

A CRITICAL STUDY OF KANSAS SUPREME COURT
OPINIONS AS HANDED DOWN IN PUBLIC
SCHOOL LAW CASES

870

A THESIS

SUBMITTED TO THE DEPARTMENT OF
EDUCATION AND THE GRADUATE COUNCIL OF THE KANSAS STATE
TEACHERS COLLEGE OF EMPORIA IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF SCIENCE

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ACKNOWLEDGMENT

The writer wishes to acknowledge his indebtedness to the following persons who have aided materially in making this study:

To Dr. Edwin J. Brown, Director of the Graduate Division of the Kansas State Teachers College, Emporia, who suggested the problem and under whose direction and guidance the study was made.

To Judge Lon C. McCarty, Judge of the Fifth Judicial District of Kansas, and Mr. C. V. Beck, County Attorney of Lyon County, whose cooperation and personal libraries aided materially in securing the data used.

To the staff of Kellog Library of the Kansas State Teachers College of Emporia, without whose cooperation such a study would have been impossible.

To Mrs. E. R. Sheldon, Americus, Kansas, and Miss Minnie A. Chapman, Northwest High School, Kansas City, Kansas, who aided in reading and correcting the manuscript.

E. R. S.

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CHAPTER I

INTRODUCTION

THE NATURE OF THE STUDY

The aim of this study is to survey the problem and subject of School Law as to what questions form the bulk of school litigation. An inspection of the few treatises on School Law reveals that the subject is a very complex one. Texts on the subject which cover the United States as a whole, show that the School Law is characterized by an enormous mass of conflicting cases and decisions attributable to the different legal and political organizations of the various sections of the United States. Since the problem is large, it has been deemed advisable to limit this study to one state, namely, Kansas. It is prepared with the purpose of pointing out and emphasizing the nature of the School Law as shown in the decisions of the Supreme Court of Kansas.

If one will but turn to the court reports of any state, he will be surprised that such a large amount of school litigation takes place. This fact is significant in tending to show that School Law, as a separate form of technical law, has not been widely studied. There is a large field of technical law already developed and applicable to various businesses but when it comes to matters of School Law very little work has been done.

Purviance¹ has made one of the most extensive studies, if not the most extensive in this field. His study is well portrayed in the following:

"This study is divided into two parts, the first calculated to develop the nature and illustrate the scope of the subject of school administrative law and to also bring out the close relationship which exists between the law of the schools and the political-legal structure and organization of the various states of the United States. The second part consists of a group of classified California Court Decisions and Cases which will afford the student an opportunity to study the nature of the school problems which get into the California Courts and the method of their solution."

The Kansas State School Code Commission, established in the year 1927 by Governor Ben S. Paulen under House Bill Number 664 relating to the revision of the school laws of the state of Kansas, and providing for a commission to carry out such work, has done an outstanding piece of work in recodifying the school laws of Kansas.

THE SCOPE OF THE STUDY

The scope of this investigation includes all the opinions on public school litigation as taken from the Kansas Supreme Court Reports² from the time the Kansas Supreme Court first met in January 1862, up to, and including the January session in 1932 (to June 4, 1932).

1 Charles E. Purviance, An Introduction To Administrative School Law in California, p. 6. Unpublished Master's Thesis, Department of Education, Leland Stanford Junior University, Palo Alto, California, 1923, 89 pp.

2 Kansas Reports (See Bibliography) 135 Volumes.

METHOD OF PROCEDURE

The data were collected on cards,[#] later to be classified for further study. This, of course, necessitated considerable study of each volume of the reports and a classification of each case. These Reports are compiled by a Supreme Court Reporter and published by the State Printing Plant at Topeka, Kansas.^{##} The data for this study were collected from the volumes of the Kansas Reports at the Kansas State Teachers College Library at Emporia, Kansas, and from the personal library of Judge Lon C. McCarty, Fifth Judicial District Judge, Emporia, Kansas. Only such report cases as have a direct reference to the school laws of Kansas³ are discussed together with the nature of such references. Many school laws of Kansas, now obsolete, have been tested in the Supreme Court of Kansas. These obsolete opinions are discussed in Chapter II of this study.

PRESENTATION OF DATA

It has been the general plan of this study to give an accurate representation of the school law in litigation, and a

A copy of the card showing technique used may be found in the appendix.

The State Printing Plant has published the Reports since 1873, under the direction of the State Printer. From 1864 to 1873 the Reports were published by various Kansas Publishing Houses.

3 Revised Statutes of Kansas, 1923, State Printing Plant, Topeka, Kansas, pp. 1155-1223 (with cumulative 1931 Supplement).

brief summary of each Report case as analyzed and classified.

HISTORICAL BACKGROUND OF THE KANSAS SUPREME COURT⁴

On May 30, 1854, an act was passed by Congress, popularly known as the Kansas-Nebraska Act, by which Kansas was created a territory, with a territorial government. The executive power was vested in a governor to be appointed by the President of the United States. The legislative power was vested in the governor and the legislative assembly -- the legislative assembly to consist of a Council and a house of Representatives. The judicial power was vested in a Supreme Court, district courts, probate courts, and in justices of the peace.

The Supreme Court consisted of a chief justice and two associate justices, any two of whom constituted a quorum. They held a term of court at the seat of government of the territory annually and held office during a period of four years and until their successors were appointed and qualified.

The first session of the territory; a Supreme Court convened at the Shawnee Manual Labor School, on July 30, 1855. The last record of any proceedings in the territorial Supreme Court is on January 11, 1861. The record is not signed.

