, the Superintendent of Public Instruction apparently has little effective power of direction and supervision. He is primarily an executive of the Board; almost all of the actual work of administration is performed by the Director for Vocational Education.¹³⁸ The Superintendent of Public Instruction with the approval of the State Board for Vocational Education appoints the Director of Vocational Education and Civilian Rehabilitation, and the supervisors and assistants in the Departments of Vocational Education and Civilian Rehabilitation. It does not follow, however, that he may exercise effective powers of

¹³⁵ *Code of 1927*, Sec. 3896, 3897.

¹³⁶ *Code of 1927*, Secs. 3838, 3839, 3852.

¹³⁷ *United States Statutes at Large*, Vol. 41, Part 1, Ch. 219, pp. 735, 736; *Code of 1927*, Sec. 3852.

¹³⁸ *Outline of Plans of the Iowa State Board for Vocational Education and Vocational Rehabilitation in Iowa, 1927-1932*, p. 5.

direction and supervision, for these officials appointed by him can not be removed by the individual action of the Superintendent of Public Instruction but only in conjunction with the Board for Vocational Education.¹³⁹

Under the administration of the Board for Vocational Education, day schools, evening schools, and part-time schools are organized and conducted in trade and industrial education and vocational home-making. Although the usual duties of administration are performed by the Board for Vocational Education, the State Department of Public Instruction through its inspectors in coöperation with the Board for Vocational Education and in conjunction with the county superintendent of schools is empowered to require local boards of school corporations maintaining part-time schools to enforce the law regulating the operation of such schools.¹⁴⁰

MISCELLANEOUS DUTIES

The Superintendent of Public Instruction directs and supervises a number of miscellaneous tasks allotted by law to his Department. Thus he may publish and distribute from time to time leaflets and circulars relative to days and occasions which he may deem worthy of special observance in the public schools. He may prepare and distribute to all elementary schools lists of books and texts and an outline on American citizenship for all grades from one to eight inclusive. Furthermore he may direct the preparation of and distribute to all high schools, academies, and institutions ranking as secondary schools, lists of texts and an outline of a course of study in American history, civics of the State and Nation, social problems, and economics. He may prescribe and distribute a manual of practical health

¹³⁹ *Code of 1927*, Secs. 3839, 3853.

¹⁴⁰ *Code of 1927*, Sec. 4297; *Biennial Report of the Superintendent of Public Instruction*, 1924, pp. 21-26.

training for the aid of teachers. Likewise he may prescribe the "reports, both regular and special, which shall be made by public 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."¹⁴¹

VII

THE ORDINANCE POWER

Just as the legislative body in State government can not be shut out of all participation in the work of administration so the heads of the State executive departments can not be deprived of all participation in the work of legislation. The head of an executive department could hardly be assigned to the position of a mere executing officer. Such an application of the theory of separation of powers has not usually been accepted and would hardly be desirable. The head of a State executive department may not, however, exercise such law-making functions as the power of veto and of initiating legislation. But he may have the power of issuing orders of more or less general application, or of filling up details in the administrative law. It is in this sense that the Superintendent of Public Instruction may exercise legislative or law-making functions. This power of the Superintendent of Public Instruction to promulgate general rules regulating in detail the execution of the laws is known as ordinance power.¹⁴²

Ordinances issued by administrative authorities are issued under an ordinance power which is either independent or delegated, i. e., ordinance power which the administrative official possesses by constitutional grant and inde-

¹⁴¹ *Code of 1927*, Sec. 3832.

¹⁴² Goodnow's *Comparative Administrative Law*, Vol. I, pp. 27, 28.

pendent of the legislature, or by delegation by the State legislature. Following a general rule of administrative law, the Superintendent of Public Instruction possesses only the latter. The ordinance power of the Superintendent of Public Instruction is further limited due to the fact that he exercises ordinance power, as granted by the legislature, only in specific cases; he does not enjoy general ordinance powers. Furthermore, these ordinances are to be distinguished from ministerial circulars or instructions, sent out from the Department of Public Instruction, which, while general in character like the ordinances, are not like the ordinances binding upon the individual, but in this case, only upon the officials subjected to the direction of the Superintendent of Public Instruction. Such instructions are based on his power of direction.¹⁴³ Thus the Superintendent of Public Instruction has power to make rules and regulations relative to: (1) cases of appeal, (2) the Teachers' Placement Bureau, (3) junior colleges, (4) normal training high schools, (5) approved graded and high schools, (6) consolidated schools, (7) standardized schools, (8) courses of study, and (9) teachers' qualifications and certificates.¹⁴⁴

The ordinary method of control over the exercise of the ordinance power in this instance, it would appear, consists in the power which the courts have, when individuals are brought up before them charged with having violated an ordinance. The purpose for which individuals are thus brought into court is to determine whether the Superintendent of Public Instruction was competent under the law

¹⁴³ Goodnow's *The Principles of the Administrative Law of the United States*, pp. 326-330; *Code of 1927*, Sec. 4106.

¹⁴⁴ *Code of 1927*, Secs. 3832 (19), 3833, 3900, 4184, 4275, 4330; *Standards and Equipment for Approved Graded and High Schools*, 1921; *Normal Training High Schools in Iowa*, 1925; *Regulations for Standardizing Common Schools*, 1923.

to issue the ordinance. In matters where the law contemplates that the administrative official may use discretion in making rules or regulations, the courts have refrained from assuming jurisdiction. Furthermore, it seems hardly to be expected that the courts will interfere on the ground of unreasonableness of an ordinance issued by the Superintendent of Public Instruction, since it is regarded as a matter settled by the legislature in granting ordinance powers.¹⁴⁵

RULES AND REGULATIONS IN CASES OF APPEAL

The Superintendent of Public Instruction has contributed to administrative law. Some of his rules are mandatory, but it appears that the greater part are permissive and advisory in nature.

Rules of Procedure in Appeals.—The Superintendent of Public Instruction has exercised his ordinance power concerning rules of procedure in connection with cases appealed to him by promulgating rules and regulations affecting both the litigants in the cases appealed and the county superintendent of schools from whom the cases are appealed. Thus, for example, the Superintendent of Public Instruction has made rules as follows, the effect in each case being quite obvious: (1) the basis of an appeal is the recorded action of the school board¹⁴⁶; (2) appearance at trial is a complete waiver of notice¹⁴⁷; (3) at a hearing parties interested may appear personally or by attorney, and argue their cases orally if they desire, or they may send written or typewritten arguments¹⁴⁸; (4) the hearings

¹⁴⁵ *Kinzer v. Independent School District*, 129 Iowa 441, at 447.

¹⁴⁶ *School Laws of Iowa*, 1902, Sec. 2819, Note 3, 1925, Decisions, p. 243.

¹⁴⁷ *School Laws of Iowa*, 1925, Decisions, p. 228.

¹⁴⁸ *School Laws of Iowa*, 1915, p. 130, Note 8.

are not to be conducted by rigid adherence to the technical forms and customs which prevail in the courts¹⁴⁹; (5) the regularity of all proceedings leading to appeal "will be presumed upon"¹⁵⁰; (6) testimony to be legal must be based upon the record of evidence introduced¹⁵¹; (7) testimony to be legal must be given under oath¹⁵²; (8) testimony unless obviously immaterial should be admitted and given such weight as it merits¹⁵³; (9) to warrant a re-hearing valid and sufficient reasons must be urged¹⁵⁴; (10) it is not the province of an appeal to discover and correct a slight mistake.¹⁵⁵

Rules and Regulations Affecting the Action of County Superintendents.—Many of the rules and regulations made by the Superintendent of Public Instruction being ministerial have affected the action of the county superintendent in the hearing of cases appealed to him. In this way the Superintendent of Public Instruction is able in a degree to exercise control over the action of this subordinate in school matters. Examples illustrative of this fact follow. (1) An appeal may not be taken to the county superintendent of schools from the decision of a school board that is not final.¹⁵⁶ (2) County superintendents of schools should not express an official opinion upon matters entirely outside of their jurisdiction.¹⁵⁷ (3) The decision of the county super-

¹⁴⁹ *School Laws of Iowa*, 1915, Decisions, p. 39.

¹⁵⁰ *School Laws of Iowa*, 1925, Decisions, p. 228.

¹⁵¹ *School Laws of Iowa*, 1902, Sec. 2819, Note 10.

¹⁵² *School Laws of Iowa*, 1902, Sec. 2819, Note 10.

¹⁵³ *School Laws of Iowa*, 1925, Decisions, p. 192.

¹⁵⁴ *School Laws of Iowa*, 1925, Decisions, pp. 221, 262.

¹⁵⁵ *School Laws of Iowa*, 1925, Decisions, p. 233.

¹⁵⁶ *School Laws of Iowa*, 1915, Decisions, p. 123.

¹⁵⁷ *School Laws of Iowa*, 1902, Sec. 2818, Note 1½.

intendent of schools must be based upon the record of evidence introduced.¹⁵⁸ (4) When the act complained of is of a discretionary character, the action should be sustained by the county superintendent unless it is clearly shown that the board of education violated law, abused its discretion, or acted with manifest injustice.¹⁵⁹ (5) The weight which properly attaches to the discretionary action of a school tribunal vested with original jurisdiction does not apply to the decisions of a county superintendent of schools.¹⁶⁰

Rules and Regulations Affecting Boards of Education.—In deciding cases of appeal involving a consideration of the powers and jurisdiction of the boards of education, the Superintendent of Public Instruction has apparently been very careful in promulgating rules and regulations to guard and extend the discretionary authority of that body. Decisions of the Superintendent of Public Instruction adding to the administrative school law and illustrative of this point are as follows. (1) The action of a board of education can not be reversed upon the allegations of an appellant without proof, or by reason of the board's failure to make defense.¹⁶¹ (2) The acts of a board of education in changing subdistrict boundaries and locating schoolhouses are so much of a discretionary nature that they should be affirmed on appeal, unless it is shown beyond a doubt that there has been an abuse of discretion.¹⁶² (3) The acts of the board of directors must be presumed to be regular, and should be affirmed unless positive proof is brought to show the contrary.¹⁶³ (4) In most matters with which boards of direc-

¹⁵⁸ *School Laws of Iowa*, 1902, Sec. 2819, Note 10.

¹⁵⁹ *School Laws of Iowa*, 1902, Decisions, pp. 37, 48, 51, 56.

¹⁶⁰ *School Laws of Iowa*, 1925, Decisions, p. 208.

¹⁶¹ *School Laws of Iowa*, 1925, Decisions, p. 208.

¹⁶² *School Laws of Iowa*, 1925, Decisions, p. 208.

