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Educational Trends: A Study In Educational Trends Affecting School Development In Kansas From The Beginning of Statehood To The Present Time

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being

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INTRODUCTION

The citizens of Kansas are justly proud of their schools. The early pioneers, who came from New England and from the Mississippi valley states brought with them various characteristic ideas concerning education. They sacrificed in order that their children might have superior educational opportunities. Early Kansans insisted that their children have a more adequate "education" in order that the successive generations might have an easier time in earning a livelihood. This idea, although partially false, prevailed down to the present depression. However, since then, they have realized that education must fit the individual to be of more service to his community, his state, and his nation. However, education has always been recognized as the one best means at the disposal of society for preserving the best that has come down from the past. Likewise, it has generally been assumed to be the only means for improving upon the best social inheritance.[1]

It shall be the purpose of this study to determine trends in Supreme Court decisions affecting public education in Kansas. An attempt will be made to determine guiding principles that have guided the Supreme Court in

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1. Schroeder, H. H. Legal opinion on the public school as a state institution. Public School Publishing Company Bloomington, Ill., 1928, p. 11.

their opinions on cases that have had an important bearing on the progress of education in the state of Kansas. If it is true that the Supreme Court has been liberal in its interpretation of laws as passed by our legislature then it may be said that the Supreme Court has been an aid to the progress of education in the state of Kansas. If there are definite principles discovered then it goes without saying that education might go forward and apply or utilize laws as soon as passed by the legislature without fear of interruption by an adverse opinion of the Court. (Hereafter when referring to the Court we shall refer to the Kansas State Supreme Court. Other courts will be correctly designated.)

The financial status of Kansas schools, has been covered very ably by Mr. John Lindquist, in his thesis, "Some Phases of Kansas School Law as Interpreted by the Kansas Supreme Court."[1] He has made a study of warrants, bonds, and taxation. He deals with general finance and warrants and orders. He takes up bonds and a review of cases affecting laws relative to them. Lastly, he considers taxation.

The establishment and support of high schools in Kansas has been carefully treated by Rolland R. Elliott, in a thesis entitled, "Some Phases of School Law as Determined by Supreme Court Decisions."[2] The high school movement

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1. Lindquist, John M. Some Phases of School Law as Interpreted by the Supreme Court.
2. Elliott, Roland R. Some Phases of School Law as determined by Supreme Court Decisions. A thesis submitted to the Kansas State College of Industrial Arts and Applied Sciences for a Master's Degree, 1935.

in Kansas was a distinct phase of educational development, and it justly should receive much study and consideration. He makes a careful study of establishing a free non-resident high school in Kansas and then he deals with two types of high schools found in Kansas: the County High and County Community High. He devotes some time to high school tuition where students of one county attend high school in another county.

Roy A. Hoagland in his thesis "A Review on Cases of Problems within the School"[1] has covered the subject of the legal status of the pupil, teacher, school property, contracts, and liabilities.

Besides these three it would be necessary to use a great deal of space in an attempt to enumerate all the studies that have been made in this particular field. In communicating with various libraries and colleges throughout the country it might be said in passing that Iowa State has five theses dealing with this topic. The author has used one of these authorities, J. F. Wiltzen,[2] the legal authority of the American Public School, frequantly in preparing this thesis. The University of Chicago has twenty-nine dissertations. In the state of Kansas, so far as the author was able to determine, there were only three theses dealing with this

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1. Hoagland, Roy A. A Review of Cases on Problems arising within School. A thesis submitted to Kansas State College of Industrial Arts and Applied Sciences for a Master's Degree, 1934.
2. Wiltzen, J. Frederick. The Legal Authority of the Public School. p. 1. July 1930.

topic.

In a study of Supreme Court cases, we are necessarily limited because only a small percentage of the cases tried in the lower courts ever reach the Supreme Court. Richard B. Theil,(1) in commenting upon this fact, said, "It has been conservatively estimated that one case out of each one-hundred fifty tried in the lower courts reach the state Supreme Courts." The number of cases reaching the United States Supreme Court from the various states in interesting. There were two hundred thirty-one such cases in 1927 tried before the Supreme Courts of the states of the United States, according to actual count. If the former ratio and the later count are correct, approximately thirty-five thousand school cases were determined in various courts of this country in 1927. It is fair to assume that the number has increased rather than decreased. Then, it is very evident that laws affecting education are frequently reviewed by the lower courts. However, such laws are no more subject to court review than are the laws affecting other interests.

Common Public Schools, Boards of Education, Authority of County Superintendent, and Curriculum, Text Books, and Appendages will be the phases of education covered in this study. These phases have been selected because the author believes that in them he is most likely to discover trends

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1. Theil, Richard B. "An Analysis of the Nature and Frequency of Supreme Court Cases on School Law for the Calendar Year, 1927. Journal of Education. Res., 19:177 March 29.

in Supreme Court Decisions or guiding principles in the giving of opinion on matters most vitally affecting education. Of course, he is well aware of the fact that school finances, contracts, and the establishment of high schools has had an important bearing on the forward movement of education in the state. Numerous studies have been made concerning Supreme Court decisions affecting education but in so far as the author can discover the most pertinent studies in the state of Kansas are the trilogy made at Kansas State College, Manhattan, Kansas.

It would seem that the Court, as a protector of the rights of the people, must change its attitude to keep abreast of public opinion. This does not mean that the court will change in principle, but it does mean that it will change its viewpoint on questions. What might have been the guiding principle of the court a decade ago might be entirely changed at the present time. The Court is a guardian of the constitution and a careful interpreter of the law. The court is farther removed from the immediate control of public opinion than the other of two branches of government. It is, nevertheless, subject to the wishes of the people in a democratic government. No doubt it is difficult to discover the basis for a decision made by the court especially where there are dissenting opinions. The problem of discovering certain definite trends and principles is an extremely difficult one and one that perhaps the court itself could not solve. At this time when great liberal

movement is on courts have, no doubt, made far more liberal decisions than they would have made had popular opinions been conservative. Perhaps when this study is completed it will be difficult to determine whether or not the major objectives have been achieved as the author has noted in other theses dealing with the same subject.

This thesis is confined to cases found in the Kansas Reports of the Supreme Court and the Kansas Court of Appeals. The period includes the entire time from the beginning of statehood down to the present. The author used West's Digest freely for outline purposes. Nearly two hundred cases have been consulted. From this number the pertinent cases have been selected that throw light upon the aspects of education covered this study.

Briefs were made of these cases on 3" x 5" cards. The essential nature of the cases were placed on these cards. They were then assembled alphabetically under the different topic headings. Then, the cases were read and notations made on the backs of the cards. In this manner opinions could be quickly found for quotation and consultation.

C H A P T E R I

COMMON or PUBLIC SCHOOLS

In the early history of the country, in the eastern and southern states of the United States, education was not always considered necessary or desirable for all children.

Even before statehood in Kansas, provision was made for common schools as is evident in the following quotation taken from Section 34 of the Organic Act, establishing the Kansas-Nebraska Territory:

"The proceeds of all lands that have been or may be granted by the United States to the state, for the support of schools, and the five hundred thousand acres of land granted to the new states, under an act of congress distributing the proceeds of public lands among the several states of the union, approved September 4, A. D. 1841, and all estates of persons dying without heir or will, and such percent, as may be granted by congress, on the sale of lands in this state, shall be a perpetual school fund, which shall not be diminished, but the interest of which, together with all the rents of the lands, and such other means as the legislature may provide, by tax or otherwise, shall be invariably appropriated to the support of common schools."

Thus, the common school was provided for by the first settlers who came to this territory. This work is not concerned with the operation or legal aspect of schools prior to statehood. However, the above quotation is of interest to students of the legal history of education in the state.

Early in the Territorial Period, territorial courts went to considerable length to establish that the meaning of the term "common schools" was synonymous with the term

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"public schools". In 1904 in the case of the Board of Education of Lawrence, Kansas, v. Dick,[1] there appear these citations from the opinion of Green J.

(a) Vol. 25 of the American and English Encyclopedia of Law, second edition, page 8:

"Common or public schools are, as a general rule schools supported by general taxation, open to all of suitable age and attainments, free of expense, and under the control of agents appointed by the voters."

(b) Black in his Law Dictionary, defines common schools:

"Schools maintained at the public expense and administered by a bureau of the state, district, or municipal government, for the gratuitous education of the children of all citizens without distinction."

(c) Anderson in his Law Dictionary says:

"Common or public schools are schools supported by general taxation, open to all free of expense, and under the control of agents appointed by the voters."

(d) Rapalje and Lawrence define common schools to be:

"Public, or free schools, maintained by public expense, for the elementary education of the children of all classes."

These quotations were cited by the Court in its interpretation of the original meaning of the term as implied by the Organic Act. In fact, one of the conditions, under which Kansas became a territory of the United States, was that common schools be established, and land and moneys be set aside for that purpose.

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1. Board of Education of Lawrence v. Dick. 70 K. 434, 1905. Lawrence v. Dick. Article 6. Section 2.
The Legislature shall encourage the promotion of intellectual, moral, scientific, and agricultural improvement by establishing a uniform system of common schools, and schools of a higher grade, embracing normal, preparatory, collegiate, and university departments.

When the establishment of the high school became an issue before the citizens of Kansas, the Court held that the term "common schools" implied high schools also. In the opinion of the Court a separate statute was not necessary. The State Constitution itself need not be amended.