By the act of admission under the constitution, the Supreme Court consisted of one Chief Justice and two associate justices, to be chosen by the electors of the state at large for a term

⁴ Kansas Reports V. 1, pp. 9-15, G. V. Banks, comp.

of six years.# The publication of the reports of the decisions of the Supreme Court of the territory of Kansas was undertaken in 1860 by Hon. Thomas Means. There were 48 pages of the work printed at that time, and then it appears to have been abandoned; from what cause, it is not known.##

JURISDICTION OF THE KANSAS SUPREME COURT

The Supreme Court has jurisdiction of any question as refers to the constitution of the state of Kansas and on any legislative question, the consideration of which is in excess of one hundred dollars. The constitution of the state of Kansas provided that⁵ "The Supreme Court shall have original jurisdiction in proceedings quo warranto,### mandamus, and habeas corpus; and such appellate jurisdiction as may be provided by law." The Supreme Court meets for the hearing of cases on the first Monday of each month, except August and September.

Amended 1900 to consist of seven justices, Sec. 2, Art. 3., Constitution of Kansas.

5 Revised Statutes of 1923, Sec. 3, Art. 3, of the Constitution of Kansas.

Later compiled by James McCahon.

Quo warranto -- by what authority.
 Mandamus -- high prerogative writ with directions to do a specific thing.
 Habeas corpus -- a writ directing and commanding a person held to be produced.
 Appellate jurisdiction -- to rehear cases which have been tried in inferior courts.

CLASSIFICATION SCHEMES OR SYSTEMS USED IN CLASSIFYING
COURT DECISIONS ON SCHOOL LAW

A diligent search has resulted in the finding of few general text books devoted to school law exclusively. A study of the digests has resulted in the finding of other systems of classification. These classification systems in general use by the digests are made for the ready reference to cases possessing similar characteristics. They have not been developed from the standpoint of affording a text for a given state or for the administrators who may wish to know the Supreme Court decisions and interpretations as regards a law. Likewise, the digests are compiled according to the point of law involved, with little regard to the particular statement of facts. The best digest that has been made to respond to the peculiarities of Kansas law and procedure was compiled by Hatcher.⁶

The reason for giving attention to the systems of classification of the court decisions is, that, by so doing, it is possible to work out a list of topics which will in the main cover the most common types of cases likely to arise. The various authorities are agreed on the general topics under which cases are filed. A brief summary of these will be given to cover the field and also save time.

⁶ Hatcher, Earl Hilton, and McCue, Howard F., comp., Digest of Kansas Reports, Lawyers Co-operative Publishing Co., Rochester, New York, 1929, 2820 pages.

Voorhees⁷ classification is given under the following heads:

School Districts-School Property-School Officers-School Teachers-Pupils-Rules and Regulations-Books and Studies-School Funds-School Taxes-General Principles and Synopses of Principal Statutes.

Mechem⁸ enumerates the school cases as follows:

Election of School Officials-Powers of School District Board-Powers of County Superintendent-Teacher's Duties and Powers-Liabilities of Board-Liability of Teacher-Mandamus and School Officers.

In the State Law Index⁹ the school laws are classified as follows:

Attendance-Buildings and Grounds-Census-Commercial Schools-Elections-Equipment-Early and Continuation Schools-High Schools-Instruction-Junior Colleges-Kindergarten-Libraries-Normal Schools-Organization-Private Pupils-Race Segregation-Specialized classes-Summer Schools-Taxes and Funds-Teachers-Text Books-Truant and Adjustment Schools-Vocational Schools.

In Ruling Case Law¹⁰ the following classification for school cases in the United States is given:

Bonds-Districts-Funds and Debts-House-Lands and Property-Officers-Teachers-Trustees.

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- 7 Voorhees, H. C., The Law of the Public School System of the United States, Little, Brown and Co., Boston, 1916.
- 8 Mechem, F. R., The Law of Public Offices and Officers, pp. 470-478, Callaghan and Co., Chicago, 1890, 751 pages.
- 9 Stewart, Miss Margaret, comp., State Law Index, United States Government Printing Office, Washington, D. C., 1932, Vol. 3
- 10 Hill, Joseph H., Ruling Case Law, the Lawyers Co-Operative Publishing Co., Rochester, N. Y., 1931 (Index Volume 2), 28 Volumes.

In the Biennial Survey of Education¹¹ in the United States classification is given under the heads of:

State Department-School Support-County Responsibility-County Superintendents-Local School Organization and Support-Teacher Training and Certification-The Curriculum-Teachers' Pensions-School Attendance-Higher Education-Education of Exceptional Children.

By using the cases and topics from Voorhees, Mechem, State Law Index, Ruling Case Law, and the Biennial Survey of Education, it is possible to obtain a well developed and well rounded general classification. By using the classification as given in the Report of the School Code Commission of Kansas,¹² and Hatcher's classification, a local and detailed development can be secured.

The classification of the proposed School Code of Kansas¹³ is as follows:

Interpretations and definitions-State Participation in Education-County Participation in Education-Joint State and County Participation in Education-District Participation in Education-Miscellaneous Provisions.

Hatcher's Digest¹⁴ gives the following classification:

In general-School Districts Generally-Property and Contracts-Liabilities-Finances-Officers-District Meetings, Elections-Teachers, Principals, and Superintendents-

11 Keesecker, Ward W., Biennial Survey of Education in the United States, Bulletin 1931, No. 20 (1928-1930), United States Government Printing Plant, Washington, D. C., 1931, 99 pages.