¹⁶³ *School Laws of Iowa*, 1925, Decisions, p. 210.

tors "have to do under the law, their authority and responsibility are absolute, and their jurisdiction is complete and exclusive."¹⁶⁴ (5) In the determination of appeals, the weight properly attributable to the discretionary actions of a board of directors should be given first consideration.¹⁶⁵ (6) A petition may be used by the electors of a school corporation to bring to the attention of the board of directors the kind of action desired by the petitioners, but a board of directors may act with equal directness without such request.¹⁶⁶

Not every decision of the Superintendent of Public Instruction pertaining to the powers of the board of directors, however, seems so favorable to the position of the board of directors. He has decided that it is mandatory upon the board of directors to put into execution matters voted by the electors and within their control.¹⁶⁷

RULES AND REGULATIONS AFFECTING NORMAL TRAINING HIGH SCHOOLS

The ordinance-making power of the Superintendent of Public Instruction extends to the issuing of rules and regulations governing the several kinds of public schools in the State. His ordinance powers relative to normal training high schools have been extensively exercised, covering practically every detail of the administration of normal training departments in private and denominational schools and public high schools.¹⁶⁸

The rules and regulations in this field are both mandatory and permissive. Many of them are advisory and suggestive in nature. The rules and regulations which are

¹⁶⁴ *School Laws of Iowa*, 1925, Decisions, p. 223.

¹⁶⁵ *School Laws of Iowa*, 1925, Decisions, p. 236.

¹⁶⁶ *School Laws of Iowa*, 1925, Decisions, p. 235.

¹⁶⁷ *School Laws of Iowa*, 1897, Decisions, p. 17.

¹⁶⁸ *Code of 1927*, Ch. 194; *Normal Training High Schools in Iowa*, 1925.

promulgated in this field are made effective largely because of the financial powers of the Superintendent of Public Instruction, for should a normal training high school fail to follow the regulations prescribed, the school not only jeopardizes the status of its normal training department, but also its chances of securing State aid.¹⁶⁹

The rules and regulations issued relative to normal training high schools are concerned with: (1) the organization of normal training departments; (2) the number and qualifications of teachers; (3) the normal training class and students; (4) course of study for the normal training department and of the high school in connection therewith; (5) professional training of normal training students; and (6) examination and certification of normal training students completing the normal training course and planning to teach.

The rules and regulations for the regular normal training examination are issued by the Board of Educational Examiners, but the Superintendent of Public Instruction, independent of this Board, may prescribe the rules and regulations governing any necessary additional examinations.¹⁷⁰

RULES AND REGULATIONS RELATIVE TO APPROVED GRADED AND HIGH SCHOOLS

The rules and regulations issued relative to approved graded and high schools seem to be suggestive, advisory, and discretionary in nature rather than ministerial. They also appear to have grown out of the Superintendent of Public Instruction's power of direction and supervision, rather than solely from his ordinance-making power. The purposes of these rules and regulations are: (1) to secure

¹⁶⁹ *Normal Training High Schools in Iowa*, 1925, pp. 12, 35.

¹⁷⁰ *Normal Training High Schools in Iowa*, 1925, pp. 12-38; *Code of 1927*, Secs. 3906, 3907.

a uniform type of school and to provide standards; (2) to assist local boards of education in maintaining the best type of school justified by local conditions; and (3) to bring about approval of the unapproved schools for tuition purposes.¹⁷¹

The general problems relative to which the Superintendent of Public Instruction issues rules and regulations governing approved graded and high schools are as follows: (1) material and equipment; (2) organization; (3) curriculum; (4) instruction; and (5) school spirit.¹⁷²

RULES AND REGULATIONS RELATIVE TO CONSOLIDATED SCHOOLS

The statutes are quite specific in certain matters relative to consolidated schools if the school is to receive State aid. In addition to the statutory provisions detailed standards are prescribed by the Superintendent of Public Instruction. These standards for the most part are of the nature of administrative rules and regulations, but they appear to be more closely related to the Superintendent of Public Instruction's power of direction than to his ordinance power. These regulations and standards, it is to be observed, are made effective largely through the exercise of his financial powers. They affect only those schools approved by the Department and receiving State aid or desiring to be approved for such. As in other instances of the Superintendent of Public Instruction's rule-making power, some of the rules and regulations concerning consolidated schools are mandatory, but most of them are permissive and advisory. Rules and regulations issued by the Superintendent of Public Instruction for approved graded and high schools, alike,

¹⁷¹ *Biennial Report of the Superintendent of Public Instruction, 1920-1922*, pp. 64, 65.

¹⁷² *Standards and Equipment for Approved Graded and High Schools, 1921*, pp. 5-51.

apply to those consolidated schools which have been approved for tuition.

The chief problems concerning which the Superintendent of Public Instruction has issued rules and regulations for consolidated schools are: (1) school grounds; (2) buildings; (3) agriculture, manual training, and domestic science; (4) superintendents', high school teachers', grade teachers', and special teachers' qualifications, certification, training, and experience; (5) transportation; (6) equipment; and (7) course of study.¹⁷³

RULES AND REGULATIONS RELATIVE TO STANDARDIZED SCHOOLS

The ordinance power of the Superintendent of Public Instruction was extended by the Thirty-eighth General Assembly which enacted a law that the Superintendent of Public Instruction "shall prescribe for standard schools the minimum 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." Under authority of this grant of ordinance power the Superintendent of Public Instruction has provided detailed specifications for rating schools as follows: (1) grounds and outbuildings; (2) schoolhouse; (3) equipment and care of the schoolroom; (4) library and reference books; (5) the teacher; and (6) the school community activities. In addition the Superintendent of Public Instruction has issued an official rating card for Iowa standard schools.¹⁷⁴

¹⁷³ *Iowa's Consolidated Schools*, 1922, pp. 6-25; *Teachers' Qualifications for Approved Schools*, 1924, 1925, pp. 2-6. For additional information on this point see the *Biennial Report of the Superintendent of Public Instruction*, 1922-1924, pp. 12, 13.

¹⁷⁴ *Regulations for Standardizing Common Schools*, 1925, pp. 6-23; *Code of 1927*, Sec. 4330.

VIII

POWERS OF FINANCIAL CONTROL

It was not contemplated by the framers of the Iowa Constitution that the chief State school official should, in any sense of the word, be a financial official, or that he should exercise control of school funds. The principle adopted by the framers of the Constitution is that there should be a separation of financial matters from educational problems. It was provided in the Constitution that the "financial agents of the school funds shall be the same, that by law, receive and control the State and county revenue for other civil purposes".¹⁷⁵ The financial functions of the Superintendent of Public Instruction as provided by the Constitution of 1846 were in connection with school funds derived from the sale of school lands.¹⁷⁶

It was not expected that under the Constitution of 1857, the Superintendent of Public Instruction would exercise control over financial matters, but the Tenth General Assembly in reëstablishing the office gave to the Superintendent of Public Instruction a limited authority to control teachers' institute funds.¹⁷⁷ The financial functions that had been handled by the office of Superintendent of Public Instruction prior to the abolishment of the office in 1858 were those concerned with the school land funds, no other school funds then being available. These funds now constitute what is known as the permanent school fund. Prior to 1911 apparently no funds were provided for the purpose of granting aid to schools meeting certain established stand-

¹⁷⁵ *The Debates of the Constitutional Convention of Iowa*, 1857, Vol. II, p. 751; Constitution of Iowa, 1857, Art. IX, Part 2, Sec. 6.

¹⁷⁶ Constitution of Iowa, 1846, Art. X, as found in the *Laws of Iowa*, 1846; *Code of 1851*, Ch. 67.

¹⁷⁷ *Laws of Iowa*, 1864, Ch. 52.

ards. That is, State aid did not play any part in establishing effective supervision of any of the several types of schools in the public school system.

Though there is a difference in the purposes for which each of these funds has been established, the principle involved in the administration of them nevertheless seems to be the same. There now seems to be no very good reason why one group of officials should handle and control the permanent and temporary school funds, and that other funds such as those for State aid to normal training high schools, consolidated schools, and standard schools should be controlled by the Department of Public Instruction. Permanent school funds are, however, handled and controlled by the State and county financial officials.

The financial powers of the Superintendent of Public Instruction in the field of State aid to schools have nearly all grown up since 1911. Prior to that time the extent of his financial control seems to have been limited to the supervision of the "institute fund" which amounted to not more than fifty dollars per year for each county holding a teachers' institute.¹⁷⁸ The financial powers of the Superintendent of Public Instruction have now come to be relatively important. His financial authority, during the biennium ending June 30, 1929, extends to the supervision and control of nearly one-half million dollars annually.¹⁷⁹ During the biennial period ending June 30, 1928, \$916,126.52 was expended for State aid under the supervision of the Department of Public Instruction as compared with \$217,290.61 of the permanent school funds, which was distributed by the regular State and county financial officials.¹⁸⁰ In addition

¹⁷⁸ *Code of 1873*, Sec. 1584; *Code of 1897*, Sec. 2738; *Code of 1927*, Sec. 4469; *Laws of Iowa*, 1911, Ch. 131.

¹⁷⁹ *Laws of Iowa*, 1927, p. 259.

¹⁸⁰ *Biennial Report of the Auditor of State*, 1927-1928, pp. 9, 23, 24, 26, 27.

to the control and distribution of State aids the Superintendent of Public Instruction has the supervision of departmental expenditures for miscellaneous purposes to the extent of approximately \$25,000 for the biennium ending June 30, 1929.¹⁸¹ Thus it is seen that in spite of what the framers of the Constitution intended there has grown up in the Department of Public Instruction a large and important financial function to be performed by the Superintendent. It should also be observed that the school funds distributed by the Superintendent of Public Instruction constitute a large share of the funds distributed by the State and county financial officials.¹⁸² Indeed, there seems to be no good reason why the authority to distribute permanent school funds should not be given to the Superintendent of Public Instruction. These funds might then be distributed on the basis of greatest need and effort. It should be observed too that funds now distributed by the Superintendent of Public Instruction are distributed on the basis of need and effort; but the basis of distribution of the permanent school fund is the school census which does not admit of flexibility.

Bordering closely on control is the supervisory power exercised by the Superintendent in connection with these State aids. It is largely through the granting of State aids that the Superintendent of Public Instruction is enabled to require certain standards for each of the several functions for which State aid is given. The financial power of the Superintendent of Public Instruction in granting State aid now extends to (1) normal training high schools, (2) consolidated schools, (3) standardized schools, (4) mining camp schools, and (5) teachers' institutes.¹⁸³

¹⁸¹ *Laws of Iowa*, 1927, p. 259.

¹⁸² *Biennial Report of the Superintendent of Public Instruction*, 1926-1928, pp. 94-97.

¹⁸³ *Laws of Iowa*, 1927, pp. 258, 259.