In 1904 in the case of the Board of Education of Lawrence, Kansas, v. Dick, the Supreme Court ruled that the term "common school" as used in the Kansas State Constitution, Art. 6, Sec. 2, meant "free common schools." This was an action brought to enjoin the Court to issue a mandamus to estop issue of bonds on the ground that a high school is not a part of the public school system. In 1894 the Court ruled that the high school was a part of the common school system,[1] and therefore, must be free also. It ruled that section 1, of Chapter 224, Laws of 1889, (Gen. Stat. 1901, Sec. 6305), which authorizes cities of the second class to maintain high schools in whole or in part by collecting a tuition fee for each pupil, violates Section 2 of Article 6 of the Constitution, which gives the legislature power to establish a uniform system of high schools.

In the case in question, a parent was being charged tuition for his children who were attending high school in the city of Lawrence, brought suit on the grounds that a high school was a part of the common school system. It was the opinion of the court that "If the injury (charging tuition to an individual) is one that peculiarly affects a

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1. Board of Education of Topeka, Kans. v. Welch K. 51 792, 1893.

person, he has right of action."

Due to these Supreme Court decisions the high school is a part of the common school system, and as such it is free to all children. This broad interpretation have greatly enlarged the educational opportunity of the youth of the state. It is a long step from the sod school house to the modern school building. Thus, the single statute authorizing the establishment of common schools, free to the children of the state, has been translated to give varying degree of power to communities to build beautiful school buildings, and provide modern educational facilities up to and including secondary school privileges. Also the statute has given the freedom to institute types of school activities without hindrance from individuals who might bring action against the school and communities.

The Supreme Court of Kansas justly has had a part in the extension of educational opportunity. Through precedent established by the Court, education has, in many ways, been free to go forward unhampered by those who have selfish interests.

There has been numerous tests of cases made of Laws passed by the legislature but the two cited above shows the sttitude of the Court. It places a broad interpretation upon the power of the legislature to establish free educational opportunity up to and including the secondary level.

C H A P T E R II

BOARDS of EDUCATION

The Federal Government established rather early the policy of granting land to the states of the Union to be used for educational purposes. Ohio was one of the first states to receive land. Kansas was given Section 16 and 36 in each congressional township for school purposes. This land, in many instances, was much preferred by the settler either on a rental basis or outright purchase. It was exempt from taxation until paid for. The price was established at $1.25 per acre, and the purchases had a maximum of twenty years to pay for it.[1] At present (1937) there are two pieces of school land in Ness County that have not been sold, one in 80 and one in 40 section. There are 229 pieces of land in forty-five counties that are in the process of paying out. These were sold on 20 year contracts and a great many are being patented at the end of the twenty years, while a few are renewed for another twenty years. Approximately 36,000 acres are contained in the 229 pieces. There are fifteen or twenty pieces which have been paid up in full but not yet patented and these are being patented as soon as requirements are met.[2] The problem of the disposition of this land has been the object of much

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1. General Statute 1909 (ch. 106) sec. 7665 p. 1654.
2. Wallace, Albert R., School Land Clerk in the Office of Auditor of the State of Kansas (1937).

litigation and in many cases has reached the Supreme Court. In these cases the Court has guarded the contractor, but when there was any reason for doubt the right of the schools were upheld.

In the organization of the school districts, it was assumed that there would be four school houses located at convenient points in every congressional township, where the land permitted settlement. In the event of householders being too far removed from the school house (more than three miles), the law required that mileage be paid. It was presumed that each schoolhouse would be located as nearly as possible in the center of the district, the boundaries of which the county superintendent fixed, with certain limitations.

The electors residing within the bounds of the district came together at the annual meeting to elect school board members. The officers elected were a trustee or director, a clerk, and a treasurer. They held office for three years. These three constituted the district board, whose duties were prescribed by law.

The right of the district board to act in carrying out the provisions of the statutes was challenged many times in the first half century of the state's history. Electors, taxpayers, and others, from time to time, challenged the powers of the district board and the boards of education. The powers of the district boards have been somewhat increased and broadened, however, we do not discover a very

great increase of powers and duties until the district became an urban center, and the district board is replaced by a board of education.

In the early history of the state, the Supreme Court defined the powers of the school district in the interest of "free public education." Where there was an element of doubt, the court has insisted upon the "reasonable" interpretation of the authority of the board. The Court maintained that the legislature is the agent of the people, but that legislative acts must not conflict with the Constitution. If the acts of the legislature do conflict with the Constitution, then it is the duty of the people's agent, the legislature, to amend the act.

Curative acts have almost, without exception, been held valid by the Court. Such an act was passed by the legislature in 1930-31 for the relief of the Oakley High School from an illegal position that was obstructing its functioning. The high school had changed from a county community high school to a second class city high school. It then discovered that its board members were powerless to act because there was no state law providing for such a change. The city of Oakley prayed the legislature to pass a curative act, making imperative that a community having progressed to a second class city, as Oakley had done, change its high school from a county community high school to a city high school. However, a few cities of the second class of east-

ern Kansas with county community high schools did not wish to make the change. Therefore, the legislature amended the bill to read: "This law shall imply only to county community high schools organized after a certain date which excluded all high schools in the state except Oakley, Kansas.[1]

A school district is a quasi corporation. The district board has the power to make contract in the name of the district, its members not being liable individually. There was a case before the Court in 1881 concerning an order on the district treasurer for the purchase of apparatus. The procedure of placing the order had been illegal. However, the Supreme Court held officers liable.[2] "The plaintiff, (Richard Watson for N. Wood & Co.,) Opinion by Valentine, J.: says in his brief that "the only question presented in this case is, 'are the officers of a school district individually liable where they exceed their authority in the purchase of goods in such manner as to impose no liability on the district to pay therefor?'

It must be presumed that he, (Richard Watson) knew for what purpose it, (the warrant), was given, and that the defendants did not intend to make themselves personally liable thereon. At least, there was enough upon the fact of the instrument to put him upon inquiry.

The judgment of the Court below will be affirmed. (All the justices concurring).

Opinion by Valentine J."Was the ruling of the court below erroneous? (The ruling of the bonds was valid). It would be very unfortunate for the intersts of justice if such

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1. Note.---L. 1931 Ch. 274. #22, provides: "That all the acts and proceedings of said board of education, acting as a board of trustees for the said community high school, prior to the passage of this act, are hereby validated and made of full legal force and effect." R. S. Supp. 1931. 72-2503a. p. 77.
2. Watson v. Richard 25 K. 462 1881.

were really the case. Here we have an act of the legislature, plain and explicit in all its terms, providing in unmistakeable language for detaching this territory from the county of Stafford, and attaching the same to the county of Barton; and for years all persons believe the act to be valid, though for occult reasons the act is void-----.

This district was everywhere and acknowledged to be a legal and valid district. It was not only so recognized and acknowledged by its own inhabitants and by its own officers, but it was also recognized and acknowledged to be a legal and valid school-district by the officers of Barton and of Stafford counties, and also by the state officers of the state of Kansas; and all this recognition would seem to have been in the best of faith, and without the slightest element of dishonesty or fraud.

The judgment of the court below will be affirmed. (All the justices concurring.)

The district board acts, for the district, in many capacities, including the hiring of teachers, the making of necessary repairs on the school building, the erecting of a schoolhouse when voted to do so by the district meeting, the receiving and the paying of tax money, the qualifying or newly elected members, and the providing for things necessary to carry on school within the district.

Although a district may be illegally organized, it is still school district de facto, and the bonds issued by it are valid.[1] School District No. 25, Stafford County v. State. 29 K. 42, 1882.

It subsequently happened that the act was void because the legislature in placing the act of attachment reduced Stafford County to less than the constitutional-area limits. The Supreme Court ruled this act constitutional. This did not affect the validity of the bonds.

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1. School District No. 25, Stafford County v. State. 29 K. 42, 1882.

district as a strong organization rather than a loose association of individuals but it is also clear that if mistakes are made the benefit of doubt rests with the school.

To establish further that a school district is a quasi-corporation and therefore, subject to legislation regulating corporations, the opinion of the Court concerning a decision handed down in 1902, is quoted: Opinion by Smith J. in Rathbone v. Hopper, 56 K. 240, 45 Pac. 610, 34 L.R.A. 674, the construction of an act of the legislature was before the Court. The title read: "An act to enable counties, municipal corporations, the board of education of any city and school districts to refund their indebtedness." It was held that the words "municipal corporations" included townships. It was said: "a township is generally spoken of as a municipality or municipal corporation, but strictly speaking, every political subdivision of the state organized for the administration of civil government is a quasi-corporation. In this respect they are placed on the same plane as counties and school districts, etc. In Intoxicating Liquor Cases, 25K. 751, 763, 37 Am. Rep. 283. Mr. Justice Brewer quoted approvingly from the case of Holmes v. Carley, 31, N. Y. 289, 290, as follows. "A thing which is with in the intention of the makers of a statute is as much within the statute as if it were written within the letter; and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers; and such construction ought to be put upon it as does not suffer it to be eluded." We are clear that it was the intention of the legislature to include employees of school districts within the provisions of the eight-hour law, and that it has done so by the use of the "Municipality" in the statute. The judgment of the court below will be reversed with directions to overrule the motion to quash the information. (All Justices concurring).[1][2]

It required much litigation and education of school boards to the fact that they were a corporation like any

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1. Rathbone v. Hopper 57 K. 240 1890.
2. id.

other corporation and not individual acting singly.