12 Report of the School Code Commission of Kansas, Kansas State Printing Plant, Topeka, V. III, December 1928, 99 pages.

13 *ibid.*

14. *op. cit.*, pp. 1931 f.

Pupils, Admission, Attendance, Tuition-Textbooks,
Instruction-Actions.

Hatcher's Digest¹⁵ is the only digest in the field per-
taining to Kansas law and procedure. As far as can be ascer-
tained, there has been no study made on Kansas school law. It
appears that the above Digest contains the most logical and
thorough classification, although the author himself recognized
the fact that it was not entirely reliable due to its enormous
scope.[#] That fact alone, somewhat justifies this study. In
personal interviews with lawyers who resort to the use of
the Kansas Digest,¹⁶ confirmation is given the author's
statement. For ordinary purposes the classification of cases
may be considered fairly complete and the Digest¹⁷ is con-
sidered reliable, is reflected by the fact that it is accepted
and used by lawyers and courts throughout the state of Kansas.

15 ibid.

16 ibid.

17 ibid.

Personal interview with Mr. Hatcher in July 1931, (approx-
imately 18,000 cases.)

CHAPTER II

AN ANALYSIS OF THE NATURE AND FREQUENCY OF KANSAS

SUPREME COURT CASES IN SCHOOL LAW FROM 1862-1932

Law is the will of the State concerning the civil conduct of those under its authority.¹ In the nature and development of law, three things stand revealed; namely, the nature, the functions, and the history of government. For the existence of law, there is needed in all cases a community capable of having a will of its own, and a clearly recognized body of rules to which that community has, by enactment or custom, given character and life. And, in addition, there must be a legalized body for the interpretation of those same rules, better known as laws. It is the right of each state to regulate, at its pleasure, the general relations of persons within its territory to each other, as well as all rights pertaining to property subject to its jurisdiction. Education is as old as the human race, for every tribe, however low its state of civilization, trains its children and youth in the arts and occupations necessary to maintain existence. School law in Kansas is being changed constantly to meet new phases of government and upon the character and nature of these laws depends the character of the state. In order to determine the exact nature and the frequency of the school cases in law, a

1 Dixon, H. M., ed., Home and School Reference Work, p. 1600, The Home and School Education Society, Chicago, 1916, 10 Volumes.

complete checking system[#] of the Kansas Reports² was employed as well as the analysis and classification card.^{##}

The cases were tabulated, first according to chronological order (decadal); second, according to counties; third, according to the type of school organization involved; fourth, according to the points of school law involved; and fifth, according to obsolete cases.

TABLE I

TOTAL NUMBER OF SUPREME COURT CASES INVOLVING QUESTIONS
OF PUBLIC SCHOOL LAW IN KANSAS FROM 1862-1932 (DECADAL)

PERIOD	NUMBER VOL.	CASES INVOLVED TOTAL		TOTAL SCHOOL		PER CENT SCHOOL TO TOTAL CASES
		NUMBER	PER CENT	NO.	PERCENT	
1862- 1871	8	534	2.68	3	.65	.56
1872- 1881	18	2050	10.30	54	11.64	2.63
1882- 1891	21	3091	15.52	44	9.48	1.42
1892- 1901	16	2188	10.99	36	7.76	1.65
1902- 1911	23	3161	15.88	101	21.77	3.20
1912- 1921	26	4610	23.15	123	26.50	2.67
1922- 1932 ^{###}	23	4267	21.48	103	22.20	2.41
TOTALS	135	19911	100.00	464	100.00	2.33

Read table thus: In the ten year period 1862-71 there were compiled and published 8 volumes of the Kansas Reports containing 534 cases or opinions; and these were 2.38 per cent of the total opinions delivered in the 71-year period; there were 3 school opinions handed down and these were .65 per cent of the

System used for this data may be found in the appendix.

2 Kansas Reports (137 Volumes.)

Analysis and classification card showing technique used may be found in the appendix.

Eleven year period instead of a ten year period.

total school opinions for the 71-year period; and finally, .56 per cent is the per cent of school opinions handed down during the ten year period.

It is interesting to note that the 464 cases are 2.33 per cent of the total cases (1911) delivered during the 71-year period. There seems to be little variation in the per cent of cases for each ten year period. However, two ten year periods do deviate somewhat and these two periods and their deviation will be explained later in this study.[#] Table I would seem to indicate that the peak of the interpretation of school law as well as all statutory laws was reached during the period of 1912-21. There was an exceedingly small number of school litigations found in the courts during the first ten years that Kansas was organized as a state. This was, no doubt, due to two reasons: namely, the early stage of state organization and the reconstruction period following the Civil War. A fewer number of school cases appears during the period 1922-32 than in the period just preceding it. This would tend to justify the statement above, that in a reconstruction period following a war there is a lull in the school cases in the Supreme Court. What is true concerning opinions involving public school law for the above periods is true of all cases involved in the state of Kansas for each specific period stated. However, it should be added that, when a new school law is enacted or an old school law is amended, there follows a period when many cases are in litigation for interpretation and construction.

[#] See page 18 of this study.

TABLE II.

TOTAL NUMBER OF SUPREME COURT CASES INVOLVING QUESTIONS OF
PUBLIC SCHOOL LAW IN THE COUNTIES OF KANSAS (Appellate)
AND IN ORIGINAL PROCEEDINGS.