Financial Control over Normal Training High Schools.—The Thirty-fourth General Assembly, in establishing the normal training high school, for the first time made it possible for the Superintendent of Public Instruction to exercise an effective supervisory control over any of the schools of the State. It was provided that each high school approved should receive State aid to the amount of five hundred dollars per annum. In “case more than one high school in any county shall be approved” by the Superintendent of Public Instruction, the total State “aid distributed in such county shall not exceed eight hundred dollars”. Furthermore, it was provided that 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”. Thus the Superintendent of Public Instruction gained practically complete control of normal training high schools, and this control becomes possible because of his power to withhold approval of the normal training high school for State aid.¹⁸⁴ The Thirty-fifth General Assembly increased the amount of State aid to be granted to each normal training high school to seven hundred and fifty dollars per year, to be paid in two equal installments.¹⁸⁵

Only four-year approved high schools may be approved by the Department of Public Instruction to maintain normal training departments and receive State aid. Private and denominational schools may be approved by the Department of Public Instruction so as to maintain normal training departments, but they can not claim the benefits of State aid.¹⁸⁶

¹⁸⁴ *Laws of Iowa*, 1911, Ch. 131.

¹⁸⁵ *Laws of Iowa*, 1913, Ch. 242.

¹⁸⁶ *Code of 1927*, Secs. 3899, 3901.

The Superintendent of Public Instruction is allowed considerable discretion in approving high schools for the introduction of normal training departments. He may select such high schools for normal training purposes as he deems necessary. The law contemplates that the basis upon which the Superintendent of Public Instruction shall approve a high school for the purpose of establishing a normal training department shall be: (1) the need for trained teachers in a particular community; (2) the need for trained teachers in the State as a whole; and (3) the likelihood of the schools in question keeping up the required standards. Indeed, he may go so far as to discriminate in favor of a consolidated school over a city high school of the same community, even though the city high school may be better fitted to do the work. He may not, however, approve any high school to receive State aid for normal training schools "unless a class of ten or more shall have been organized, maintained, and instructed during the preceding semester" in accordance with the normal training law. A normal training high school may not be deprived of its right to be approved for State aid because of the employment of a teacher properly certified, having had three years' experience and who has once been approved for teaching a normal training school.¹⁸⁷

Each high school now approved by the Department of Public Instruction receives State aid to the amount of seven hundred and fifty dollars per year. The Superintendent of each normal training high school at the close of each semester must file a report of the condition of his school with the Department of Public Instruction, which must be approved by the Superintendent of Public Instruction before State aid can be had. Whereupon, the Superintendent of Public Instruction issues a requisition upon the Auditor of State

¹⁸⁷ *Code of 1927*, Secs. 3899, 3900, 3901, 4337, 4338.

for the amount due the school. The Auditor of State then draws a warrant on the State Treasurer payable to the school in question for the amount of the requisition, and forwards the same to the secretary of the school corporation.

Should there be insufficient funds in the State Treasury to grant State aid to each of the public high schools approved as normal training high schools, the Superintendent of Public Instruction is obliged to *pro-rate* the amount available for distribution to those schools with the expectation that the legislature will then make up the difference by subsequent appropriation. Prior to any distribution of normal training State aid the expenses necessarily incurred by the Department of Public Instruction in inspectional and supervisory service in connection with normal training high schools shall be paid.¹⁸⁸

A consolidated school approved as a normal training high school is ordinarily expected to receive State aid as provided for normal training high schools and not State aid as provided for consolidated schools. Should it be found that the normal training State aid fund is insufficient to give all schools the flat-rate of seven hundred and fifty dollars, the Superintendent of Public Instruction may not distribute any portion of the consolidated school State aid to the consolidated school in question and make up the balance from the normal training State aid. If the question of refusing approval of a high school for normal training privileges should arise solely because of lack of available State aid, the Superintendent of Public Instruction may "classify the schools in such a way as to designate which should be entitled to State aid, even though there should be no distinction between the courses of study in the schools receiving

¹⁸⁸ *Code of 1927*, Secs. 3902, 3903, 3904; *Biennial Report of the Attorney General*, 1923-1924, p. 364, 1925-1926, pp. 128-130.

State aid and in those which do not receive it".¹⁸⁹ In this event it would seem that a consolidated school might be approved as a normal training high school and receive State aid as a consolidated school.

Financial Control over Consolidated Schools.—The Superintendent of Public Instruction was first authorized to exercise financial control over consolidated schools in Iowa by the Thirty-fifth General Assembly in 1913. To that end \$30,000 was appropriated for the period ending June 30, 1914, and \$50,000, "or so much thereof as may be necessary, annually, thereafter for a period of four years." This sum was to be distributed to the various consolidated schools approved by the Department of Public Instruction according to a classification as follows: (1) two room schools, \$250.00 toward the equipment and \$200.00 annually; (2) three room schools, \$350.00 for equipment and \$500.00 annually; and (3) four or more room schools, \$500.00 for equipment and \$750.00 annually.¹⁹⁰ For the school year ending June 30, 1928, three hundred and fifty-one consolidated schools were approved for tuition and State aid, and six were approved for tuition only. Twenty-four consolidated schools now maintain four-year approved normal training departments, sixty-four offer courses in Smith-Hughes vocational agriculture, and twenty-four offer courses in home-making, and are thereby subject to double supervision.¹⁹¹

"All consolidated schools in districts with an area of sixteen or more government sections maintained with suitable

¹⁸⁹ *Biennial Report of the Attorney General*, 1913-1914, p. 135, 1923-1924, p. 364.

¹⁹⁰ *Laws of Iowa*, 1913, Ch. 250.

¹⁹¹ *Biennial Report of the Auditor of State*, 1927-1928, p. 9; *Biennial Report of the Superintendent of Public Instruction*, 1926-1928, pp. 38-45.

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 Instruction, may receive State aid. The Superintendent of Public Instruction may not, however, deprive a consolidated school of its right to be approved for State aid because of the employment of a teacher properly certified, having had three years' experience, who has previously been approved for teaching in such a school.¹⁹² Thus the Superintendent of Public Instruction may exercise effective supervision over practically every aim and function of the consolidated school. No consolidated school may, however, receive State aid as provided for consolidated schools and at the same time receive State aid as provided for normal training high schools. But it is expected that any consolidated school maintaining an approved normal training department will receive State aid as provided for normal training high schools.¹⁹³

Consolidated schools may be approved for State aid either by inspection of the reports sent into the Department of Public Instruction or by personal inspection from a member of the Department. The usual basis of approval is, however, the report filed by the secretary, or by the superintendent of the consolidated school. Such report must be filed at the close of the school year. The Superintendent of Public Instruction specifies the matters to be reported upon and if such report is satisfactory, he issues a requisition

¹⁹² *Code of 1927*, Secs. 4184, 4337, 4338.

¹⁹³ *Code of 1927*, Sec. 4185; *Biennial Report of the Attorney General*, 1923-1924, p. 364.

upon the Auditor of State for the amount due the school in question. The Auditor of State, thereupon, draws a warrant upon the State Treasury payable to the consolidated school corporation for the amount of the requisition and sends it to the school corporation.¹⁹⁴

Financial Control over Standardized Schools.—The standard school was established by the Thirty-eighth General Assembly in 1919, and financial control of it by the Superintendent of Public Instruction was authorized.¹⁹⁵ An appropriation of \$100,000.00 annually is provided to make effective the operation of the standard school law.¹⁹⁶ In administering this State aid the Superintendent of Public Instruction is given power to prescribe “minimum 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.” Indeed, it seems that only because of his financial powers thus exercised is he able to exercise any effective supervision over any of the one room rural schools.

Any rural school before it may be designated a “standard” school must have met the following conditions the previous school year: (1) it shall have been maintained for eight school months; (2) it must have a suitable school-house, grounds, and outbuildings in proper condition and repair; (3) it must be equipped with needful apparatus, textbooks, supplies, and an adequate system of heating and ventilation; (4) it must have done efficient work; (5) it must have complied with such requirements as shall be specified by the Superintendent of Public Instruction; (6) it must have had a teacher possessing a first-class county certifi-

¹⁹⁴ *Code of 1927*, Sec. 4186.

¹⁹⁵ *Laws of Iowa*, 1919, Ch. 364.

¹⁹⁶ *Laws of Iowa*, 1927, p. 259.

cate; (7) the school must have had an average daily attendance of at least ten pupils; and (8) the teacher must have been under contract for the entire school year. A standard school may not, however, be deprived of its right to be approved for State aid because of the employment of a teacher properly certified, having had three years' experience, who has previously been employed in a standard school. Each school designated by the Superintendent of Public Instruction as a "standard" school shall be furnished by him with a suitable door plate or mark of identification.¹⁹⁷

Any rural school district maintaining one or more standardized schools shall receive State aid to the amount of six dollars for each pupil who has attended school in the district at least six months of the previous school year. The Superintendent of Public Instruction, in administering State aid to the standard schools, acts largely through the county superintendent of schools. The county superintendent reports the rural schools having fulfilled the requirements of a standard school to the Superintendent of Public Instruction. If such report is satisfactory the Superintendent must issue a requisition upon the Auditor of State for the amount due the school district entitled to State aid for the past school year, whereupon the Auditor of State draws a warrant on the State Treasurer payable to the secretary of the school corporation and forwards the same to the secretary. The money thus received must be expended in the standard school district or districts in amounts proportionate to the number of pupils upon which State aid was granted. The subsidy is expended by the school board with the approval of the county superintendent of schools.¹⁹⁸

¹⁹⁷ *Code of 1927*, Secs. 4329, 4333, 4334, 4337, 4338.

¹⁹⁸ *Code of 1927*, Secs. 4332, 4335; House File No. 217, of the Forty-third General Assembly; *Journal of the House of Representatives*, 1929, pp. 419, 563, 564, 1361 1480, 1481, 1591; *Journal of the Senate*, 1929, pp. 827, 1245, 1270, 1271, 1390.

Financial Control over Mining Camp Schools.— The powers of financial control of the Superintendent of Public Instruction were extended by the Thirty-eighth General Assembly so as to include control over rural schools in mining camp districts. To this end the sum of \$50,000.00 was appropriated “to be used by the state superintendent of public instruction and under his direction during the next biennium for the purpose of relieving the conditions existing in the mining camps” so far as school facilities were concerned. The authority to control this sum seems to have been unlimited; the Superintendent of Public Instruction had full authority to expend it as he saw fit.¹⁹⁹ The Thirty-ninth General Assembly, however, limited the financial authority of the Superintendent of Public Instruction in this function by providing that the State aid for mining camp schools be “used by” the Superintendent of Public Instruction and “under his direction”, but with the approval of the Executive Council. The Fortieth General Assembly further limited the financial powers of the Superintendent of Public Instruction by requiring that the expenditure of State aid for mining camp schools was to be not only with the approval of the Executive Council, but also under “its direction”.