The school board, as an agent for the school district, can hold a district liable for debts contracted. There was a case brought before the Supreme Court in 1902 in which in the construction of a schoolhouse, changes were made in the original plan, with the observance and approval of the school board. Suit was brought to recover from the contractor.[1] The opinion of the court is quoted:

Opinion by Smith J. "It appears from the evidence that one or two members of the board directed the extra work to be done, that some member of members of the board were upon the ground practically every day watching or overseein ghe progress of the work, and that the completed building, including the extra work sued for, was accepted and had been used as a school building for a year or more. It was also admitted that the building was turned over by the contractor to the school board and by it was used for school purposes ever since. Numerous authorities are cited in support of the proposition that a binding contract with the officers of school board district can be made only when they are in session. Notwithstanding this rule a district may be required to pay the value of material received by it when it has knowingly permitted it to be furnished and has received and used the same and enjoyed its benefits, and this was the attitude of the defendant appearing from the evidence. (Sullivan v. School District, 39 K, 347, 18 Pac. 287; School Dist., v. Sullivan, 48 K. 624, 29 Pc. 1141; Furniture Co. v. School Dist., 50 K. 727, 32 Pac. 368; Mound City v. Snoddy, 53 K. 126, 35 Pac. 1112.)

A school district is as liable as any other corporation for materials or apparatus used by the district, the Supreme Court ruled in 1893, and they must be paid for. Opinion by Allen, J. It may be conceded for the purposes of this case that both these written instruments were void,

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1. Rural School District v. Davis 96 K. 647 1902.
2. Furniture Co. v. School District 50 K. 727, 1893.

and the special meeting may be called at the discretion of the board. However, a few electors do not have power to call a meeting whenever it suits their whims or vested interests. While the interests of the electors or householders of a district must be considered at all times, the interests cannot interfere with the welfare of the schools.[1]

A portion of the opinion of the Court is quoted:

(The opinion as delivered by Johnson, C. J.) "Looking at the word 'may' in the connection in which it is used in the statute quoted it can hardly be said that the obvious intention of the legislature was to make the calling of a special meeting an imperative requirement. It does not appear that either the interest of the public or of third persons compels the exceptional interpretation."

Strict parliamentary procedure need not be followed in conducting a school meeting. Actions taken in a school meeting are not invalidated by failure to conduct the meeting according to Robert's Rules of Order. In the case brought before the Supreme Court in 1914, action had been brought because the meeting had not been properly adjourned according to parliamentary rules. Acquiesence of a fair proportion of the electors to an adjournment is sufficient, in the opinion of the Supreme Court.[2] Opinion by Porter, J. A parliamentary question arose as to whether any one could become a candidate after the nomination had closed, and the meeting became disorderly; much confusion prevailed and some of the parties almost came to blows. During the disturbance a written paper signed by some of the persons

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1. State v. School Dist. No. 1, Edwards County 80 K. 667, 1909.
2. Reeves v. Ryder 91 K. 639, 1914.

composing the meeting was handed to the chairman requesting him to adjourn the meeting to a future date. No other motion to adjourn was made. The chairman read the written request and stating that he did not want any trouble, declared the meeting adjourned until April 15, 2 o'clock p.m., at the same place, again to take up the election of a treasurer. All of those present acquiesced in the decision of the chair to adjourn and accepted the same as the action of the meeting, and practically all those present immediately dispersed. The trial court finds as a fact and as a conclusion of law that the meeting was legally adjourned to April 15, to finish the election of treasurer and other business. The judgment of the lower court is affirmed. James Reeves, Appellee, v. A. T. Ryder, as Clerk of School Dist. No. 107, etc. Appellant.

In school district elections, the Court ruled again, in another case, the Australian ballot need not be used.[1]

"A school district is a political subdivision of the state, and when the voters thereof legally assemble for the purpose, and make a choice of persons for public officers, such a proceeding constitutes an election by the people. Opinion by Schoonover, J. Southern Department of Kansas Court of Appeals.

Thus a school board officer, elected in another manner is duly elected nevertheless.

In the case here quoted the school meetings had been conducted quite irregularity. This had no effect upon the right of the district. He, the director, must sign all orders drawn upon the treasurer of the district although there may be a doubt in his mind that the district is getting value receive.[2] Opinion by per curian. If the effect upon the rights of the school district were reasonably in doubt we should hesitate to recognize the informal procedure, but the question of the right of School District No. 116 to tax the detached territory for school purposes,

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1. Lathen v. Campbell. 7 K. App. 388, 1897
2. Faulk v. McCartney. 42 K. 697, 698 1889.

which is the principal question in controversy herein, was finally determined adversely to the school district in our former decision, and that decision is, so far at least, res judicata as to School District No. 116. That district having no further right in the matter as to the detached territory, it is of no interest to it what other district has or assumes to exercise the right. It is a matter of great public concern to both school districts involved in this action that fruitless litigation between them should not be protracted. The motion to dismiss the proceeding in error is allowed. School District No. 116 v. School District No. 141.

The director is the most important officer of the school district. He must appear in all suits where the district is involved unless the district shall direct other-wise at a district meeting.[1]

Here is the Supreme Court's opinion in a typical case concerning the duties of the director: Opinion by Holt, C.J. "It was the imperative duty of the defendant as director of the school district to sign the orders when presented to him for his signature; he had no discretion in the matter. The court should have compelled him to do his plain duty.

"We recommend that the judgment be reversed.
By the Court: It is so ordered."
(All the Justices concurring.)

The clerk and the district board constitute a majority of the district board.[2]

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1. School Dist. No. 116 of Sedgewick County v. School Dist. No. 141 Sedgewick County. 79 K. 407, 1909.
2. Brady v. Sweetland, 13 K. 37, 1874.

and that no action could be maintained on either or both of them; yet the defendant district, having received and retained the property, which the court, finds to have been fairly worth the price stated in the written contract, is bound in common honesty to pay for it. The judgment will be reversed with an order to the district court of Elk County to enter judgment on the findings of fact in favor of the plaintiff against the defendant for $80, with seven per cent interest per annum from the twentieth day of August, 1884, to the date of judgment. (All the justices concurring.). K. 50 727-893. The Union School Furniture Co. v. School District No. 60 in Elk County.

But it was plainly evident that the school is subject to laws governing other corporations.

Furthermore, if at a district meeting a purchase is approved even though there is a great doubt as to the usefulness of the article the district is liable for payment for the same.[1] The opinion of the Court by Valentine J. is quoted in a case in point: "Now it is possible, and even probable, that this mathematical chart was in fact worthless; but as there was no evidence showing that it was worth the amount which the school board agreed to pay for it. If there were any irregularities in the drawing of the order sued on, we would still think that the order was ratified and approved by the school district, at a regular school district meeting. Under the circumstances of this case, we cannot say that any material error was committed by the Court below, and therefore its judgment must be affirmed. (All justices concurring.)

One regular annual meeting is required by law. At first it is held in August, and later in April. Now it is held in May. Special meetings may be called by the board. But the board need not call a special meeting unless an order has been given by the district meeting.

Electors of a school district may petition the school district board for a special meeting and the special meeting

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1. Rural School District v. Davis. 96 K. 647 1902.

The power to hire teachers and to take charge of an control the property of the school district, belongs exclusively to the school district board. (Gen. St. 925) and any two members of the board may act for the board. (Gen. St, 999 subd. 4). The judgment of the court below must be reversed and cause remanded for further proceedings. (All the justices concurring.) Case: John T. Brady v. Isaac Sweetland.

A newly elected member of the district board need not qualify within the 20 days set by law if there is sufficient "cause" for his not qualifying.[1] Opinion by Valentine, J. Of course, if the plaintiff had no right whatever to the office, he could not recover; but he has shown that he has some right thereto. He was elected to the office, took possession thereof, afterward qualified, though not within twenty days but he offered to prove that he had "sufficient cause" for not qualifying within that time, and the state has not yet seen fit to commence any proceeding against him to oust him from the office, or to have it determined that he is not entitled to the office; and a mere intruder, or attempted intruder, as the defendant now seems to be, has no right to question his right to the office. The judgment of the court below will be reversed, and the cause remanded for a new trial. Horton, C.J. concufring. Johnston, J. not sitting. Cese: A. W. Carpenter v. Asa Titus, Jr.

A treasurer of the district board may be prosecuted for his failure to turn over money to a newly elected treasurer.[2]

This action is brought in the name of the Treasurer elect, F. M. Parker, treasurer of School District No. 16, Lyons and Chase counties and not in the name of the District against J. L. Coffman, former treasurer of school district for the recovery of bonds. All justices concurred in the fact that this was an error from the lower court permitting Mr. Parker to sue Mr. Coffman.

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1. A. W. Carpenter v. Asa Titus, Jr. 33K. 7, 1885.
2. J. L. Coffman v. F. M. Parker. Treasurer et al. 11K.15,1873.