Allen	10	Finney	5	McPherson	3	Shawnee	20
Anderson	3	Gearry	1	Meade	2	Sheridan	1
Atchison	7	Gove	1	Miami	1	Sherman	1
Barber	0	Graham	1	Mitchell	0	Smith	2
Barton	4	Grant	1	Montgomery	5	Stafford	5
Bourbon	4	Gray	3	Morris	2	Stanton	3
Brown	4	Greeley	0	Morton	0	Stevens	1
Butler	5	Greenwood	6	Nemaha	7	Sumner	6
Chase	2	Hamilton	3	Neosho	5	Thomas	1
Chautauqua	1	Harper	2	Ness	5	Trego	5
Cherokee	1	Harvey	3	Norton	0	Wabaunsee	2
Cheyenne	3	Haskell	2	Osage	1	Washington	1
Clay	4	Hodgeman	2	Osborne	3	Wallace	2
Clark	6	Jackson	3	Ottawa	4	Wichita	0
Cloud	1	Jefferson	4	Pawnee	2	Wilson	4
Coffey	2	Jewell	2	Phillips	0	Woodson	2
Commanche	1	Johnson	5	Pottawatomie	3	Wyandotte	12
Cowley	2	Kearney	4	Pratt	4	Original in	
Crawford	6	Kingman	7	Rawlins	3	Mandamus	97
Decatur	2	Kiowa	1	Reno	12	Original in	
Dickinson	4	Labette	7	Republic	3	Quo Warranto	14
Doniphan	4	Lane	2	Rice	2	Original in	
Douglas	7	Leavenworth	3	Riley	2	Habeas Corpus	1
Edwards	3	Lincoln	1	Rooks	4	Original in	
Elk	5	Linn	2	Rush	1	M. & Q.W.	1
Ellis	1	Logan	0	Russell	1	Original in	
Ellsworth	0	Lyon	5	Saline	6	D. J.#	1
Ford	9	Marion	4	Scott	4		
Franklin	2	Marshall	1	Sedgwick	9		
Finney				Seward	4		
						TOTAL	464

Read table thus: Allen County appealed 10 public school law cases.

From Table II it is seen that 9 counties had no Supreme Court cases in school law and 21 counties had only one case appealed. Of course, it must be understood that all of the original proceedings happened in some county. An original proceeding is a proceeding

Original in Declaratory Judgment, Revised Statutes of 1923, 60-3127 (Laws of 1921, ch. 168, sec. 1.)

originating in the Supreme Court to expedite the opinion. The constitution of Kansas³ governs the original proceedings in the Supreme Court, thus expense and time are both saved because if that type of case classified as an original proceeding were heard in a district court, the decision of the court would be carried to the State Supreme Court for affirmation or reversal. Shawnee County, with 20 cases, holds a commanding lead in the number of cases in school law. By a further examination of the data it is found that Shawnee County gains this lead due to the fact that the State Offices are located in Topeka and seven cases have been appealed to the Supreme Court because the Attorney General, in seeking for an interpretation of a case in school law, was obliged to start the action in an appellate court. In other words, he could not bring that particular type of case into the Supreme Court as an original proceeding. Of course, proceedings could have been begun in a court in some other county, but Shawnee county was the most convenient. Wyandotte County and Reno County each have appealed 12 cases in school law. The mean (arithmetical average) number of cases of school law coming to the Supreme Court from the appellate district courts was 3.33 per county. It was also found that 30 per cent of the total cases in school law were appealed from ten counties and these same ten counties: namely, Shawnee, Wyandotte, Reno, Anderson, Sedgwick, Ford, Nemaha, Labette, Atchison, and Douglas make

³ Revised Statutes of 1923, Sec. 3, Art. 3 of the constitution of Kansas.

up 23 per cent of the state's population.⁴ Likewise, about 30 per cent of the cases in school law are original proceedings in mandamus.

The population of the state of Kansas in 1930 was 1,880,999.⁵ In 1930, there were 7 cases in school law in the Supreme Court. This gives one supreme court case in school law to about 269,000 inhabitants. In Thiel's⁶ study of the United States Supreme Court cases in school law for the calendar year of 1927, the ratio of the population to the number of cases for the United States as a whole was one Supreme Court case in school law to about 455,700 inhabitants, while the western states show a ratio of one case to about 218,000 inhabitants. The ratio for Kansas is much the same as the ratio found for the western states.

In making comparisons between the number of cases and the area in square miles, the mean for Kansas was found to be one case in school law for every 12,496 square miles. Thiel's⁷ study of the comparison between the number of cases of school law and the area in square miles showed that the mean for the nation as a whole was one case for every 12,900 square miles. This mean agrees with that of Kansas, but Thiel's investigation was for the nation as a whole for the

4 Fifteenth Census of the United States, United States Department of Agriculture, comp., United States Government Printing Office, Washington, D. C., 1931, Vol. 1, 1263 pp.

5 *ibid.*

6 Thiel, Richard B., "An Analysis of the Nature and Frequency of Supreme Court Cases in School Law for the Calendar Year 1927" in JOURNAL OF EDUCATIONAL RESEARCH, Vol. 19, No. 3, pp. 177-182.

7 *ibid.*

year of 1927 only, while the Kansas figures are for the period from 1862-1932.

In classifying the various decisions in Table III, the grouping was made so that if the case, in the main, dealt with that type of organization, it was so tabulated. The last two classifications are not strictly school organizations, but because of the large number of cases of school land opinions, it was necessary that some such classification be included.