In administering State aid to mining camp schools personal visits of inspection and consultation with the local officials are made, usually by the Inspector of Mining Camp Schools. These visits are made to determine the relative concrete needs of the various schools. The Superintendent of Public Instruction then submits a “comprehensive program” to the Executive Council showing the entire proposed expenditure of the \$50,000.00 annually provided. All mining camp schools applying for funds must then be notified of the contemplated division of funds before the Exec-

¹⁹⁹ *Laws of Iowa*, 1919, Ch. 373.

*no longer
true.*

utive Council's action. Ten days prior to the hearing by the Executive Council notice of the hearing must be given by registered mail addressed to the secretary of the respective mining camp schools.

The State aid for mining camp schools unlike the apportionment of State aid to consolidated schools, normal training schools, and standard schools, is not apportioned to schools meeting certain standards set up, but is apportioned rather, to those having the greatest need.²⁰⁰

Financial Control over Graded and High Schools.—In addition to exercising control through the approval of schools for State aid, the Superintendent of Public Instruction exercises supervision over graded and high schools through his power to control an important source of their revenues. Of the 32,887 high school students enrolled during the school year of 1927-1928, 9,595 were tuition students. Also, 2,449 grade school pupils brought revenue to these schools. During this same period the revenue accruing to schools approved by the Superintendent of Public Instruction was approximately \$3,049,000.00. No graded and high schools not approved by the Superintendent of Public Instruction may compel payment of tuition by the school corporation of which the student is a resident. Graded and high schools not approved for tuition must claim payment other than from the corporation of the student's residence.²⁰¹ In addition to the consolidated and normal training schools there were, during the school year ending June 30, 1928, 362 other school corporations maintaining high

²⁰⁰ *Laws of Iowa*, 1921, Ch. 295, 1923, Ch. 286, 1925, Ch. 218; *Biennial Report of the Superintendent of Public Instruction*, 1923-1924, pp. 13-15; letter dated February 13, 1926, from Inspector of Mining Camp Schools, Miss Winogene Hobbs.

²⁰¹ *Code of 1927*, Secs. 3832, 4274, 4275, 4277, 4278; *Biennial Report of the Superintendent of Public Instruction*, 1926-1928, pp. 14, 50, 94-96.

schools approved by the Department of Public Instruction for tuition purposes. These schools receive no special State aid, their only source of revenue being the property tax, the semi-annual apportionment, and tuition collected from individuals and from school corporations. Also, during this period 206 normal training high schools and 351 consolidated schools were approved for tuition as well as State aid and six consolidated schools were approved for tuition only.²⁰²

The powers of the Superintendent of Public Instruction to approve schools for tuition purposes enables him to establish standards for graded and high schools and to inspect the graded and high schools of the State to determine if the standards are being met or to approve new schools desiring to meet these standards. The Superintendent of Public Instruction has suggested standards relative to the government and administration of these schools by the board of school directors and the school superintendent, organization, the school plant, equipment, course of study, and teachers.²⁰³ The Superintendent of Public Instruction may not, however, deprive a graded or high school of its right to be approved for tuition because of the employment of a teacher properly certified and having had three years' teaching experience and who has previously been approved for teaching in such a school. Certificates of approval for tuition purposes are issued by the Department of Public Instruction to the schools meeting the minimum requirements.²⁰⁴

When children of employees of any institution under the

²⁰² *Biennial Report of the Superintendent of Public Instruction, 1926-1928*, pp. 14, 38-45.

²⁰³ See *Standards for Graded and High Schools Seeking Approval for Tuition Purposes, 1928*.

²⁰⁴ *Code of 1927*, Secs. 4337, 4338; *Standards for Graded and High Schools Seeking Approval for Tuition Purposes, 1928*, p. 7.

State Board of Conservation, the State Board of Control, the State Board of Education, or belonging to the Federal government, attend school in the district in which such institution is located or in a nearby district, the tuition is paid from the State Treasury. The Superintendent of Public Instruction, however, promulgates the rules and regulations necessary to determine the tuition and audits the tuition accounts in each case.²⁰⁵

Financial Control over Teachers' Institutes.—The Tenth General Assembly in 1864 granted the Superintendent of Public Instruction authority to “appoint the time and place” of holding a teachers’ institute in each of the several counties of the State, and appropriated a sum of fifty dollars annually for each such institute. The same amount of State aid is still granted to each county for teachers’ institutes, but authority of the Superintendent of Public Instruction to supervise the activities of the county superintendent relative to teachers’ institutes has been slightly increased. The Superintendent of Public Instruction is now empowered to direct the county superintendent in holding the institute and the county superintendent must secure the approval of the Superintendent of Public Instruction in selecting the instructional staff of the institute.²⁰⁶

IX

THE QUASI-JUDICIAL POWER

The first constitutional provision for appeals in school matters to be taken from the local school officials to the

²⁰⁵ *Code of 1927*, Secs. 4283b-6; House File No. 133, of the Forty-third General Assembly; *Journal of the House of Representatives*, 1929, pp. 182, 349, 524, 525, 1271, 1297, 1298, 1337; *Journal of the Senate*, 1929, pp. 519, 524, 827, 1123, 1124, 1161, 1174.

²⁰⁶ *Laws of Iowa*, 1864, Ch. 52; *Code of 1927*, Secs. 3832 (14), 4108, 4112, 4113.

chief State school official in Iowa was made by the State Board of Education in 1859. According to this rule, the function of hearing appeals was to be exercised by the Secretary of the State Board of Education. With the abolition of the State Board of Education in 1864, and the re-establishment of the office of Superintendent of Public Instruction, the latter officer was empowered to hear and "determine all cases appealed from the decision of the County Superintendents."²⁰⁷

The judicial power exercised by the Superintendent of Public Instruction has its origin in his power of direction and supervision. In accordance with a well known rule of administrative law it is held that where a head of a State department does not usually have the power of direction there is no general right of appeal from the decision of subordinates.

From the standpoint of study in administration the judicial power of the Superintendent of Public Instruction is one of considerable interest in Iowa government. This is largely because the Superintendent of Public Instruction, sitting as a tribunal passing upon the acts and decisions of the boards of directors and county superintendents, acts as an administrative court of final jurisdiction, and because the administrative court is not intrinsically a part of the American governmental system. The idea of an administrative court apparently had its origin in Europe. From the administrative court in France and Germany there has grown up a system of administrative law peculiar to their system of government. The theory of the French law is that the law which binds the administration is a special and distinct law; while the "theory of our law is that the admin-

²⁰⁷ *Educational Laws of the State of Iowa*, passed by the Board of Education, at its first and second sessions, as found in the *Journal of the Board of Education*, p. 27, Part XIII; *Laws of Iowa*, 1864, Ch. 52.

istration is in principle within the rule and nexus of the common law".²⁰⁸

The sections of the law granting the judicial power of the Superintendent of Public Instruction provide that the Superintendent of Public Instruction "shall examine and determine all appeals taken to him, according to law . . . and render written opinions upon questions submitted by school officers pertaining to their duties." "An appeal may be taken from the decision of the county superintendent to the superintendent of public instruction in the same manner as provided . . . 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."²⁰⁹

The grant of power to hear cases of appeal has not gone unchallenged by the courts. The Supreme Court of Iowa as early as 1864 held that the Superintendent of Public Instruction in hearing cases of appeal is not exercising a judicial function, but is performing a ministerial act. This, it held, is made manifest by the fact that in acting upon appeals he is "limited necessarily to the same subject, and to the exercise of the same kind of power" as the county superintendent and the board of school directors. This is further made manifest, the Supreme Court held, because of the fact that the statutes have "expressly" withheld from the Superintendent of Public Instruction "the power to render judgments for money, thereby showing that neither party is to be shut up to his decision, so far as their rights

²⁰⁸ Goodnow's *The Principles of the Administrative Law of the United States*, pp. 140, 146; Freund's *The Growth of American Administrative Law*, pp. 9-11, 15, 16; Dickinson's *Administrative Justice and the Supremacy of Law in the United States*, pp. 32-36.

²⁰⁹ *Code of 1927*, Secs. 3832 (19), 4302.

and remedies by legal procedure are concerned." The denial of power to render money judgments is perhaps the one element that, more than any other, has differentiated this tribunal from those strictly judicial.²¹⁰ It is to be observed, however, that the administrative court of the Superintendent of Public Instruction decides many cases very similar in nature to those decided by the ordinary law courts. This is to be noted even in cases involving the determination of rights, judgments for money, determining jurisdiction, and defining procedure. Indeed, it has been recognized by good authority that, from all appearances, the Superintendent of Public Instruction constitutes a court parallel in jurisdiction and authority with the regular courts.²¹¹ The Supreme Court in 1887 spoke of this power as "judicial"²¹² and in 1896 as "*quasi-judicial*".²¹³ The courts have held that cases heard by the Superintendent of Public Instruction have met the requirements of the due process of law.²¹⁴

JURISDICTION

The jurisdiction of the Superintendent of Public Instruction in exercising his *quasi-judicial* functions has been worked out through statute, through court decisions, and partly through the Superintendent of Public Instruction's own definition and interpretation of his powers. His jurisdiction extends to "all cases of law and fact", but he cannot "render a judgment upon an appeal in the exercise of judicial authority".²¹⁵ It is not in his power to determine

²¹⁰ *The School Township of Sioux City v. Pratt*, 17 Iowa 16, 18.

²¹¹ Goodnow's *Politics and Administration*, pp. 79-81; Greenleaf's *A Treatise on the Law of Evidence*, Vol. I, pp. 162, 167.

²¹² *Desmond v. The Independent District of Glenwood*, 71 Iowa 23.

²¹³ *Rodgers v. The Independent School District of Colfax*, 100 Iowa 317, 321.

²¹⁴ *State of Iowa v. Thomas*, 152 Iowa 500, 504.

²¹⁵ *The Independent School District of Lowell v. The Independent School District of Duser*, 45 Iowa 391, 394.

the constitutionality of law,²¹⁶ since the powers of the Superintendent of Public Instruction are ministerial rather than judicial and no appeal may be had to the Supreme Court. The jurisdiction of the Superintendent of Public Instruction is also limited by the fact that he is denied power to render money judgments, nor may he hear cases arising from disputes concerning the formation or dissolution of a consolidated school district. In cases involving judgments for money and rights of citizens the courts are expected to determine equity and rights to be allowed; while the settlement of cases of dispute over the formation or dissolution of a consolidated school district, the law contemplates, shall reach final jurisdiction with the county board of education.²¹⁷

It might be presumed from the provisions of the law, in its use of the words "decision of the county superintendent to the superintendent of public instruction in the same manner as provided . . . for taking appeals from the board of a school corporation" that only decisions in the cases appealed to the county superintendent are meant. The Superintendent of Public Instruction does, however, entertain cases involving merely an original decision or order of the county superintendent and connected in no respect with any proceedings of a board of directors. For instance, he has entertained cases involving revocation of teachers' certificates. A person aggrieved by the order of a county superintendent revoking a certificate has the right of appeal to the Superintendent of Public Instruction. Thus the jurisdiction of the Superintendent of Public Instruction

²¹⁶ Perkins v. The Independent School District of West Des Moines, 56 Iowa 476, 478, 479.