If the treasurer should leave the country for parts unknown, no demands need be made before starting action. If the director of the school board refuses to prosecute the treasurer for any breach of bond, any householder may bring suit.[1] In this case the opinion of the Court is quoted: "Every householder in the district is supposed to be interested in the public schools, and in safe-guarding the funds provided by law for maintaining them. The legislature has expressly provided that in cases of this nature, where the director neglects or refuses to prosecute, any householder may proceed; and we are asked to place a limitation upon this power by holding that he must have the consent or the authority of the director, or at least a majority of the voters expressed at public school meeting. This may be a wise suggestion for the legislature to consider, but as the act is unequivocal in its terms we cannot read into it any such limitation. It is true that the power thus conferred upon a householder might be abused, and a householder might bring an action without cause, when no one else in the district desired that it be brought. This is equally true, however of the director. Any power, wherever lodged, may be abused; but in a small community like a school district, where every householder has a more or less intimate knowledge of all the affairs of the district, and where the people generally have pretty full information as to the merits of any claim that might be asserted against their treasurer, and pretty full means of knowing the motives of any householder who may assume to bring an action in the name of the school district, we may reasonably presume that the legislature thought there was little danger of the abuse of this power conferred."

The bond of a treasurer expires with his term. In an instance where a treasurer had two bondsmen, and one was prior to the other, the Court ruled that both were equally liable.[2]

School District No. 38 v. Jenks. This is an action brought by a School District against a School District

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1. School District No. 9, Kingman Co. Kans. v. Geo. C. Brand. 71 K. 728 1905.
2. Jenks v. School District 18 K. 356 1877.

Treasurer Bondsman the defendant, Jenks. Bondsman of former treasurer, Walker of School District No. 38 of Coffee County contented that action could not be brought separately against a bondsman.

The court found no error in the judgment of the Court below. (All Justices concurring).

The lower court rendered the verdict on the grounds that all bonds are joint and several, and a suit may be maintained on the bond one, or all of the obligetes, or against any of them. It is an obligation upon the board to move the school provided the site etc. if it is instructed to do so at a District meeting.[1]

J. M. Day v. N. Hulpieu. Opinion by Milton, J. of the southern department of the Court of Appeals.

"No sufficient reason has been shown or discovered why this contention should be sustained. When a district meeting votes to change the site of the school house of such district, it then becomes the duty of the district board to act in conformity with such vote.---

In the present case, upon the filing of the appraisers' report it became the duty of the district board to remove the schoolhouse to the new site, under the authority delegated to such board by the district meeting.

The order and judgment of the district court are reversed and the case remanded for further proceedings in accordance with the views herein expressed."

It is the duty of the school board to put the schoolhouse in order, and to maintain it in fit condition for school, to provide fuel and apparatus, and other things necessary for a well conducted school.

Electors of a school district in the district meeting

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1. Day v. Hulpieu. 8K. App. 742, 1898

may give directions to the school board, but cannot afterwards hinder the board from carrying out the directions, unless there is an appearance of fraud. This decision by the Supreme Court gave a school board power to move a schoolhouse without calling a special meeting.

The schoolhouse is to be used for school purposes mainly. It may be used for certain public meetings, such as school meetings, and township meetings. But it cannot be used for a private purpose even though rent be paid. In the cited, a parent whose child suffered loss and inconvenience due to mistreatment of the child's pencils and books, was held to be within his right in bringing suit against the district. No court would interfere with injunction for a single use of a schoolhouse for a private purpose, but continual use is the wrong use of a district's taxing power, and is plainly contrary to law.[1] The

opinion of the Supreme Court is quoted: Opinion by Brewer, J. "The public schoolhouse cannot be used for any private purposes. The argument is a short one. Taxation is involved to raise funds to erect the building; but taxation is illigitimate to provide for any private purpose. Taxation will lie to raise funds to build a place for religious society, a political society, or a social club. What cannot be done directly, cannot be done indirectly. As you may not levy taxes to build a church, no more may you levy taxes to build a schoolhouse and then lease it for a church. Nor is it an answer to say that its use for school purposes is not interfered with, and that the use for the other purposes worked little, perhaps no immediately perceptible injury to the building, and results in the receipt of immediate pecuniary benefit. The extent of the injury or benefit is something into which courts will not inquire. The character of the use, is the only legitimate question. A municipal bond of five cents, in aid

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1. Spencer v. School District 15 K. 259, 202 1875.

to purely private purpose, is as void as one of a thousand dollars, and that too though the actual benefit to the municipality far exceeds the religious or political gathering, is legally, as unauthorized as its constant use therefor. True, a court of equity would not interfer by injunction after a single use, and where there was no liklihood of a repetition of the wrong, for it is only apprehended wrongs that equity will enjoin. There the unauthorized use is charged as a frequent fact, and one likely to occur hereafter.

Another case dealing with the use of public funds for private purposes, was brought before the Supreme Court in 1903. It concerned the transportation of pupils as required by law (Laws of 1889, p. 363, c. 177, sec. 12). When the law was tested in a suit the Supreme Court held that the school district was liable for transportation of pupils who lived more than three miles from the schoolhouse, and that such a use of public funds was legitimate.[1] A portion of the Court's opinion is quoted: Opinion by Smith, J. "The next point made against the validity of the act is that, by allowing a parent to be paid out of public funds for conveying his children to school, money collected by taxation is diverted to private and individual use. If it could be said that the sole purpose of education at public expense is to impose a benefit of the person receiving it and those related to him, the argument of the counsel would have some foundation on which to rest. A wider view, however, must be taken of the subject. The common schools of the country supported by an annual expenditure of millions of money raised by taxation, are not maintained solely to confer advantages on those to whom instruction is imparted, but in the interest of all classes and conditions of people. The illiterate class (a small minority in this state) profits by a system of general education because the political rights of all are preserved best where the most intelligence is applied in the selection of representatives to make the laws, and in the choice of executive officers to enforce them. The influence of free schools on the destinies of a free people is beyond calculation or measurement. The possessor of a liberal education

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1. School District No. 3 of Atchison Co., Kans. v. J. Atzenweiler, K. 67, 609 1903.

or measurement. The possessor of a liberal education cannot so far continue to confine his knowledge to selfish purposes that the benefits of his learning will not in some degree endure to the good of other. The judgment of the district court will be affirmed. (All justices concurring.)

The Court has maintained that the school district board was a quasi-corporation, subject to the will and wishes of the people, within the limitations of the law. But once the board was given the power to act, it had full authority to proceed, and it was not subject to the whim or fancy of every discontented householder of the district.

It would seem that every power established by law for the board to exercise has been subject to the review of the courts. This has been due to two things: (1) The school district is very close to the people, and (2) the school boards have not been efficient officers in many instances. It has taken the courts many years to convince districts and their officers that they must transact their school business the same as the business of any other corporation, and that adequate records must be kept.

However, as pointed out before, the Supreme Court has not been very insistent on the letter of the law being carried out, as long as the reasonable thing was done. School boards have been brought to task by the Court more often for failure to act than for exceeding their statutorial powers.

But, when one considers the thousands of school districts in Kansas, and when those thousand are multiplied

by three, it is concluded that there has not been such a high percentage of test cases brought to the attention of the Court when compared with other political units. School district officers have not transgressed any more often than have other public officials.

The personnel of school district boards has improved--A conclusion one can draw from the study of the cases brought before the Suprme Court as the year passes. The complexion or the type of cases change from that of cases brought by discontented or disgruntled householders of the district testing the power of the district board to act as provided by law, to cases testing the power of the school districts to provide better educational facilities.

That the Supreme Court of Kansas has kept the aim of education well in mind, the educational facilities of the state will attest. No claim is here made that the Court is infallible. It has in a majority of cases insisted on an underlying truth: That the public school was established for a public purpose, and that, although it be locally administered, it is a state institution.

A community which is a city of the third class has a district board. When a community becomes a city or the second class its school governing board is changed from a district board consisting of three members, to a board of education consisting of six members. When a city of the second class becomes a city of the first class its board

of education of six members is enlarged to a board of education of twelve members. The members are elected by a city election. In a six member board of education, one third, or two members are elected every year. The county superintendent is an ex-officio member, in reality making a seven member board. Regularly monthly meetings are required by law.

There are a number of advantages in the school systems under the control of a board of education, both to the instructors and to the pupils. Larger and better equipped buildings are provided. A principal or superintendent with supervisory powers, is placed at the head of the school. He is granted direct control of school affairs, while the board of education concerns itself with providing buildings and equipment. This school system is able to offer a broader curriculum. The child of the city has become more fortunate from an educational standpoint than his country cousin. For various reasons, the better teachers are generally attracted to the city schools. Salaries are higher and living conditions are better. The board of education of a city is able to offer the teacher s contract, dut to the time of election of members, before the district board is able to legally give a contract.

There are various set-ups in the case of high schools. In cities of the first and second class, where boards of education have been organized, both high school and grade

school are under the direction of the same board. Where there is a county community high school set-up in a county there must be separate boards. Likewise, rural high schools have a separate board, and it consists of three members the same as in rural school districts.

Boards of education of cities of the first and second class are "successors in office" of an annexed school district, and they must respect the provisions of a contract made by the former school district. A stipulation remains binding although there is a change in legal status.

Such a case came before the Supreme Court in 1890. A family in Topeka, name Curtis, had, before the community became a city of the first class, deeded a plot of land to the school district for the erection of a school house, and for no other purpose. The school district was later annexed by the city of Topeka, and the "sucessors in office" i. e., the board of education, was compelled the respect the original stipulation, namely, that the land be used for no other purpose than for the erection of a school building.[1]

In this case of litigation the opinion of the Court is cited: Opinion by Valentine, J. "We think the property in controversy belongs to the school district of the city of Topeka to be used for school purposes only. If it should ever be used for any other purpose, any person injured thereby would have his action for damages, or his action to enjoin the parties from so using it; and possible circumstances might occur or be brought into existence under which the courts would hold that the title to the property had been forfeited; but no such case is presented in the present action. The judgment of the court below will be affirmed.