TABLE III
TYPES OF SCHOOL ORGANIZATION INVOLVED IN THE 464
KANSAS SUPREME COURT DECISIONS FROM 1862-1932

TYPE OF SCHOOL ORGANIZATION	CASES	
	NUMBER	PER CENT
First and Second Class Cities	79	17.03
District Schools (Rural and Third Class Cities)	157	33.84
Rural High Schools	49	10.56
County High Schools	2	.43
Community High Schools (Successor to County H. S.)	7	1.51
Universities and Colleges	4	.85
State and County Officers	29	6.25
School Lands (only)	83	17.89
Miscellaneous#	54	11.64
TOTALS	464	100.00

Read table thus: There were 79 cases of school law involving first and second class cities and this was 17.03 per cent of the total cases for the 71-year period.

The largest per cent of cases was in the district type of organization with a total of 33.94 per cent. The smallest per cent was .43, found in the county high school organization. Of course, the county high schools soon were succeeded by the community high schools, therefore these two might be

Mainly test cases and interpretation cases (State v Individuals, or Individual v Individual) not closely connected with the school organization.

consolidated into one type of organization. It is interesting to note that 50.87 per cent of the cases of public school law involve two types of organization, namely, the district schools and the schools of the cities of the first and second class. This might be expected since these two types of organization have been functioning since Kansas became a state in 1861. It is astonishing to note the high percentage (10.56) for rural high schools since this type of school organization was established in 1915. Further investigation proves that the storm center for Kansas school litigation during the last fifteen years has been the rural high school. The universities and colleges have been in supreme court litigation but 4 times or .85 per cent of the total cases.

School lands seem to occupy a rather prominent position in the school cases in the Supreme Court. By further investigation it was found that approximately 65 per cent of the 83 cases of school land litigation had to do with the sale, priority, and forfeiture of school lands. The complicated nature of the school land law and the large number of school land sections granted to the state of Kansas by the United States for school purposes, account in part for such a large number of school land litiga^otions. By further investigation it was also found that there has not been a school land litigation case in the Supreme Court since the year 1921. This tends to indicate the forecasting statement in the statutes⁸

⁸ Revised Statutes of Kansas, 1923, State Printing Plant, Topeka, Kansas, p. 1187.

that "the facts in regard to the school lands are not set out in full because it is believed that all school land has been disposed of by the state."

Referring to Table I in which there is a considerable deviation[#] in the per cent of school cases for the ten year period 1902-1911, it was found by further investigation that it was during this period that several very important statutes pertaining to forfeiture, priority rights, and the payment of purchase money were passed by the Kansas legislature. The deviation for the period 1912-21 can be explained as due to the rural high school litigation cases. The organization of the rural high school is rather complicated as given in the statutes and many test cases were necessary to "clear up" ambiguous points and incomprehensible statements of the statutes.

In order to determine the precise nature of the issues in the 468 school cases of school law passed upon by the Kansas Supreme Court, the classification of the American Reporter System⁹ was used. The law of public schools according to this system is considered under 170 items and these 170 items are grouped into eight divisions as indicated in Table IV.

In classifying the various decisions in Table IV, the grouping was made not only according to the number of cases of school law involved, but also according to the number of

[#] Referred to previously on p. 12.

⁹ National Reporter System, Sectional Reports, St. Paul, West Pub. Co.

points of school law involved. As some cases involved several distinct points of school law, the totals will not correspond to those of Table III.

TABLE IV
POINTS OF SCHOOL LAW PASSED UPON IN THE 464 KANSAS
SUPREME COURT DECISIONS FROM 1862-1932

POINTS OF SCHOOL LAW	CASES	
	NUMBER	PER CENT
Establishment, school lands and funds, and (Regulations in general)	111	19.86
Creation, Alteration, existence, and (dissolution of districts)	89	15.92
Government, officers, and district meetings	74	13.24
District property, contracts and liabilities	71	12.70
District debt, securities, and taxation:	105	18.79
Claims against district, and actions	51	9.12
Teachers	24	4.29
Pupil conduct and discipline of schools:	34	6.08
TOTALS	559	100.00

Read table thus: 111 (19.86 per cent) of the points of school law involved in the Kansas Supreme Court are establishment, school lands and funds, and regulations in general.

A glance at Table IV reveals the fact that the first three divisions relate to the territorial and administrative organization of districts and their government. This accounts for 274 of the 559 points of school law, or 49.02 per cent of the total points. Thiel¹⁰ found by using this same classification,¹¹ that the first three divisions accounted for 40 per cent of the total points of school law passed upon by the Supreme Court of the United States during the calendar

¹⁰ op. cit., p. 180.

¹¹ op. cit.

year 1927. This per cent agrees quite closely with the Kansas investigation. The slightly higher per cent is due, probably, to the fact that Kansas has had considerable controversial cases in regard to the school lands and also to the redistricting as noted in the rural high school and communith high school organization.

The next three divisions have to do with controversial matters affecting school property, contracts, district debts, taxation, and claims against the district. They are the cases affecting the taxpayers' pocket books, and compose 227 points of the total of 559 points, or 40.61 per cent. Thiel¹² found that these same divisions tabulated 43 per cent of the total points of school law. Even though changes in the bounaries of districts require a readjustment of financial matters, and new districts call for new buildings, Kansas is approximately 3 per cent below the tabulated per cent made by Thiel¹³ for the United States during the year 1927. This is rather significant and tends to show that the Kansas points in school law conform rather definitely to those of the United States.

With regard to the 24 litigations affecting teachers, four dealt with certification, twelve with contract stipulation, five with suspension, and three with other matters. Thiel¹⁴ reported in his study:

That of the 38 disputes affecting teachers, three dealt with certification, twelve with matters relating to appointment and contract stipulations, fifteen with suspension, or dismissal, including actions or damages, and the remainder with pensions and other matters.