²¹⁷ The Independent School District of Lowell v. The Independent School District of Duser, 45 Iowa 391, 394; Kirkpatrick v. The Independent School District of Liberty, 53 Iowa 585, 588; Code of 1927, Secs. 4158, 4159, 4160, 4161, 4162, 4188.

in hearing appeals is extended beyond that of hearing cases originating with the board of directors.

It is in this sense that the Superintendent of Public Instruction may be considered as having original jurisdiction. Where a county superintendent acts without jurisdiction, an appeal to the Superintendent of Public Instruction does not, however, confer jurisdiction in any case.²¹⁸

The courts have recognized that the jurisdiction of the school tribunals, that is, of the Superintendent of Public Instruction, the county superintendent, and the board of school directors, is to a certain extent exclusive. Usually in those cases where adequate remedy is provided by the school tribunals the courts will not interfere. For instance, it has been held that *mandamus* to compel action by a board of directors will not lie where the aggrieved party has the right of appeal.²¹⁹ And a teacher claiming that he is wrongfully discharged by a board of directors for incompetency can not, on the ground that action of the board was irregular and the discharge void, maintain an action for his salary without first appealing to the county superintendent and the Superintendent of Public Instruction.²²⁰

The cases in which the courts have claimed exclusive or concurrent jurisdiction in addition to those involving contracts, money judgments, or of the constitutionality of the law are, as a rule, cases in which one of the extraordinary writs is necessary to a speedy and adequate remedy. In the case of *mandamus* this is further supported in the law itself. The law provides that appeal may be taken only from a "decision or order", and this has been interpreted to preclude appeal in cases of neglect or refusal to act. Here it

²¹⁸ *Code of 1927*, Secs. 3893, 3894, 3895, 4302; *School Township of Newton v. The Independent School District of the City of Newton*, 110 Iowa 30, 31, 32.

²¹⁹ *Marshall v. Sloan*, 35 Iowa 445, 448.

²²⁰ *Kirkpatrick v. The Independent School District of Liberty*, 53 Iowa 585.

has been held *mandamus* is the only means of compelling action.²²¹ The remedy of a person denied possession of an office to which he has been elected and the remedy to test the validity of a school organization is by *quo warranto*.²²² Where a board of directors exceeds its jurisdiction or acts in a fraudulent or illegal manner *certiorari* and not appeal has been designated as the proper remedy.²²³ Where the question involves the construction of a statute conferring power upon school officers the courts quite readily assume jurisdiction either in *mandamus* or injunction.²²⁴ It is upon this matter, chiefly, that the courts have insisted upon sharing authority with the county superintendent and the Superintendent of Public Instruction, or even in restricting the authority of these officials. It is to be noted in this matter that though the courts have carefully guarded their own powers they have also given full recognition of a supplementary remedy; namely, by appeal. Thus, in support of the school tribunal, the Supreme Court of Iowa has said:

The school system of Iowa has been framed with special care to keep its management and control separate and distinct from other local jurisdictions having more directly to do with the administration of public affairs in general The officers and boards have not only a wide range of discretion in matters of administration, but are vested with much authority which is judicial, or quasi-judicial in character, with the result that, of the very large number of questions arising for solution comparatively few find their way into the courts for adjudication. This is as

²²¹ *Hancock v. The District Township of Perry*, 78 Iowa 550, 551, 552; *Code of 1927*, Sec. 4298; *Case v. Blood*, 71 Iowa 632, 634, 635.

²²² *School Laws of Iowa*, 1925, Decisions, p. 197; *State of Iowa ex rel Harms v. Alexander et al*, 129 Iowa 538, 540; *Independent School District of Manning v. Miller*, 189 Iowa 123, 133.

²²³ *Code of 1927*, Sec. 12456; *Smith v. Powell et al*, 55 Iowa 215, 216.

²²⁴ *Perkins v. The Board of Directors of The Independent School District of West Des Moines*, 56 Iowa 476, 478, 479; *Clay v. The Independent School District of Cedar Falls*, 187 Iowa 89, 100.

it should be, and the courts should hesitate long before using extraordinary powers of injunction or *mandamus* to control the administration of school affairs, where there is no clear showing of fraud or other flagrant wrong.²²⁵

On the other hand the extraordinary writs are frequently necessary to maintain justice. This is to be seen where the slower method of appeal would permit the consummation of a wrong which could be checked by an injunction.²²⁶ The statute provides that appeal may be taken from a "decision or order . . . in a matter of law or fact". The courts have not usually questioned decisions in matters of fact, but they have been more alert in any matter involving the construction of the law. This, it appears, is because the power to construe the law is rather distinctively a part of the work of the courts.²²⁷ In some cases the Supreme Court has indicated that proceedings through the courts would be more appropriate than appeal. There have been cases, however, in which there is little necessity for the existence of more than one method, or in which there is little real need of more than the method of appeal, yet the courts have defended their jurisdiction.²²⁸ The powers of the Superintendent of Public Instruction when acting within his jurisdiction are in some respects broad. Though the Superintendent of Public Instruction has held that it is not reasonable to urge that the county superintendent would have greater power on appeal than the board of directors would have, the courts have decided that in cases of appeal from the action of a board of directors both the county superintendent and the Superintendent of Public Instruc-

²²⁵ *Clay v. The Independent School District of Cedar Falls*, 187 Iowa 89, 98, 99.

²²⁶ *Hume v. The Independent School District of Des Moines*, 180 Iowa 1233, 1243.

²²⁷ *Code of 1927*, Sec. 4298; *Hinkle v. Saddler*, 97 Iowa 526, 536.

²²⁸ *Perkins v. The Board of Directors of The Independent School District of*

tion "have jurisdiction *de novo* by the appeal and can enter any order that the board could have made in the matter."²²⁹

The Superintendent of Public Instruction in the discharge of his judicial duties has the power, possessed by all courts and judicial officers, to correct mistakes in his decisions. 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 his mistake, recall it, and decide rightly."²³⁰ And when an appellate tribunal is unable to decide an appeal because the testimony is insufficient or the transcript of the action of the board of directors is incomplete, and the facts are not sufficiently shown, the Superintendent of Public Instruction may remand the case for a new trial or for further action by the board of directors.²³¹ The Superintendent of Public Instruction may affirm the decision of the county superintendent; he may dismiss the case; he may deny a hearing; or he may modify and affirm, reverse and remand, or reverse and dismiss a case appealed to him.²³²

In other ways the power of the Superintendent of Public Instruction appears to be much less than that of the courts for he seems to have no power of committal or fine for contempt, and can only appeal to the courts for assistance. He

West Des Moines, 56 Iowa 476, 478, 479; *Rodgers v. The Independent School District of Colfax*, 100 Iowa 317, 320, 321.

²²⁹ *School Laws of Iowa*, 1925, Decisions, pp. 248, 249; *Atkinson v. Hutchinson*, 68 Iowa 161, 163, 164; *Munn v. School Township of Soap Creek*, 110 Iowa 653, 657.

²³⁰ *Desmond v. The Independent District of Glenwood*, 71 Iowa 23, 25.

²³¹ *School Laws of Iowa*, 1925, Decisions, p. 211.

²³² *School Laws of Iowa*, 1925, Decisions, pp. 193 ff.

does not have authority to enforce his decisions. His decisions may, however, be enforced "by an action of *mandamus*".²³³

PROCEDURE

The *quasi*-judicial authority of the Superintendent of Public Instruction includes the regulation of procedure. The statutes and the Supreme Court decisions have not occupied the entire field. Under this power rules of practice have been established and forms for use in appellate proceedings have been prescribed. The rules are to be found in his decisions. For instance, he has decided that appearance at the trial is a complete waiver of notice; that testimony to be legal must be under oath; that testimony unless obviously immaterial should be admitted and given such weight as it merits; that charges to warrant a dismissal must be specific and sustained by evidence; and, that a technical error will not defeat an appeal.²³⁴

Appeals from the decision of the county superintendent are made by the filing of an affidavit with the Superintendent of Public Instruction. This affidavit must be filed within thirty days from the date of the decision appealed from. Upon the filing of the affidavit the Superintendent of Public Instruction notifies the county superintendent to forward to the Department of Public Instruction within thirty days a transcript of the papers in the case. The original papers are kept on file in the office of the county superintendent. The transcript sent to the Superintendent of Public Instruction includes an exact copy of all testimony taken in the case by the county superintendent and a copy of his docket. The transcript, it is expected, will be uniform in size and type-written. The appellant must give thirty days' notice to the

²³³ *State v. Thomas*, 152 Iowa 500, 503, 504.

²³⁴ *School Laws of Iowa*, 1925, Decisions, pp. 193, 228, 229; *School Laws of Iowa*, 1915, p. 130.

county superintendent and also to the adverse party of the taking of the appeal. It is expected that this notice will be served as soon as the affidavit of appeal has been filed with the Superintendent of Public Instruction. Proof of the serving of the notice is to be filed with the affidavit in the Department of Public Instruction. The time for hearing by the Superintendent of Public Instruction will be fixed by him; and may be at any time after thirty days from the filing of the affidavit. A one-dollar postage fee must accompany the filing of the affidavit, otherwise the affidavit will not be considered. In cases concerning the revocation of a teacher's certificate by the county superintendent the person aggrieved by the county superintendent's action must make his appeal to the Superintendent of Public Instruction within ten days of the date of the county superintendent's decision. At the hearing held by the Superintendent of Public Instruction the parties interested may appear in person or by attorney and argue their cases orally, or they may send arguments in writing. The hearing in cases of appeal is not to be conducted by rigid adherence to technical forms and customs such as prevail in the regular courts.²³⁵ Should there be shown upon appeal that the transcript is materially defective, that valuable testimony given before the county superintendent has been omitted, an appeal case may be remanded by the Superintendent of Public Instruction. His decision when made shall be considered final. That is, it is final in the sense that no court will attempt to review or set aside a decision or order if the matters included are clearly within the jurisdiction of the Superintendent of Public Instruction.²³⁶ A

²³⁵ *School Laws of Iowa*, 1915, pp. 128, 129, 130, 131; *Code of 1927*, Sec. 3895; *School Laws of Iowa*, 1925, Decisions, p. 224.

²³⁶ *Munn v. School Township of Soap Creek*, 110 Iowa 653, 657; *School Laws of Iowa*, 1925, Decisions, pp. 211, 214, 215, 216, 219; *School Laws of Iowa*, 1915, pp. 129, 130, 131.

person in whose favor an appeal is decided may secure the enforcement of the decision of the Superintendent of Public Instruction by a writ of *mandamus* procured from the courts.