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1. Permalia Curtis et al. v. the Board of Education of the city of Topeka 43 K. 138, 144 , 1890.

(All Justices concurring).

Outlying and adjacent territory attached to a city of the second class for school purposes, is not entitled to elect members to the board of education of the city, to represent attached territory, unless such territory contains a population equal to that of any one ward of the city, or unless its taxable property equals that of any one ward of the city.[1] Opinion by Simpson, C. W. S. Jay v. the Board of Education of the city of Emporia. "We are not considering Jay's action as a member of the board, or how his acts as such might affect third persons or the public. The inquiry he makes is as to whether he is entitled to a seat as a member of the board. To maintain this action, he must show that the board of education in its refusal to recognize him as a member is violating some plain duty enjoined by law. His right depends upon the existence of certain statutory conditions, and these are that the outlying territory he claims to represent contains a population equal to that of any one ward in the city, or that its taxable property equaled that of any one ward in the city. The answer says neither of these conditions ever did exist, and there is nothing recited in the answer that multilates or destroys the force and effect of the fact stated, either by acquiescence, estoppel, or the previous service of persons as members of the board from the outlying territory." (All the Justices Concurring).

In another case dealing with attached territory that was brought before the Supreme Court in 1891, the board of education had permitted a member from the attached territory to sit on the board between the years of 1874 and 1889. The Court decreed that simply because the board had permitted the member from the attached territory to represent a member of the Board of Education was no reason for binding the board to continue to do so. An office

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1. Jay v. Board of Education of the city of Emporia. 46 K. 525,1891.

must have a de jure (lawful) existence before it can have a de facto (acting) existence. The office must be created by statute.

In the matter of the attachment of territory, another case was brought to the attention of the Court in 1876. Council for the plaintiff maintained that the legislature could not take A's property and give it to B. But the Court maintained that the property remained in the hands of the same individual as before a change. Full power to change the boundaries of school districts seems to be within the power of the legislature. Here is a noteworthy opinion of the Court, and is a splendid example of the division of power that exists between the legislature and the Courts. "---It may be that at times grievous wrong is done by the legislature in changing the boundaries of counties, or school districts, but that is a matter beyond the power of the courts to control. Application must be made to the tribunal that decreed or authorized the change. Neither can the courts annul the change because the burden of taxation is largely increased to do an act, and the wisdom of the act as well as the hardships which may result therefrom, are solely for the consideration of that body.

That the pwers of a board of education are greater than are the pwers of a school district board, is recognized by the Supreme Court of Kansas. It ruled in 1885 that a board of education must assume the liabilities of a school district when the community is changed from a city of the third class to a city of the second or of the first class.[1] Cities of the third class are organized as

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1. Hoffield v. Board of Education of city of Newton. 33 K. 644, 1885.

school district. The opinion of the Supreme Court on this case is quoted: Opinion by Horton, C. J. "In some respects, the board of education was vested with powers not conferred upon school district No. 1, but the merger of school district corporation from an obligation to pay debts of the school district."

A city of the first class, under the power granted by the legislature (Gen. St. 1901, Sec. 6290) may provide separate schools below the high school level for persons of African descent.[1] However the education opportunities must be equal. The opinion of the Supreme Court is cited: Opinion per curian: "The control of city schools, including the selecting of sites, and distribution of pupils, is devolved by the legislature on the board of education, and the discretion committed to that body is to be exercised untrammelled by judicial interference, and its decisions are final, except when its action is capricious or arbitrary.

However, the board of education cannot force colored children to risk life and limb in order to attend a school separate from the whites. In the case brought before the Supreme Court, the colored children would have had to cross several railroad tracks in attending their school.[2] D. A. Williams v. Board of Education of the city of Parsons. Its judgment (the board of education) and not that of the courts, must determine the proper solution of the practical questions of administration that continually arise. Its decisions must be final except when its action is capricious or arbitrary, and under the findings that condition does not exist here.

Later second class cities were given power by the

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1. Williams v. Board of Education of city of Parsons 81 K. 593. 1910
2. Williams v. Board of Education of City of Parsons 81 K. 1910

legislature to establish separate schools.

In another case, the Court commented, colored children might not have as large a school building as the school building of the white children so long as the educational opportunities were equal the colored child had no remedy at law.[1]

1. Mamie Richardson v. the Board of Education of Kansas City, Kansas. This action was brought in test of the Constitutionality of a law (Chap. 414, Laws of 1905 Sec. 1) which gave the Board of Education the right to organize and maintain separate schools for colored and white children including the High Schools of Kansas City, Kansas. Mamie Richardson, plaintiff, brought ection on the ground that this latter reference to Kansas City, Kansas, was a special law. The Court ruled that such a law may be general law or a special law although it is not a law of general nature. A law providing for the organization, maintenance and control of common schools may be a general nature, because its subject matter is not one of a general nature. A writ of mandamus to compel the Board of Education of Kansas City, Kansas, to admit the plaintiffs' child was denied by the court. "A small building is only an incident unavoidable in the administration of any extended school system." J. Burch (dissenting). I am not satisfied that the conclusion reached in the foregoing opinion is correct, and therefore withheld my assent from it.

The power to provide separate schools was never given to school districts, or to cities of the third class, which have the same type of organization as the school district.

Thus, it would seem that the legislature believed that a board of education needed more delegated power than the school district board, and it enacted laws accordingly. The Supreme Court has found no reason to restrict those powers granted.

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1. Richardson v. Board of Education of Kansas City, Kansas. 72 K. 629,1905.

The Court has had many cases to decide regarding actions and powers of boards of education. It would seem that by and in large the Court is guided by the "spirit" of the law or acts rather than the exact application.

C H A P T E R III

AUTHORITY of the COUNTY SUPERINTENDENT

From a legal standpoint the county superintendent is a most important school officer in the state public school system. He had the power to certificate teachers, until the last legislature changed the law but he still conducts the examination of teachers, establishes the boundaries of a school district, takes a census of the school population, holds teacher's institutes, and holds elementary diploma examinations. Also he is a supervisory officer over all school districts and district officers including those of a city of the third class.[1] The county superintendent in conjunction with the school board may dismiss a teacher for incompetence, negligence, immorality, and for certain other causes. There need be no formal recognition of this tribunal to members of the board, and the county superintendent may dismiss. Quoting from a case involving this power, opinion by Smith, J.:----"The only question presented is whether the steps taken by the school district board and the county superintendent to dismiss the teacher complied with sec. 7468 of the Gen. St. 1909 (Laws 1876, ch. 122, srt. 4, sec. 24)." The lower court found the verdict for[2]

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1. Duncan v. School District. 83 K. 581 1910.
2. Board of Education v. Allen Co. 82 K. 782 1910.

the teacher but the Supreme Court reversed the judgment. This is plainly a case of school officers carrying on their duty in pursuant of the law.

However, the county superintendent has lost direct control over educational matters in cities of the first and second class. Schools in these cities are under the direct control of a head of education, usually styled a superintendent of schools. The county superintendent may visit the schools, but only as any other interested visitor. He may issue certificates according to law to those desiring to teach in city systems. However, cities began recently to hire teachers with certificates from state normal schools. It appears that the county superintendent lost much of his prestige as cities established special educational systems and the colleges began granting state teachers certificates.

The Supreme Court has dealt with many cases concerning county superintendents. In 1876 a case was brought before it testing whether or not the office could be held by a woman.[1] Opinion by Brewer, J. : "---As the people, with respect to certain offices, have seem fit by express constitutional provisions to restrict freedom of choice, it is a fair inference that, where the constitution is silent, they intended no restriction." It is noteworthy that Kansas was one of the firat states to permit women to hold public office.

The county superintendent has power to change districts, and this power cannot be questioned by school district

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1. Mary P. Wright v. Juluis H. Noell. 16 K. 601 ,1876.

boards.[1] This is a case in which an appeal is made to the board of county commissioners to hear and determine appeals from the decision of the county superintendent as to the formation or alteration of school districts is special and limited, and must be exercised strictly on the conditions under which it is given. When an appeal is heard and decided, that decision is final. The board has no original jurisdiction, its only function is to determine whether the decision of the county superintendent shall be sustained. It has no authority to form districts for which application has not been made to the county superintendent nor can it make alteration not considered by that officer or embraced within his decision. Opinion by Johnston, J.: "Considerable discretion is vested in the county superintendent in changing the boundaries of districts, but the board has no original jurisdiction in that respect, nor any power except to determine whether or not the action of the county superintendent shall be sustained."

In continuation the author quotes another case similar to the above which arose in 1919[2] in Finney County. "In the syllabus of the court we find the board of county commissioners has no jurisdiction under sec. 8906. Gen. St. 1915 to hear an appeal from the action of the county superintendent in altering old school districts or in forming new ones. The county superintendent has an authority here which is exclusive with him unless he wishes to refer that authority but he like the board of county

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1. State of Kansas v. F. M. Secrest 60 K. 641 1899
2. School District v. Wilson in Finney County. 104 K. 153, 1919.

commissioners is limited. The author quotes from the syllabus by the court in the case of Robinet v. School Dist. No. 83 Harper County.[1] A county superintendent of public instruction in determining the proportion of the present value of a schoolhouse or other property justly due a new school district formed out of territory taken from another district, acts in a judicial or quasi-judicial, capacity. After an award has been made by him and the amount thereof paid by the old district, his power is exhausted, and in allowance increasing the original award made fifteen months after the first determination is void. The opinion of the court was delivered by Smith, J. : "If the superintendent of public instruction, her first award having been paid, could after the lapse of more than one year, supplement the same by increasing the amount of the allowance made to the defendant in error, she might again and again increase the award." Doster, C. J., Ellis, Pollock, J. J., concurring. He must by written notice inform districts of proposed change. Petition may be made to the county commissioners and superintendent sitting as a board for changes in school district boundaries. In the case of two counties, where union districts are formed or changes are made annexing territory from another county both boards of county commissioners and superintendents act as a board in the action. In the latter instance an appeal to the state superintendent is final. In the former event the action of the county superintendent is final.