12. op. cit.

13. ibid.

14. ibid., p. 131.

Of the 34 cases affecting pupil conduct and discipline of schools, ten dealt with tuition, nine with transportation, one with vaccination, one with compulsory school attendance, two with expulsion, two with admission to high school, and nine with separate schools for white and colored children. Thiel¹⁵ found in his study for the United States that among the 30 cases affecting pupil conduct and discipline, seven related to the payment of tuition, seven to transportation, two to vaccination, two to compulsory attendance, one to expulsion, and 11 to those more delicate relations between parents and children on one side and the teachers and school authorities on the other. It is remarkable to note that these two studies in regard to the points of school law passed upon are so similar. Kansas seems to conform quite closely to the nation as a whole in regard to the points involved in the Kansas Supreme Court.

It might be expected that a great many opinions would be handed down by the Supreme Court that are now obsolete, due to the altering process in our school laws. Table V does not include the school land opinions. Since these opinions have been discussed previously and it would be repetition to include the school land opinions again.

15 *ibid.*

TABLE V
 OBSOLETE OPINIONS[#] AS HANDED DOWN BY THE KANSAS
 SUPREME COURT REGARDING PUBLIC SCHOOL LAWS

CLASSIFICATION	CASES	
	NUMBER	PER CENT
Organization	12	24
Teacher's Contracts	2	4
Taxation	8	16
School bonds	6	12
District officers and school district	11	22
County Officers	3	6
Textbooks	6	12
State Schools	2	4
TOTALS	50	100

Read table thus: There are 12 obsolete cases handed down in regard to organization and these are 24 per cent of the total obsolete cases.

It is readily seen that 46 per cent of the obsolete cases have to do with the school district and its organization. Teacher's contracts and state schools each occupy 4 per cent of the total cases. The total number of obsolete cases in public school law is approximately 11 per cent of the total 464 cases.

It is the aim of Chapter III of this study to make a diagnosis and specific analysis of the various cases of school law using the index classification given by Hatcher.¹⁶

[#] Opinions in which the law has been amended or repealed by later statutes.

¹⁶ Hatcher, Earl Hilton, and McCue, Howard F., comp., Digest of Kansas Reports, Lawyers Co-operative Publishing Co., Rochester, New York, 1929, p. 1931, 2820 pp.

CHAPTER III
AN ANALYSIS AND DIAGNOSIS OF THE KANSAS SUPREME
COURT CASES IN SCHOOL LAW

A. General.¹ The common school means the free common school and is synonymous with the public schools. A high school grade of a city system of schools is a part of the common school system.

B. School Districts. (Corporate Nature.)²

"The legislature shall pass no special act conferring corporate power. Corporations may be created under general laws; but all such laws may be amended or repealed."³

There is no vested[#] right in the existence of a school district. Its rights and franchise having been granted for the purpose of government, can never become such vested rights as against the state that they cannot be taken away. In other words, school districts are, with limited powers, co-extensive with the duties imposed upon them by statute or usage, but restrained from a general use of the authority which belongs to those metaphysical persons by the common law. In the Laws

1 70 K 434. (N.B. In order to conserve space the writer has used the preceding explanatory legend taken from the Revised Statutes.) The first number given refers to the volume, the letter K, refers to the Kansas Reports, the following numeral to the page in the report. This technique is followed throughout the study.

2 33 K 692--49 K 197--64 K 612--65 K 237--96 K 647--110 K 613--111 K 820--120 K 321.

3 Revised Statutes of 1923, sec. 1, art. 12, of the Constitution of Kansas.

A complete and consummated right.

of 1871,⁴ the term "municipal corporation" did not embrace school districts and a school district election to vote bonds could not be contested at the instance of an aggrieved elector. According to the Laws of 1891,⁵ the school district is a "municipality" and the eight-hour labor law applies to the erection of a school building. A rural high school organization under the Laws of 1915⁶ is a corporate body and is capable of contracting and being contracted with; suing and being sued.

(Power of the Legislature.)⁷ Quasi-principalities,[#] like the county high schools and the rural high schools are creatures of the legislature and subject to legislative modification or dissolution. Therefore where "...a general law can be made applicable; no special law shall be enacted."⁸ But if a special law is enacted and it is repugnant to the above provision, it is to be construed by the courts of Kansas. Several special acts to establish county high schools have been enacted and have been found unconstitutional in accordance with the

4 Session Laws of Kansas, 1871, ch. 79.

5 Session Laws of Kansas, 1891, ch. 114.

6 Session Laws of Kansas, 1915, ch. 311.

7 33 K 692--53 K 480--61 K 90--64 K 6--84 K 248--111 K 820.

8 Revised Statutes of 1923, sec. 1, art. 1, of the Constitution of Kansas.

A term used to mark a resemblance.

above constitutional provision. Likewise the Supreme Court of Kansas has found other special acts passed by the legislature, when not in conflict with a general act, to be constitutional.

(Establishment and Creation.)⁹

"It shall be the duty of the county superintendent of public instruction to divide the county into a convenient number of school districts."¹⁰

Then by a due process of law specifically stated in the statutes,¹¹ the county superintendent of public instruction shall appoint a time and place for a special district meeting for the election of the district officers. The original organization of a school district is legal and valid when a district elects members to a district board and they, in turn, qualify and accept in writing to the county superintendent, who shall file the acceptance in his office. It is possible and just for the board of county commissioners to create a new district after September first.