Evidence.—It has been held that the Superintendent of Public Instruction may determine the admission of evidence since from all appearances he constitutes a court parallel in jurisdiction and authority with the regular courts. In the hearing of cases of appeal the Superintendent of Public Instruction has taken great pains to make this court a court in the full sense of the word. In the admission of evidence, principles similar to those followed in courts of law have been used. Thus, the Superintendent of Public Instruction has adopted the principle of excluding parol evidence where it is possible and that it is not to be used to impeach written records, that parol evidence will not be substituted for written evidence of a transaction unless there is proof of fraud or falsehood, and that the written record is its own best evidence.²³⁷ The Superintendent of Public Instruction has also held that opinions unsupported by facts do not become satisfactory evidence, and that the charges must be clearly sustained by evidence, but that unless obviously immaterial, testimony will be admitted and given such weight as it merits.²³⁸

That appeal is of greater freedom and in some respects preferable to action in the regular courts may be seen from an examination of the rules relative to evidence. The Superintendent of Public Instruction has held that sufficient latitude should be allowed in the introduction of evidence to permit full presentation of the issues involved, even if ir-

²³⁷ Greenleaf's *A Treatise on the Law of Evidence* (16th Edition), Vol. I, p. 162; *School Laws of Iowa*, 1925, Decisions, pp. 194, 195, 197, 214, 216, 217.

²³⁸ *School Laws of Iowa*, 1925, Decisions, pp. 193, 235, 236.

relevant testimony is admitted, and that new evidence may be admitted when the facts materially affecting the case could not have been known before the trial.²³⁹

In support of the action of the board of directors the Superintendent of Public Instruction has held that, to show that a rule made by the board is unreasonable, the burden of the proof lies with the appellant and that positive testimony must be introduced and conclusive evidence must be shown to prove that a board acted maliciously or prejudicial to the interests of the appellant.²⁴⁰

ADMINISTRATION OF THE QUASI-JUDICIAL FUNCTION

The effect of the exercise of the *quasi*-judicial powers by the Superintendent of Public Instruction is shown, not so much by the text of the law, or by the language of the courts, as by the actual use made of the powers conferred, which is shown in examination of the decisions of the Superintendent of Public Instruction. That considerable weight is accorded the decisions of the Superintendent of Public Instruction may readily be inferred from the attitude shown by the Supreme Court in quoting from his decisions. Judged by the number of appeals and the questions involved, the powers actually exercised by the Superintendent of Public Instruction have been fully as comprehensive as those conferred in the statutes. As early as 1880, the importance of determining appeal cases was pointed out. In 1877, 123 cases were decided upon by county superintendents and 53 were appealed to the Superintendent of Public Instruction.²⁴¹ An examination of the number of cases reported by the county superintendents during the

²³⁹ *School Laws of Iowa*, 1925, Decisions, p. 244.

²⁴⁰ *School Laws of Iowa*, 1925, Decisions, pp. 215, 239, 240.

²⁴¹ See *School Laws of Iowa*, 1925, Decisions, pp. 193 ff.; *Biennial Report of the Superintendent of Public Instruction*, 1877-1879, p. 51, Appendix p. 43; *Wallace v. School District*, 150 Iowa 711, 714.

years of 1873 to 1922, makes it apparent that there has been a decided but gradual falling off in numbers. In 1873, there were 179 cases heard by county superintendents; in 1887, 96; in 1897, 36; in 1907, 17; and in 1917, 22. In 1919 there was a considerable increase in the number of cases decided in the counties. Since then there has followed another gradual decrease. In 1919 there were 85 cases; in 1920, 54; and in 1921, 39. The increase in 1919 apparently was due to: (1) the increased work in the several departments, and (2) the increased consolidation of schools and changed boundaries.²⁴² The cases carried from the county superintendents to the Superintendent of Public Instruction have usually been less than half those decided in the counties.²⁴³ Thus the Superintendent of Public Instruction is relieved of a considerable burden. The steady decrease in numbers may be explained in part by the fact that as school boundaries and sites have become more permanently fixed the possibilities of disputes on these points have decreased. The general policy of the county superintendents and the Superintendent of Public Instruction to discourage the taking of appeals has no doubt also contributed to their reduction.

An aspect of considerable significance in the administration of the *quasi*-judicial function is the independence with which the Superintendent of Public Instruction decides appeals. Of those cases appearing in the published decisions a majority are reversals. Of these 106 cases, 44 are reversals; 40 have been affirmed; 3 reversed and dismissed; 9 dismissed; 4 reversed and remanded; 3 remanded; and 2

²⁴² *Biennial Report of the Superintendent of Public Instruction*, 1872-1873, Appendix pp. 165, 185, 1876-1877, Appendix p. 43, 1877-1879, Appendix p. 17, 1887-1889, Appendix p. 57, 1907, p. 343, 1916-1918, p. 265, 1918-1920, pp. 43, 291, 1920-1922, pp. 153, 301.

²⁴³ *Biennial Report of the Superintendent of Public Instruction*, 1892-1893, p. 135.

petitions for re-hearing denied. From this analysis it is evident that the Superintendent of Public Instruction not only acts with considerable independence, but that there is also a need for his hearing of administrative appeals. The figures show that he does not hesitate to reverse the decisions of the boards of directors or county superintendents, or on the other hand, to adapt the decision to the equities of the case. Thus it is possible to justify the existence of this administrative tribunal, for apparently injustice would be done without it. From this brief analysis of the judicial function of the Superintendent of Public Instruction it is clear that this function contributes in a large measure to his administrative position in the State government. With the assurance that the Superintendent of Public Instruction may alter its decisions or may entirely disallow them, the board of directors is likely to be more careful in rendering its decisions, and the county superintendent more judicious in deciding cases appealed to him. The result of this seems likely to be that of bringing about uniformity in the enforcement of school law and a better knowledge of what the school law is. Furthermore, the likelihood that a decision of the county superintendent may be reversed would seem to discourage administration of the schools for selfish or personal motives.²⁴⁴ Knowledge of this potential power of the Superintendent of Public Instruction has no doubt been influential in developing a respect for the system. There has been, however, much criticism of the appellate authority even by the incumbents of the office of Superintendent of Public Instruction. It has been recommended that this function be abolished; it is urged that it has been "productive of more evil than good", and that someone is "dissatisfied with almost any act of the board of directors, and by availing himself of the right of appeal, much trouble often

²⁴⁴ *School Laws of Iowa*, 1925, Decisions, p. 333.

grows out of a very small matter." It was very early complained that the settlement of appeals, the official correspondence and the general work the law demands were sufficient to employ the entire time of the Superintendent of Public Instruction and his deputy. This has been a rather general complaint. Because of the ambiguity of the law and the unnecessary delay in hearing appeal cases one Superintendent of Public Instruction recommended the settlement of cases by local arbitration boards. Of recent years there has not been so much questioning of the existence of this judicial authority.²⁴⁵ The courts have shown a somewhat more favorable attitude toward the system and have regarded this method of adjusting school disputes as "plain, speedy, and adequate". They have spoken in high praise of the system.²⁴⁶ In discussing the judicial function of the Superintendent of Public Instruction the courts have said that "of the very large number of questions arising for solution in carrying on the vast and more or less complicated affairs of this system, which reaches into every neighborhood throughout the state, comparatively few find their way into the courts for adjudication. This is as it should be, and the courts should hesitate long before using their extraordinary powers of injunction or mandamus to control the administration of school affairs".²⁴⁷

For a Superintendent of Public Instruction to arrive at any definite opinion relative to a case appealed to him great care and labor must be taken in determining the law. This involves not only scanning a particular act, but searching the decisions of previous Superintendents of Public Instruc-

²⁴⁵ *Report of the Secretary of the Board of Education*, 1861, pp. 13, 14; *Biennial Report of the Superintendent of Public Instruction*, 1864-1865, pp. 21, 27.

²⁴⁶ *Marshall v. Sloan et al*, 35 Iowa 445, 448; *Clay v. The Independent School District of Cedar Falls*, 187 Iowa 89, 99.

²⁴⁷ *Clay v. The Independent School District of Cedar Falls*, 187 Iowa 89, 99.

tion, of the Supreme Court, and often the opinions of the Attorney Generals. The Constitution and the Code provisions form the basis; these are written, and both are administrative and judicial. Next in importance are the decisions of the Supreme Court which, though primarily judicial, embrace many matters in the nature of administrative law. For instance, the Supreme Court has decided that where an appeal is taken from the actions of a board of directors to the county superintendent and the Superintendent of Public Instruction, the Superintendent of Public Instruction has jurisdiction anew and can enter any order the board could have made.²⁴⁸ The decisions of the Superintendent of Public Instruction are entirely administrative. The opinions of the Attorney General referred to are such as are given upon request of the Superintendent of Public Instruction. This practice has been much used of late, and in some cases it appears that the Superintendent of Public Instruction has practically allowed the Attorney General to frame the school decision.²⁴⁹ As a result, these opinions have been given great weight and have been printed in the school laws as of equal importance with the other matters contained therein. The two classes of decisions and the opinions go to make up the "unwritten" law.²⁵⁰

Indeed, the work of giving opinions alone constitutes an enormous task to be performed by the Superintendent of Public Instruction. To make these opinions, decisions, and school statutes of most value, the Superintendent of Public Instruction has advocated the compiling of an annotated school code. For the year 1921, the Department of Public Instruction wrote 1881 opinions, classified under 63 heads. For the year ending June 30, 1922, 1864 opinions were is-

²⁴⁸ *Munn v. School Township of Soap Creek*, 110 Iowa 652.

²⁴⁹ *Biennial Report of the Attorney General*, 1923-1924, pp. 340-385.