In an instance where two boards of commissioners and

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1. Robinet v. School District No. 83 Harper County. 63 K. p. 1 1901.

two superintendents were sitting as a board, the fact that one superintendent gave his instructions and opinions by telephone, did not affect the legality of the disposition of the case, the Court ruled. However, in this case, Chief justice Johnson gave a dissenting opinion.[1] It is quoted:

"---The superintendent of Sedgewick county could not delegate the authority to act for him to the superintendent of Butler county, any more than the latter could delegate the authority of both to the county attorney or some other officer. The Law vests the power and imposes the duty on both superintendents, and several superintendents, and con- superintendents shall be present and participate in every step of the proceeding."

Union districts or consolidation may be brought about by a majority vote of each district considering the proposed union or consolidation.

The county superintendent must certify to the board of commissioners as to the amount of funds needed for the certain tupes of high schools in the state of Kansas. The county commissioners make levies pursuant to the estimates of the county superintendent.[2] The county superintendent has the power to certify to boards of county commissioners the amount necessary to maintain high schools in such counties in which high schools were organized under the laws of 1907. When the county superintendent makes such certification it is the duty of the board of county com-

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1. Field v. School District No. 110 Butler County 83 K. 186,1910
2. The Board of Education of the city of Iola v. the Board of county commissioners of the county of Allen, 82K. 782,1910

missioners to make such levy.[1] Quoting from the syllabus of the court the "statute known as the Barnes law of 1907 is not unconstitutional on the ground that it violated sec. 16, art. 2 of the Constitution." This was an action brought compelling the board of county commissioners upon certification of the amount necessary by the superintendent to levy for the maintenance of a county high school. Here is some interesting opinions delivered by the Court, Graves, J.: "It is stated in argument that the people in the county at large are compelled by this law to pay taxes for the support of high schools remote from their homes and in the management of which they have no voice. This is an inherent inconvenience that can not be situated within convenient distance of every residence in a large county. Every student in the county, however, is free to attend any high school in that county. This obviates, as far as possible, the criticism suggested, and removes any constitutional objection as to want of uniformity."

A certificate of the county superintendent as to the amount needed for a levy is conclusive and is not subject to review by the board of county commissioners if it cannot be proved the county superintendent acted in bad faith.

Quoting from the opinion of the Court: "The certificate of a county superintendent of the amounts necessary for the maintenance of the high schools established under that act determines the amount to be levied for that purpose."
"The action of the county superintendent in the exercise of this authority can not be overruled unless he abuses his discretion by acting arbitrarily, capriciously or fraudulently, or in other words, acts in bad faith."
"If expenses not properly chargeable for the purposes referred to have been included in a certificate filed at

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1. No bill shall contain more than one subject, which shall be clearly expressed in its title and no law shall be revived or amended, unless the new act contains the entire act revived or the sections amended, and the section or sections so amended shall be repealed.

the time designated in the statute the county superintendent may lawfully file a new certificate making the necessary corrections."
"In the absence of proof to the contrary it will be presumed that a county superintendent has performed official duties in good faith and upon proper information."
"In the situation disclosed by the statement of facts agreed to, it is held that the levy made by the county superintendent on August 16 for the support of the high schools for the ensuing year is valid, and should be extended on the tax roll."

When pupils of one county attend high school in another county the county superintendent may recommend that tuition be paid by the county in which the children live to the county in which the high school is located. However, the Board of Education must show the county superintendent of the county against which the action is brought recommending the payment of the tuition. Quoting from the case applying to the same, opinion by Marshall, J.: "So far as the abstracts show, it does not appear that the pupils for which tuition is claimed came from a community remote from, or inconvenient of access to, a high school, or that there were not sufficient pupils in the community of ordinary high-school advancement to organize and maintain another high school. These facts must have appeared to the county superintendent before he would be authorized to recommend payment of the tuition."[1] Tuition must be paid upon recommendation by the county superintendent even though the county in which the pupils reside may have a high school. Convenience to the pupils may be a consideration. We quote from a case[2] involving this question. Opinion of the court delivered by Marshall, J.: "There was evidence which tended to prove that both Stafford and Pratt counties were operating under the Barnes high school law; that a number

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1. Board of Education v. Leavenworth County Commissioners. 119 K. 117 1925.
2. Byers High School v. Stafford County Commissioners. 121 K. 832,1926.

of pupils with high-school qualifications lived in Stafford county in a community where no high school existed and which community was not convenient of access to a high school then in operation in that county, and in which there were not a sufficient number of pupils of high school advancement to maintain another high school, and attended the Byers rural high school in Pratt county; that the county superintendent of Pratt county approved the attendance of the pupils from Stafford county in the Byers Rural High School and audited the claims of that school against Stafford county for tuition, that the county superintendent of Stafford County refused to approve the claims, and that the board of commissioners of that county refused to pay the claims."

The case we have just quoted excludes the right of mandamus to be granted to the Board of Education to compell the board of county commissioners to pay tuition because a Board of Education has adequate remedy at law which compells payment of tuition.[1] Telephonic direction of written statements are held as sufficient evidence that students had been approved for tuition of the Court delivered by Hutchinson, J., (This is a paragraph requoted from the lower court whose judgment was affirmed.) "Now it would not be reasonable or common sense to say that those scholars had to quit school upon the passage of this law and remain out until the county superintendent could secure advice and formulate rules and comply strictly with the requirements and all the details of the act before they could go back into school. ---I believe and therefore find, that the law in all respects was complied with and that the various pupils received the proper approval of the county superintendent to attend the high school in the city of Hutchinson to make the Reno Community High School District of Nickerson subject and liable for their tuition, and judgment will be rendered accordingly."

The salary of the county superintendent is pre-

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1. Board of Education v. Kingman County Commissioners 122 K. 213 1927.
2. Board of Education v. Reno Community High School 124 K. 175,1927.

cribed by law, and the county superintendent has no re-
course.[1] Opinions of the Court dealing with this case is quoted: "A superintendent of public instruction shall be elected in each county, whose term of office shall be two years, and whose compensation shall be prescribed by law."

The salary of the county superintendent is determined from the number of children of school ages within the county. However, all incorporated cities, including cities of the third class, are excluded from taking the enumeration of the school children for such a purpose.[2] The opinion of the Court in this case is quoted: "---- It could hardly be supposed that the act governing the compensation of the county superintendent could hardly have referred only to those "incorporated cities" in existence at the time of the passage of the act."

In another case the superintendent contended that the law intended that compensation should be for the amount of work done based on school population. The Court thought otherwise:[3] "--The principle is not new--- school population is not a measure of a county superintendent's work except indirectly."

The county superintendent has been given much control of Education. The Supreme Court has upheld him in his authority. Even when he may have not carried out the letter of the law the Court has maintained his legal right to carry out acts permitted by law.

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1. Mary Jansky v. Clare Baldwin. 120 K. 332, 1926.
2. Jefferson County Commissioners v. McCleary. 13 K. 116, (Second Edition) 1874.
3. Harrison v. The Board of County Commissioners of Sumner County 89 K. 850, 1913.

C H A P T E R IV

CURRICULUM TEXT BOOKS AND APPENDAGES

The educational facilities in the state of Kansas have changed with the times. What may have been considered a fad or a frill in one decade of the states, history was considered a necessity in the next. It is surprising the controversies that will arise under any advances which may be made in the curriculum from time to time.[1] We quote from the Syllabus of the Court.

"A mathematical chart may be deemed either an "apparatus" or an "appendage", within the meaning of those terms in the statutes conferring upon school-district-boards authority to make purchases for school purposes."

We quote further from the opinion of the Court as delivered by Valentine J.: "Now, it is possible, and even probable, that this mathematical chart was in fact worthless; but, as there was no evidence showing that it was worthless it must be presumed that it had some value, and that it was worth the amount which the school board agreed to pay for it. If there were any irregularities in the drawing of the order sued on, we would still think that the order would not be invalid, for it would seem that the order was ratified and approved by the school-district, at a regular school-district meeting. Under the circumstances of this case, we cannot say that any material error was committed by the court below. (All justices concurring).

Here is an interesting case regarding a stereoscope and its views and its value in education.[2]

"A stereoscope and stereoscopic views are not 'necessary appendages for the school house', within the meaning of Gen.

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1. School District No. 17, Chase County v. N. J. Swayge. 29 K. 152, 1879.
2. Opinion by Brewer J. Judgment of district court reversed. Bourbon County School District No. 29 v. Perkins. 21 K. 389 (Second Edition) 1878.