The storm center of litigation in regard to the establishment and creation of school districts has been in the rural high school districts. Forty-nine cases have been taken to the Supreme Court of Kansas in the period between 1915-32, which is an average of approximately three cases a year. The

9 18 K 465--41 K 531--105 K 134--107 K 144--110 K 600-112
K 264--112 K 421--116 K 285--116 K 325--117 K 332--117
K 493--120 K 347--120 K 321--132 K 679--133 K 638.

10 Revised Statutes of 1923, with 1931 supplement, ch. 72, sec. 213. (N.B. Hereafter cited as R. S. 72-213).

11 R.S. 72-213 and 72-214.

exact procedure to follow in organizing and establishing a rural high school is stated in the statutes¹² and a further study of the forty-nine cases indicates that it is the legal meaning of the terms that causes the litigation to be taken to the Supreme Court for interpretation; i.e. form of ballots used, location of site, or the insertion of a word here or there that might alter the meaning of the law.

It might be stated that the validity of organization is not open to question by private persons without special interest. Neither have the resident electors the right to challenge the right of individuals to act as officers of the district nor to enjoin public officials from canvassing the votes cast at an election.

Joint rural high school districts, that is districts organized with their boundaries within more than one county, have been a source of considerable litigation in the process of creation and establishment. When a board of county commissioners calls an election on the proposition to establish a joint rural high school district and passes favorably upon the sufficiency of the petition; and the necessary steps required to be taken are taken; and the district is ordered to be established; and, where there is no fraud or bad faith, the action of the board is conclusive and not subject to judicial review. The statutes¹³ provide that in case the board of county commissioners and the county superintendents

12 R.S. 72-3501 to 3509#

13 *ibid.*

Inclusive in all cases.

of public instruction of two or more counties shall fail to agree on the approval of the boundaries of the proposed district, then the state superintendent of public instruction must fix the boundary. The state superintendent of public instruction, however, has no authority to approve the boundaries of a proposed rural high school district situated in two or more counties until the county superintendent of public instruction and the county commissioners fail to agree on the boundaries. The county superintendent of public instruction may organize a new school district and include therein territory embraced within a district composed of two districts that have been consolidated. In the organization of a rural high school district, it is competent[#] for said district to establish the district at an election duly held for that purpose, and at a later election to designate the location or site of the high school building.

(Territory and Boundary.)¹⁴ Preliminary steps to secure the approval of the boundaries of a proposed rural high school by the county superintendent of public instruction and the board of county commissioners under the statutes are informal and a petition signed by the voters or residents of the proposed district asking for such approval is not necessary. No high school district shall be organized within the state where the aggregate value of taxable property is less than two million

[#] Capable to act.

dollars. Rural high school districts are not within the operation of the Barnes high school law. When a petition calling for an election to vote on a proposal to organize a rural high school district failed to recite that the boundaries had been approved by the county superintendent of public instruction and the county commissioners, the omission of such recital and the fact that the boundaries were not approved until after the petition was signed, but were approved before it was voted upon, were held to be immaterial irregularities. Where to follow the description of the boundaries of a rural high school district would result in destroying the continuity of a line which can be preserved by rejecting an obviously erroneous call, the erroneous call will be ignored and the boundaries thus corrected to correspond with the obvious intention of the parties. The rule that no one but the state can challenge the existence of a quasi-corporation is applied in an action brought by a railroad company attacking the validity of a change of boundaries of a school district so as to take in part of an interstate bridge owned by it; although no other taxable property was thereby brought into the district. The county superintendent of public instruction may organize a new school district and include therein territory embraced within a consolidated district. Upon the detachment of the territory within which a school district officer resides, from the district of which he is an officer, his office immediately becomes vacant and may be filled by appointment. The proceedings in a case of this kind are irregular but void.

(Appeals)¹⁶ The statutes¹⁷ state that, in regard to forming or altering districts,--- aggrieved person or persons may appeal to the board of county commissioners who shall confer with the county superintendent of public instruction and their action shall be final. But in a meeting called for that purpose, with regard to the formalities of the statute, the board of county commissioners has no jurisdiction to hear an appeal from the action of the county superintendent of public instruction in altering old school districts or forming new ones. A county commissioner is not disqualified from acting on an appeal from an order of the county superintendent of public instruction changing the boundaries of school districts by reason of the fact that the commissioner has property affected by the change. Such an appeal is not disposed of by the action of two members of the board where one votes in favor of the appeal and the other against it. Where such an appeal has been taken it must be heard by the board of county commissioners. If the appeal is not determined at the first regular meeting of the board after it is filed, it may be determined at a subsequent meeting on proper notice. An appeal from an order of the county superintendent of public instruction creating a new district may be taken on the day that the order is made, and the fact that the notices of the formation of the new district were not

16 17 K 537 78 K 805--104 K 153--106 K 514--112 K 60--115
K 526--119 K 74--113 K 256.

17 R. S. 72-309.

then posted will not defect the appeal. Where the county superintendent of public instruction makes an order changing the boundaries of a joint district, any person aggrieved may appeal from such order to the state superintendent of public instruction. An appeal from an order changing the boundaries of a joint district cannot be taken to the board of county commissioners of either county in which such district is partially situated. An appeal lies to the state superintendent of public instruction from the failure of the county superintendent of public instruction of adjoining counties to agree to an order in response to a petition requesting that territory in rural high school districts situated within one of the counties be detached from those districts and that territory, together with other territory not in any rural high school district, be attached to a joint rural high school district situated in both counties. Arbitrary and capricious detachment of territory may be restrained without an appeal being first made to the county commissioners.