²⁵⁰ *School Laws of Iowa*, 1915, p. 5.

sued. Questions concerning tuition composed the largest group, there being 191 requests for opinions during the year ending June 30, 1921, and 234 for the following year. Other matters demanding considerable attention during the two years, matters which might be considered as being representative of the work performed in giving opinions, are, in order of their approximate number, as follows: (1) school bonds, (2) boundary lines, (3) buildings, (4) certification of teachers, (5) collection of salaries of teachers, janitors, and bus drivers, (6) contracts of teachers, janitors, and bus drivers, (7) consolidation elections, (8) minimum wages of teachers, (9) school officers and their powers and duties, (10) publication of school notices, (11) tax levy, and (12) transportation. The work of formulating and issuing opinions is handled by the Deputy Superintendent of Public Instruction.²⁵¹

ADMINISTRATION OF THE QUASI-JUDICIAL FUNCTION AND THE BOARD OF SCHOOL DIRECTORS

The scope of the authority of the Superintendent of Public Instruction may be shown by a consideration of the character of questions which are involved in the appeal cases, with some indication as to the general policy shown in the decisions. First to be considered are those where an act of a board of directors is appealed from; second, those cases of appeals from decisions or orders originating with the county superintendent. In cases of appeals from the decision of boards of directors discharging teachers the Superintendent of Public Instruction has been careful to safeguard the rights of teachers. Thus he has refused to admit the validity of a discharge not made upon full and fair investigation. The teacher is allowed a reasonable time to

²⁵¹ *Biennial Report of the Superintendent of Public Instruction, 1920-1922*, pp. 40-46.

prepare for and make defense. The Superintendent of Public Instruction has decided that a teacher may not be discharged at a special meeting called for the purpose of securing a modification of his contract.²⁵² He has held that the teacher is entitled to the counsel and coöperation of the board of directors in all school matters; and that a teacher may not be dismissed for refusing to teach grades, or classes not named in the contract. When discharged for incompetency or dereliction of duty a teacher has the right of appeal; when dismissed in violation of his contract an action in the courts will afford him a speedy and adequate remedy.²⁵³ The Superintendent of Public Instruction has also been careful to guard the individual rights of the school child as against the board of directors; holding that in cases involving the welfare of the child the law should be followed in "spirit" rather than literally, and that a first offense in the violation of the national prohibition act is not sufficient to warrant expulsion. He has held, however, that the board of directors may expel a pupil for immorality, for violation of rules and regulations made by the board of directors, or when the pupil's presence is harmful to the best interests of the school. The board of directors, it has been held, possesses large discretionary powers in making rules and regulations relative to the government of the schools.²⁵⁴ Where the right of a teacher to punish a child has come before the Superintendent of Public Instruction, he has held that the right of the parent to restrain and coerce children applied equally to any one who acts *in loco parentis*. From this it is to be concluded that the teachers may inflict corporal punishment. But it has been held that in correction of pupils the teachers must exercise sound discretion and judg-

²⁵² *School Laws of Iowa*, 1925, Decisions, pp. 247, 255, 273.

²⁵³ *School Laws of Iowa*, 1925, Decisions, pp. 209, 247.

²⁵⁴ *School Laws of Iowa*, 1925, Decisions, pp. 218, 229, 230, 235, 266.

ment; punishment with undue severity is unwarrantable.²⁵⁵ Boards of directors in attempting to exercise jurisdiction over school children after the termination of the school year have been declared to have exceeded their powers.²⁵⁶

In the selection of a school site, when a board of directors violates a law or abuses its discretionary power, its action has been reversed on appeal and the Superintendent of Public Instruction has himself undertaken to determine what the intent of the school electors was concerning the locations of the site and to issue his order accordingly. It is not, however, in the province of the Superintendent of Public Instruction to determine which of two sites is better. For the board of directors to make a distinction in determining the location of a school site between the children of freeholders and those of tenants is contrary to the spirit and intent of the law. The fact that some other action of the board of directors would have been desirable or preferable does not, however, establish that the board abused its discretion. The Superintendent of Public Instruction has decided that the action of the board of directors is presumed to be regular, correct, and for the best interests of the school districts.²⁵⁷ The Superintendent of Public Instruction has decided that the board of directors may not substitute its discretion for the clearly expressed wish of the electors. Thus, when the electors vote a schoolhouse tax to erect a building upon a particular site, the board of directors may not erect it on some other site. In the location of a school site it is incumbent upon the board of directors to recognize the rights of even a small minority. It may not deny an actual resident of a school district equal school advantages with other residents. The board of directors

²⁵⁵ *School Laws of Iowa*, 1925, Decisions, pp. 202, 203.

²⁵⁶ *School Laws of Iowa*, 1925, Decisions, p. 266.

²⁵⁷ *School Laws of Iowa*, 1925, Decisions, pp. 206, 210, 228, 235, 239.

may, however, in such manner as it sees fit determine the question of residence.²⁵⁸ The right of a board of directors to provide and enforce a course of study has been determined in its favor. It has been held that an appeal may not be taken from an order of the board of directors on the district treasurer, or in a matter of equity. But an appeal may be taken from the action of the board of directors in re-opening a school, on the failure or refusal to vote on a motion, the adoption of committee reports, from the failure of a motion to secure a second or from a motion to table a petition.²⁵⁹

ADMINISTRATION OF THE QUASI-JUDICIAL FUNCTION AND THE COUNTY SUPERINTENDENT OF SCHOOLS

The judicial decisions of the Superintendent of Public Instruction have affected the administrative activities of the county superintendent of schools. In the hearing of appeals the county superintendent is thus limited in jurisdiction to matters that may be decided by the board of school directors from whose action the appeal is taken. His action in original jurisdiction is limited to revoking certificates of only those teachers employed in his county. The county superintendent exercises considerable influence in the granting of certificates. In such matters he has been accorded broad discretionary powers. He may require the applicant to show conclusive proof of good moral character and he may refuse a certificate to a teacher who fails to furnish satisfactory evidence of such character. Also he may refuse to enroll as a member of the teachers' county normal institute any person failing to furnish satisfactory proof of good moral character. It has been held, however, that a statement of a county superintendent of schools as to the

²⁵⁸ *School Laws of Iowa*, 1925, Decisions, pp. 242, 283, 292.

²⁵⁹ *School Laws of Iowa*, 1925, Decisions, pp. 202, 208, 240, 295.

character of an applicant made with full knowledge of the facts can not be repudiated later by him to satisfy his interests.²⁶⁰

The Superintendent of Public Instruction has held that the county superintendent, in deciding appeals, may consult the county attorney before giving his decision. Moreover, he may ask the Superintendent of Public Instruction for interpretation of a law upon any school matter. He may not, however, expect the Superintendent of Public Instruction to decide cases of appeal for him. Where cases of appeal come before the county superintendent with facts insufficiently shown so as to determine what should be done, but showing the action of the board of directors to be inadequate, the Superintendent of Public Instruction has decided that the case should be remanded. The county superintendent is not only responsible for his own acts, but has been held to be responsible for the acts of his deputy.²⁶¹

X

EX OFFICIO FUNCTIONS

The Superintendent of Public Instruction has certain powers and duties which he exercises by virtue of his office. He is *ex officio* a member of the State Library Commission, a member of the Board of Trustees of the State Library and Historical Department, president and executive officer of the Board of Educational Examiners, and chairman and executive officer of the Board for Vocational Education. The Superintendent of Public Instruction also serves the Board for Vocational Education in administering the vocational rehabilitation service. Although the Superintendent of Public Instruction is *ex officio* a member of these several

²⁶⁰ *School Laws of Iowa*, 1925, Decisions, pp. 227, 270, 333.

²⁶¹ *School Laws of Iowa*, 1925, Decisions, pp. 211, 216, 264, 333.

boards and services it is only in a few instances that any specific duties and powers are given him in an individual capacity. He functions primarily as a member of the particular board or commission. This seems especially true in case of membership on the State Library Commission and as a member of the Board of Trustees for the State Library and Historical Department. More extensive duties and powers are given him in connection with the Board of Educational Examiners and the Board for Vocational Education.²⁶²

As president and executive officer of the Board of Educational Examiners the Superintendent of Public Instruction appoints the time and place of holding the meetings of the Board. He has general supervision and direction of the Board's activities and carries on the work of the Board, holding teachers' examinations, appointing persons to grade the examination papers, supervising the work of grading the papers, and issuing and signing teachers' certificates. The law ascribes to the Superintendent of Public Instruction the duty of printing and furnishing the examination questions, which he distributes to the county superintendents conducting the teachers' examinations. The Board of Educational Examiners selects a secretary who carries on the work of the Board under the immediate direction of the Superintendent of Public Instruction. This work is performed in the office of the Superintendent of Public Instruction. The Superintendent of Public Instruction makes the annual reports of the Board of Educational Examiners, giving detailed account of all money received and expended with a list of all persons receiving certificates or diplomas. He must also certify to the State Board of Audit the authorized expenditures of the Board of Educational Examiners and the county superintendents in con-

²⁶² *Code of 1927*, Chs. 191, 192, 193, 233, 234.

nection with teachers' examinations and applications for certificates.²⁶³

The vocational education function is administered by the State Board for Vocational Education which consists of the Superintendent of Public Instruction, who is the chairman and executive officer, the President of the State Board of Education, and the Commissioner of Labor. The work of the Superintendent of Public Instruction in connection with this function is of a general nature and limited. He acts as chairman and executive officer of the Board, and with its approval appoints "such assistants as may be necessary" to carry out the work of vocational education. The staff of the Department of Vocational Education now consists of the Director of Vocational Education, a Supervisor of Industrial Rehabilitation and two assistants, a Supervisor of Agricultural Education, a Supervisor of Home Making Education, and a Supervisor of Trade and Industrial Education, all of whom are appointed by the Superintendent of Public Instruction. The work of the Department of Vocational Education is under the direction of the Director of Vocational Education. The responsibility for administering the vocational rehabilitation service is placed by law upon the State Board for Vocational Education. Thus the Superintendent of Public Instruction serves as chairman and executive officer in administering the rehabilitation service. The Director of Vocational Education is expected to devote two-fifths of his time to the rehabilitation service and three-fifths of his time to the details of vocational education work.²⁶⁴

²⁶³ *Code of 1927*, Ch. 193; *Biennial Report of the Superintendent of Public Instruction*, 1920-1922, p. 31; *Normal Training High Schools in Iowa*, 1925, pp. 26-35.

²⁶⁴ *Code of 1927*, Secs. 3838, 3839, 3852, 3853; *Outline for Plans for Vocational Education and Civilian Rehabilitation*, 1923-1927, pp. 3, 36; *Biennial Report of the Superintendent of Public Instruction*, 1922-1924, pp. 21-30.

XI

REFORMS IN THE DEPARTMENT OF
PUBLIC INSTRUCTION

The office of Superintendent of Public Instruction constitutes one of the departments of the State government. The Department of Public Instruction in Iowa, like a few other governmental agencies, does not perform a complete State function. This has been the result of biased and not unselfish partisan legislation. Only to a certain extent may it be said that the Department of Public Instruction was thoughtfully created and organized in full consciousness of the functions that it should perform. From small and insignificant beginnings it has grown by accretion rather than by well planned development. The Department of Public Instruction in its growth has also been subjected to considerable limitation. In general its activities have been limited to the field of public secondary and elementary schools.

The whole program of education in Iowa is by its very nature more or less closely associated in the operation of its educational activities. The purposes of these several agencies seek a common end. Education is a unit function of the State. The agencies seeking to perform this function should best be under a single direction. At present the State educational interests are not, however, administered by a single governmental agency. This separation has seemed necessary because of administrative and historical reasons. Only for a brief period of five years, 1858-1863, have all the educational interests of the State been under the direction of a single administrative agency. From time to time since the organization of Iowa as a Territory at least a few of Iowa's leading educators and statesmen have hoped to give education a large place in the functions of the State. This ideal has, however, been subjected to the many

hazards of political disputes and bargaining that are found in any republican form of government. Nevertheless, education has come to be the chief function of the State. Under our form of government education must be regarded as of peculiar importance owing to the need that popular control of public policy may at the same time be intelligent. More than forty per cent of the State and local annual expenditures go for the support of education. The public schools of the State, including the State institutions of higher learning and other educational services, have come to be the greatest coöperative enterprise of the State requiring for their management and control professional and administrative ability of the highest order.