St., p. 925, Sec. 46, prescribing what the district board should provide."
Opinion by Brewer J.: "Now, a steroscope, however valuable or useful it may be in a school, can in no proper sense of the term be called an appendage for a school house. It may be difficult to state what is exactly meant by and included in this phrase, 'appendages for the school house'. It would seem to refer to things connected with the building or designed to render it suitable for use as a school house. But without attempting to define the exact scope of the phrase, it is plain that no reasonable interpretation would enlarge it so as to include a stereoscope and stereoscopic views, which, if not the 'toy boy and pictures', as counsel sneeringly call them, are at most but mere apparatus. And provision is elsewhere made for supplying the school with 'blackboards', 'outline maps', and 'apparatus.'"[1]

Here is an interesting case regarding a stereoscope and steroscopic views and its value in education.

There is even doubt in the minds of some people a half century ago concerning the value of a well as an appendage.[2] Here is a quotation by Valentine J. from the opinion of the lower court. "The officials of the school district when acting together as a school board are authorized by law and have power to provide the necessary appendages for the school house and a school district order issued by them for such appendages which are valid and binding on the district; but a well is a necessary appendage to a school house, within the meaning of the law and a school board cannot bind the district for the digging or boring of a well, unless they are authorized to do so by some special meeting of the voters of such district lawfully assembled."

The Court held this to be an error quoting from the opinion we are inclined to think that the district erred in instructing the Jury that "a well is a necessary appendage to a school house." The judgment of the Court

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1. Bourbon County School District No. 29 v. Perkins K. 21 389,1878
2. Hemme v. School District 30 K. 377,1883.

below was reversed; (All justices concurred).

The Court went a step further in 1919 and delivered an opinion in which the judgment of the lower court was reversed finding that a district may be bound to pay for the drilling of a well in the school yard for the purpose of supplying drinking water, even though no suitable water is found and a well on that account is entirely useless.

The law provides that "the district is bound which provides necessary appendages for the schoolhouse during the time a school is taught therein. (Sec. 25 Art. 4 Chapter 22, of laws of 1876. Comp. Laws of 1879 p. 830).

This makes it very plain that publishers must perform their portion of the contract. At a very early date the school board was required by law, adopted a uniform system of text books as prescribed by law. (Laws 1879. p. 279; Comp. Laws 1879, p. 851, Sec. 28).

However, when a parent brought action in a lower court to compel by injunction the use of a school reader that was not legally adopted because of uncertainty he was denied the injunction. The school board had adopted Appleton's Readers but failed to designate for what grade or in what edition. The child's parent in question attempted to compel the school by an injunction the use of Appleton's Reader insteed of McGuffey's in the case of his child.

McGuffey's Readers being used because of lack of explicitness in the adoption. We quote from the opinion of

the Court by Valentine J.[1] "Now, an injunction might, under some circumstances, be allowed, at the instance of a private individual, to restrain the use of McGuffey's Readers, (provided they had not been legally adopted) so far as their use might interfere with the plaintiff's or his child's use of some one of Appleton's Readers as a text book, (provided Appleton's Readers had been legally adopted). But this is not the kind of injunction that was asked for or allowed in this case; and whether even this kind of an injunction could or should be allowed under the facts of this case is at least doubtful. Clearly shown that the school board has previously and legally adopted the very kind of Fifth Reader which the plaintiff's son took to school, under any circumstances, be allowed. A clear right must be shown before an injunction can be granted; and even then, if the plaintiff is a private individual, as in this case, the injunction is desired for the protection of the interests of the entire public, it can be granted only at the instance of the proper public officer. The judgment of the court below will be reversed, and the cause remanded for further proceedings in accordance with the views herein expressed. (All the justices concurring).

Here we see that adoptions were not as carefully carried out as at a later date, but even here the Court hints that there should be uniformity.

In the matter of provision of text books in the state of Kansas, very early in the history of the state laws were passed to protect the public in their purchase of text books from publishers exploitation. In a case here quoted with the opinion delivered by Valentine, J.[2] he quotes the law (Sec. 5 Chapter 171, of Laws of 1885, Gen. Stat. of 1889, Paragraph 5868). "No text books shall be prescribed in pursuance of the provisions of this act unless the publishers thereof shall have first filed with the county superintendent of public instruction a guarantee

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1. School District No. 1 v. Shadduck. 25 K. 325, 1881.
2. E. Maynard & Co. v. Olson 24 K. 565 1892.

of its price, quality, and permanence of supply for five years, together with a good and sufficient bond for the faithful compliance with said guarantee, conditioned in such sum as the county text book board may determine and approve."

Under this set-up the county ward adopted text books for a period of five years. If the publishers fail to give sufficient bond they were without remedy at law to compel the county superintendent to accept their books.

We quote further from the same opinion: "We cannot say that the plaintiff company complied with the statutes in executing the required bond, and therefore we cannot say that it is entitled to a peremptory writ of mandamus to compel the county superintendent to perform an act which he is not required to perform unless such a bond has in fact been given."

Boards of Education acquired more power regarding curriculum in citiea of the first and second classes. In the city of Topeka a peremtory writ of mandamus was brought to compel the defendant president of the board of education to sign bonds for the erection of a high school valued at eighty-five thousand dollars. The lower court held that bonds were illegal on the ground that it was beyond the power of the Board of Education to issue bonds for High School purposes. The Supreme Court issued the writ of mandamus as prayed for. Sec. 2 and 3 from the Syllabus of the Supreme Court is as follows: Discretionary Powers--- The boards of education of cities of the first class are vested with large discretion in all matters pertaining to the management of the schools under their control. What rules and regulations may best promote the interest of the schools, and what branches shall be taught, other than those expressly prescribed by the Statue for all

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1. Board of Education v. Welch. 51 K. 792,1893.

school districts, are matters left to the determination of the directors of the boards; but they should always keep in view the highest good of the schools. With the discretionary powers of such officers, the courts will not interfere, unless there has been such an abuse of their discretion as works palpable injustice or injury. Schools---Various Grades---The boards of education of cities of the first class have the power to establish and maintain various grades or departments in city public schools, including a high-school grade, or department.

A city of the first class is not exempt from the operation of the uniform text books law (chapter 179, of laws of 1897) although they are under contract with publishers of school texts when the law went into effect. A peremptory writ of mandamus was awarded.[1] In the opinion as delivered by Allen J.: "The pretended contracts set up in the answer of the defendant are utterly void, and furnish no defense to this action. It was and is the clear duty of the defendant to cause the course of instruction in the public schools of Topeka to correspond with thesystem adopted by the State Text Book Commission, and to require and direct the use in the city schools of the text books selected by the commission."

The repetition of the Lord's Prayer and the twenty-third Psalm is not religious worship in school.[2] Green J. presents the following in the opinion of the Court delivered by himself: "An examination of the evidence convinces us, as it convinced the learned judge who tried the cause, that the exercisss of which plaintiff complained were not a form of religious doctrine. There was not the slightest effort on the part of the teacher to inculate any religious dogma. She repeated the Lord's Prayer and the twenty-third Psalm without response, comment, or remark. The pupils who desired gave their attention and took part; those who did not were at liberty to follow the wandering of their own imagination. The only demand made of them was that during these exercises they should demean themselves in the same orderly manner required during their general studies.

In a test case to determine whether music might be

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1. State v. Board of Education of the city of Topeka 59 K. 501 1898.
2. Billard v. Board of Education 69 K. 53 1904.

taught in schools as a part of the curriculum the Court makes the following three contentions in their Syllabus:

[1]

"School-District Board---May Provide instruction in Music. Under the provisions of Section 7478 of the General Statute of 1909 it is competent for a school-district board to provide that other branches shall be taught than those specifically enumerated in the section, and in the discretion of the board they may provide for instruction in music by a qualified teacher. The uniform course of study prepared by the state board of education for the common schools of the state for the year of 1914, under the authority of chapter 272 of the Laws of 1913, authorize the teaching of music in such schools. It is within the discretion of the school-district boards whether all subjects, including music, shall be taught by a single teacher or to provide that music shall be taught by another teacher provided such other possess the qualifications and authority required by the school laws."

A uniform series of textbooks applies to all textbooks used in the public schools. Textbooks adopted upon any subject may be made up of books prepared by different authors provided the same textbook is adopted for use in the same grade in all the public schools. It is for the textbook commission, in its discretion, judgment, to determine whether or not textbooks by different authors upon the same subject are so arranged is to permit them to be used connectedly. In an original proceeding in

[2]

mandamus. In the opinion of the court as delivered by Porter, J.: "This question as to whether the books by different authors upon the same subject are so arranged as to permit them to be used connectedly is a question to be determined not by the Courts but by the State Textbook Commission, which the legislature has created for that purpose, giving the commission the power to use their discretion in the selection of the series. The demurrer is sustained and the writ denied."

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1. Epley v. Hall 97 K. 549 1916.
2. State ex. rel. v. Textbook Commission. 87 K. 781, 1912

A school board has no power to materially change the course of study as prescribed by the State.

"A board of education of a city has no power to adopt and use in its schools other books then those adopted by the State Textbook Commission, except such proper books of reference as may reasonably be used as such."

This is a direct quotation from the syllabus of the Court.[1]

Thus it is plain that the Court has maintained that the law intended that each child should have the same quality of textbook in a given grade in all schools.

The Court has maintained that the board of education, chosen by the people, has the ability to provide a course of study. The course of study in the opinion of the Court is not a topic for open discussion at a school meeting.