Suggesting changes that should be made in political institutions has become an almost universal practice. This is noticeably true in times like the present when there is dissatisfaction due to the inevitable increase of taxes. All sorts of schemes are proposed to stem the tide of increasing cost of government. Whatever changes in the administration of education are to be introduced should be based on sound principles of education and administration. Present tendencies in the development of a most effective agency for administering the State's educational affairs should be observed. Well established systems following correct principles of education and administration in other States ought to be considered. Alabama, Minnesota, New Hampshire, and New York have school systems approaching the ideal. The school system in each of these States is, apparently, quite satisfactory for it seems to be well established. In proposing reforms in the present educational system in Iowa features of these State systems have been kept in mind. Consideration is also given to the recommendations of the Iowa Superintendent of Public Instruction. In these proposed reforms three things are taken into consideration,

No longer true

namely: (1) cost of the proposed plan of organization, (2) efficiency in performing the functions which the organization is expected to perform, and (3) practicability of the proposed changes.

No system of State administration of education should be set up which would impose a tax burden upon the people out of all proportion to the educational needs, or the possibilities of the people to support. It must be recognized that other functions of the State must have a place in the people's support. But since education has become the chief business of the State, and since more money is being spent for it than for any other function, it seems that as far as the cost of the administration is concerned more money ought to be spent to develop the Department of Public Instruction into a business-like department of the State government, one which would compare favorably with the administrative department of any large industrial enterprise having problems of like immensity and to a like extent. Since the people of the State are the ones called upon to support education the problem of setting up a State system should be decided by them. No system of administration involving the support of the people should be imposed upon the people without their consent. The problem of organizing the Department of Public Instruction should be left to the head of the State educational administrative system.

Any proposed system of State administration of education should admit of efficiency to the highest possible degree in working out the problems of education and administering the proposed policies in that field. Educational administration has in principle and should have in practice no direct relation to partisan politics. Provision should be made for complete freedom of all educational interests from partisan politics, and for full recognition of the need of professional and administrative ability as qualifications for the head of

the State school system. The educational interests should be free from any political ties in order to adjust and readjust itself to the constantly changing and ever developing and enlarging needs and demands of the people.

In considering or recommending a new plan for any branch of State administration the ideal can scarcely be hoped to be accomplished. Also what may be an ideal system may not be readily adapted to Iowa conditions. Looking toward an ideal in State educational administration a plan perhaps somewhat less ideal, but more practical and more hopeful of adoption is here proposed. It is believed that because of the likelihood of jealousy of certain administrative officials and their reluctance to part with any of their present authority, coupled with the unlikelihood of the people's understanding or appreciating why a centralized educational system is needed, that a system less highly centralized and resembling more closely our present system should be proposed. Many do not believe that the people of the State and those in charge of the different branches of State school administration are ready to have the State institutions of higher learning under a department of education, and on a level with the system of the public common and secondary schools. It is doubtful if these people are ready to have the State University, the State College of Agriculture and Mechanic Arts, and the State Teachers College put upon a par with other divisions of a State department of education, and under the administration of a State superintendent of public instruction. The ideal in State educational administration would be to have a board of education at the head of all public educational activities of the State with a State superintendent of public instruction as the executive and administrative officer. Under such a plan the institutions of higher education would be directly responsible to a State superintendent.

In proposing a change from the existing State educational organization it is believed that a goal should be set up which will be acceptable and workable to a large degree. This plan proposes a State board of education as the administrative head of the State's educational system. The Department of Public Instruction, the State University, the State College of Agriculture and Mechanic Arts, and the State Teachers College would be put upon a par with each other in administration, and each alike would be responsible to the board of education. Through such a plan there will be more coördination between the work of the higher institutions and the work of the public elementary and secondary schools than now exists.

The proposed department of public instruction should be under the direction of a State superintendent of public instruction and the proposed department should be divided into as many distinct divisions as would give the greatest efficiency. The following are the proposed divisions with an assistant superintendent at the head of each division: (1) executive and business management; (2) legal division; (3) building plans and building sanitation division; (4) research and statistical division, including child accounting; (5) teacher training, certification, and placement division; (6) division of elementary education, rural schools, graded schools; (7) division of vocational education, and rehabilitation service; (8) division of special education, (a) school for deaf, (b) school for blind, (c) school for boys, (d) school for girls; (9) historical and library division, including the State Library, the Historical Department, and the Library Commission; (10) division of supervision of art, music, and drawing; (11) division of physical training. The board of education should have authority to assign new functions to divisions, to create new divisions, or to consolidate or abolish existing divisions.

The nature of the work and the relations of any State educational system are such as to make necessary wise and definite administrative action. Well considered policies are more important than quick action.

The board of education should be as non-partisan as possible. The members should be lay members selected from the State at large. They should be men and women of recognized ability and sterling character, devoted to the public welfare and convinced of the importance of education, and they should be willing and able to give their time and energy to the duties of their office. The members of the board should represent fairly all sections of the State and the main professions, occupations, and interests of the people. They should be men and women in close touch with the interests of the people of the State.

The board of education itself should consist of seven or nine members serving for seven or nine years, the term of two members expiring every two years, for convenience in appointment. This would give the board stability, continuity, and constant newness as well as a degree of permanence. This provision for length of term would largely remove the board from the temporary influence of any one political régime. The members of the board of education should be appointed by the Governor by and with the consent of the Senate. There should be no *ex officio* members. This method of selection of board members has the merits of centralizing full responsibility in the executive head of the State and is more likely to result in wise selection than when selected at popular election. It also protects the board of education from undue political influence and makes it possible to provide that not more than a bare majority should be from any certain political party. It is one of the principles of a well-ordered administration that administrative boards should be appointed by the chief executive.

Recent developments
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this very clear

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Members of the board of education should not be paid a salary, but should be paid a liberal per diem and all necessary expenses for attending board meetings.

The State board of education should have general control of all educational interests of the State, as embodied in the public elementary and secondary schools, the special schools for the blind, the deaf, the training school for boys, and the training school for girls. This board of education should also have general control of the State University, the College of Agriculture and Mechanic Arts, and the State Teachers College. It should have general control of such work as vocational education, rehabilitation service, and continuation work. The board of education should see that every possible effort is made to harmonize and coördinate the work of the schools of higher education with the public elementary and secondary schools of the State. This is of the greatest importance, since for the best results all schools of the State, of whatever kind and grade, ought to function as one organization.

The State superintendent of public instruction should be the executive head of the department of public instruction. He should be selected from the country at large and on the basis of professional preparation and administrative ability. He should be responsible to the State board of education. Able and efficient superintendents of public instruction have come into office by popular election and something may be said in favor of appointment by the Governor, but neither of these methods of selection is as sure and reliable as appointment by a non-partisan board. Neither is any other method of selection rational, if the superintendent of public instruction is to be responsible to the board of education. The term of office should have no reference to the change of officers connected with the partisan government of the State. The term should be indefinite or for a period of

years long enough to make possible the consistent development of administrative policies.

The superintendent of public instruction, under the general control of the board of education, should have charge of the entire public school system of the State, and should be given such freedom of action as is necessary for executive efficiency. The office of superintendent of public instruction should be regarded as the most important educational office in the State. Its requirements and compensation should be in keeping with this conception. The salary should not be fixed by law, but should be arranged by the board of education to enable it to secure a qualified person for the office. It is only reasonable that the salary of the superintendent of public instruction should be as large as that of any other officer of education in the State, or the presidents of the institutions of higher education.

There should be a competent staff of experts, assistants, and clerks appointed by the State board of education upon the recommendation of the superintendent of public instruction. At the head of each of the proposed divisions of the department should be an expert assistant superintendent of public instruction or supervisor. He should be professionally qualified and be immediately responsible to the superintendent of public instruction, acting under his direction. To a large extent the efficiency of the department of public instruction and the character of the work accomplished by the public schools of the State would depend upon the character and ability of the heads of these divisions. As in the case of the superintendent of public instruction, the assistant superintendent should be selected from the country at large and only for his fitness for the work to be done. Salaries and conditions of service should be such as to make it possible to obtain and hold in these positions the most competent educators in their special fields. What is seemingly

a saving in providing a few small salaries is likely to be false economy and can not fail to have its evil effects upon the whole school system.

The duties of the superintendent of public instruction should consist of the general direction and supervision of all the educational interests of the State not charged to the three institutions of higher education. The superintendent of public instruction should have general direction and supervision of the county superintendents of schools and should advise with them concerning the problems of the common schools of their respective counties. The relationship existing between the county superintendents and the superintendent of public instruction should exist largely as it is at the present time. County superintendents should be responsible to and removable by the superintendent of public instruction. The direction and supervision of the superintendent of public instruction should be exercised through the several divisions of the department of public instruction. In general his duties should be as follows. (1) The superintendent of public instruction should be the executive official and secretary of the board of education and should enforce rules and regulations made in conformity to law by the board of education. (2) He should have power to prepare and submit for the approval of the board of education rules and regulations for every activity in his department, such as for certification of teachers and holding examinations; protection of public health, physical welfare, medical inspection of schools; classifying, grading, and standardizing schools of an elementary or a secondary grade; specifying minimum equipment, standards, and number of teachers; diplomas and certification of graduation from schools; distribution of State aids and grants to the different schools under his jurisdiction; taking school census; the administration of vocational and rehabilitation service; and hygi-

enic, sanitary, and protective construction of school buildings. (3) He should have the power of appointment and removal, which should extend to all assistants, supervisors, and officials of the department. (4) He should have the general direction and supervision of the divisions of the department of public instruction. (5) He should have power to hear all cases appealed to him from county superintendents, to render opinions and give advice on matters of school law. (6) He should have power to prepare and submit to the board of education the budget for the department of public instruction. (7) He should have power to apportion and distribute all school funds, grants, and aids to the public schools of the State. (8) He should have general power to classify, define, inspect, supervise, and direct all the public elementary and secondary schools of the State. (9) He should prepare the annual report of the department of public instruction. (10) He should prepare suitable courses of study for the schools of the State.

In conclusion it may be said that the changes recommended could be accomplished by legislation and would not necessitate constitutional revision. They are recommended with a view to increasing the efficiency of the office of Superintendent of Public Instruction to the end that the costs of education and of government may, if possible, be reduced and that tax increase may be kept at a minimum. It is doubtful, however, whether taxes can ever be greatly reduced when people constantly demand that the government undertake new functions and education new forms. These recommendations are made, furthermore, because the changes seem not so radically different from the present organization but that there is the possibility of their adoption.

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