A school district has the authority to add subjects to its course of study including what is commonly known as a high school course. The fact that the school district had less than required valuation did not apply in the opinion of the Court because the full course of high school instruction had been organized a year prior to the enactment of a law which required the above valuation.[3] When the Kansas State Textbook Commission attempted to rescind an action formally passed the Court upheld the right of the publisher to recourse at law and no uncertain terms denounced the subsequent actions of the Commission. We quote at length

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1. The State, ex. rel., v. Innes. 89 K. 169 1913.
2. The State, ex. rel, v. School District No. 2 Summer County. 112 K. 67 1912.
3. Woodson v. School District 127 K. 651, 1929.

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from the Court's Report on the case. "On April 29 and 30, 1935, School Board Commissioners is session for purpose, considered bids and texts. On April 30 the record of the meeting shows the following: "---voted by ballot on a textbook in Business Arithmetic, and Social-Business Arithmetic, Barnell-Max, published by Mentzer, Bush & Company. This company's books received a majority of votes case, and was adopted by commission for use in the high schools of Kansas for a period of five years."

****On May 9, 1935, the secretary of the commission mailed to plaintiff a letter enclosing for execution in duplicate a form of contract. The letter reads "at their meeting last week the School Book Commission of Kansas adopted your Social-Business Arithmetic for use in high schools of Kansas. I am enclosing herewith contract made out in duplicate which we will be pleased to have you sign and return to us. One copy of the contract will be signed here and returned to you for your files.

****The Publisher went to much trouble and expense to prepare to print books and they sent complimentary copies and notices to teachers.

****The Commission sent to all publishers whose texts were adopted (39 in all) including plaintiff, and to all book dealers a printed list entitled

Books Adopted For Use in Kansas Schools
Beginning Sept., 1935

****Commission adjourned on April 30 to meet on May 27. On that date motion was moved, carried and seconded "That all steps toconsumation of contracts be suspended, pending further investigation from educational departments of Kansas University, Kansas State Teachers College of Emporia and Kansas State College.

Meeting adjourned to meet at call of chairman. Met June 8 recinded the resolution of May 27 and adopted the following:

"That the commission reconsider its action in the adoption of all text books made at the meeting of April 29 and 30, 1935, and that the commission substitute for those adoptions and extension of one year of the contracts made in 1930."

****---further consideration of adoption of Plaintiff's books was an after thought."

****"A bidder whose text had been adopted ought to know promptly whether an adoption is final especially a formally promulgated adoption, and in the absence of a special rule which plaintiff might learn about plaintiff was entitled to depend on the generally accepted parliamentary practice which forms a part of our common knowledge, that

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1. Mentzer, Bush & Company v. The School Book Commission of the State of Kansas. 442 K. 1935.

rule which plaintiff might learn about plaintiff was entitled to depend on the generally accepted parliamentary practice which forms a part of our common knowledge, that a motion to reconsider can be made only on the day the vote to be reconsidered was taken, or on the next succeeding day, a legal holiday or a recess not being counted as a day. (Robert's Rules of Order 36)"

****"---the motion to reconsider on June 8 was wholly irregular, and was irregatory so far as it might affect plaintiff's rights."

****The Commission's discretion over the subject of adoption of text books was exhausted when it contracted with plaintiff.

----"The duty to see that school have textbooks is a public duty, plaintiff had a special private interest in the performance of the contract. Nobody could tell how many books could be sold, and plaintiff had no plain and adequate remedy in the ordinary course of law."

****"The Court has a certain discretion in the matter of causing writs of mandamus to be issued. In an appeal to the courts' discretion the answer contains a castigation by the commission itself of its own conduct which is so sweeping and severe the court does not care to publish it in the Kansas Reports. There is no complaint of price of plaintiff's books, but the expense to the public consequence. An adoption of plaintiff's books, which was all that involved in this proceeding, will be somewhat larger than if texts ten years old were used. The answer pleads that the new books are much more desirable, both as to form of text and subject matter. This being true, the public interest in keeping down expense is outweighed by the paramount public interest in seeing that organs of the state government keep within the laws. (Harvey and Smith J. J., dissenting.")

The Court has made some very important contributions to education in these decisions concerning the curriculum, textbooks, and appendages. The Court has recognized their value and it can truthfully be said that the court has been "progressive" in its decisions.

CONCLUSION

The Supreme Court as interpreter of the law has kept well abreast of public opinion. This does not mean that the Court changed its principles but it does mean viewpoints were changed. Noticable changes are recognized in reviewing the various cases. The Court is farther removed from public opinion than either of the other two branches of government. It is nevertheless subject to the wishes of the people in a democratic government.

The problem of discovering certain definite trends and principles is an extremely difficult one and one that perhaps the court itself could not explain.

The people of Kansas have, generally speading, made great financial sacrifices in order to provide schools for their children. They have not always shown wise judgment in the expenditure of educational resources. Until 1937 they used one rather unfair method (unfair to the boys and girls at least) of providing revenue for schools. The source referred to is that of the general property tax. Notwithstanding the fact that school districts have been more than willing to levy high taxes school funds have been inadequate.

When the high school movement swept the nation in the closing decades of the ninteenth century, Kansas readily fell in line with the other states in providing free high

school instruction. There were various types of high schools created from time to time as situations arose and occasions demanded, but they are all supported financially in the same manner as the one-roomed, single teacher school. General property tax carried, and still carries the burden.

Law so vitally affects school people that they should have a knowledge of the general principles governing the operation, maintenance, and liabilities of the school. Judge Lyon, of Wisconsin has well said, "Our system of public schools necessarily involves the most delicate relations between parents and children on the one hand, and the school authorities on the other."[1] People and school authorities are prone to blame the laws and the courts for injustices occurring in education. In many instances, if people were more familiar with the procedure, precedent, and the principles of the courts, blame would be placed where blame is due; and aroused public opinion would bring about the desired changes through legislation. However, the courts need not be defended here, although it must be said that the courts usually have been splendid guardians of the best interests of education.

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1. State ex. rel. Burfee v. Burton, 45 Wis. 150. 30 Am. Quoted from Weltzin, Frederick J. The legal authority of the public school P. 1 July 1930. The University of North Dakota, School of Education. Bulletin No. 7.

CONCLUSION

The supreme Court rendered many adverse decisions in regard to school boards in the early history of the state. It took much time and litigation to convince school boards that were corporations as much as any other corporation (in some respects). They could sue and be sued. They were to act as a body and not individually in making or breaking contracts. They were liable as any corporation for goods purchased. Many cases were necessary to prone to electors and the lower courts that school boards were agents of the people but not subject to the whims of every disgruntled member of the district. Once they were elected they were clothed with power to act according to law on matters within their authority. As school district boards were supplanted by Boards of Education in cities they were given more authority by the legislature, became more liberal in its interpretation of the powers of the Board of Education.

The Court has insisted upon the reasonable thing being done when there was action. For illustration: The Court ruled that absence of strict parliamentary procedure did not invalidate acts of a school board. But the fact that an individual was a member of the district board did not prevent court action being brought against him by a householder of the district; on the other hand a disgruntled elector of a school district could not prevent a school board from acting

because of a mere technicality of law. The court has been guided by the spirit of the law rather than the letter of the law. The court maintained that the school building was not a church, a gambling den, or for another private use. The Court held the private use of a school building in conflict with the State Constitution. But the payment of tuition to pupils attending school is not using public funds for private use.

However custom does not establish a precedent. The fact that a school board member of an attached school district sits on a Board of Education of a city does not make him a member of the latter organization.

The Court makes plain the fact that when a law works a hardship, the remedy is solely with the legislature, who created the law.

Where there is doubt the benefit of the doubt rests with the school district.

School officers must not exceed their authority is plain in decisions of the Court. But unless bad faith can be shown an official act is above question. The Court insists on common sense, however, in official acts.

Each child in the state should have equal educational opportunity including uniform textbooks. The Court has interpreted the law in such manner that curriculums may be ex-

panded with fear of litigation. It may be truly said that the Court has been progressive educationally.

However, in conclusion the author does not want to infer that the courts are faultless and above blame. Most of the judges on the Court hedged on the question of separate schools for negroes. Granting the expediency of such a plan the Court went at great length to prove was what the face of it unjust. But on the whole the Court has been a friend and ally to education and deserves more credit than it receives.

GLOSSARY

defacto: actually; in fact; ---distinguished from de jure.

de jure: By right; by lawful title.

demurrer: A pleading which, assuming the truth of the matter alleged by an opponent, sets up that it is insufficient in law, or that there is some others patent and material defect in the pleadings constitution a legal reason for staying or dismissing the action.

injunction: Law. A writ or process granted by a court equity and requiring a party to do or forbear some act.

mandamus: (a) Originated in England, any of various ancient prerogative writ issued to enforce performance of a public duty. (b) 1. A common-law writ similarly used. 2. Any of various statutory proceedings similarly used.

enjoin: (1) To command; charge. (2) Forbid; prohibit.

quasi: Law, qualifying something (mentioned) as being of a certain kind of which it belongs only by operation or construction of law and without reference to any intent of the party in interest, as the obligee or owner; etc.

writ: An order of a court to do or not to do some order of the court or to carry out some provision of the law.

per curiam: By the court.

ex. rel: By or on the relation, or information (of).

estop: To impede or bar by estoppel.

estoppel: A bar to one's alleging or denying a fact because of one's previous action by the contrary has been admitted, implied, or determined.

res judicata: A thing or matter finally decided on its merits by a court of competent jurisdiction.

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of Kansas unsold, the number in the process of paying out, and the number not yet patented due to flaws in the title.