(Changing Boundaries: Transferring Territory)¹⁸ The statutes¹⁹ provide four methods of forming joint school districts; first, by forming a joint school district from territory lying in more than one county; second, by attaching land in one county to an existing district in an adjoining county; third, for altering the boundaries of a joint district already formed;

18 33 K 644--104 K 478--117 K 332--119 K 223.

19 72-3501--72-3508--72-3509--72-3514.

and fourth, for attaching to a rural school district territory not previously a part of one. The statutes relating to rural high school districts are controlling and exclusive for rural high school districts.

When a new corporation (a school district) takes all the rights of the older district it assumes and is liable for all its obligations, and when sued, even by misnomer, is valid against the board intended to be named in the judgment as though it were properly named therein. The statutes²⁰ authorizing the county superintendent of public instruction to transfer territory from a rural high school district to "any school district in which a four year accredited high school is maintained," means that such territory may be transferred to some common school district of that sort under the general jurisdiction of the county superintendent of public instruction. There must be evidence to show collusion of good faith in the official conduct.

(Consolidation)²¹ The Laws of 1911²² providing for the "voluntary disorganization and consolidation of district" do not violate the provisions of the constitution²³ which requires that the title to an act shall clearly express its subject-matter, although the text of the act is not as broad as its title. In regard to voluntary disorganization and consolidation

20 R. S. 72-3509.

21 77 K 742--109 K 552-- 111 K 598.

22 Session Laws of Kansas, 1911, ch. 275.

23 Revised Statutes of 1923, Sec. 16, art. 2, Constitution of Kansas.

of the school district, a majority of the votes cast is sufficient to carry the proposition in a district. This amended a former statute²⁴ which stated that a majority of the voters in the district must vote for the proposition to disorganize and consolidate or the proposition was lost. In an action attacking the validity of proceedings by which it was attempted to consolidate a school district with a union district which had been in existence since 1908, it was held that the failure to comply with the requirements of the statutes²⁵ rendered the proceedings void. The provisions²⁶ relating to the manner in which a school district contiguous to a consolidated union district "already established under the act of 1911" might become a part of such district is held to apply to a consolidated or union district already in existence at the time the Laws of 1911²⁷ were enacted.

(Annexation.)²⁸ The board of education[#] of a city of the first or second class is empowered²⁹ to attach to such cities for school purposes adjacent territory upon the application of

24 Session Laws of Kansas, 1901, ch. 305.

25 R. S. 72-903.

26 *ibid.*

27. *op. cit.*

28 16 K 536--45 K 560--64 K 6--83 K 778--100 K 59--105 K 320--111 K 598--112 K 737--122 K 701--128 K 487--130 K 818--134 K 674.

29 Session Laws of Kansas, 1872, ch. 100, sec. 99.

To require governing body of cities of first and second class.

a majority of the electory of such territory and the existence of a school district made by the annexation of the adjoining territory is in pursuance of a valid law and may not be tested in an injunction proceeding brought by a private party to enjoin[#] the imposition of a tax on the ground that the annexation and reorganization of the district was valid. Territory may be taken by a first class city from a second class city when adjacent to both cities. This law is an example of an early statute that has stood the test of years. However parts of it have been amended.

The statutes³⁰ provide a method for settlement between a school district and a city, which district, is annexed by an extension of the city limits. The city is held liable for the bonds of the district so annexed. School districts from which the territory is detached does not invalidate the statute.³¹ The school board^{##} is in error in attempting to take control of an annexed school house and territory taken in by the city and cannot obtain a restraining injunction.

The first requisite for attaching adjacent territory to a city is good faith, and a scheme to secure by means of added signatures to a petition so as to add to the taxable property of the district is not a compliance with but a perversion of the statute.

30 R. S. 72-5316.

31 *ibid.*

to require.

Governing body of cities of the third class, rural high schools, and district schools.

The Statutes³² further provide that when a rural high school district has been organized in a county, and adjacent to it there is territory not within any rural high school district, upon the application being made to the rural high school board by a majority of the electors of such adjacent territory in due lawful procedure, it may be attached to the rural high school district for high school purposes. The question of county lines is not material.

Under the authority of the statutes,³³ territory may be detached from a rural high school district and annexed to a city school district. Likewise territory which does not touch the city limits but does adjoin the city school district may be attached.

(Apportionment After Change in District.)³⁴ When a new district is formed from one or more districts the county superintendent of public instruction shall determine the value of the school property of all the school districts.³⁵ The new district shall be formed only between April 1st and September 1st of the same year. The board of county commissioners may create a new school district after September 1st. A county superintendent of public instruction in determining the proportion of the present value of a school house or other property

32 R. S. 72-3514.

33 R. S. 72-1725.

34 15 K 43--18 K 467--20 K 76--32 K 123--63 K 1--112 K 60.

35 R. S. 72-307.

justly due a new school district formed out of territory taken from another district, acts in a judicial or quasi-judicial, capacity, and after an award has been made by him and the amount thereof paid by the old district, his power is exhausted. Where taxes are levied and a school house is built in a certain school district; afterwards a portion of the territory of the said district was allowed to remain unorganized for about a year and then organized into a new school district; then in about three years the county superintendent of public instruction made an apportionment of the property. The court held that an award for the old district to pay the new district is valid and binding upon the old district. The court in another opinion held that an apportionment is valid even if made nearly seven months afterward. A tax levy cannot be enjoined by and for such school districts when so organized and apportionment is completed. Where there is a denial of any indebtedness or liability, an ordinary action may be brought, but where the legal ability to pay, and the amount claimed are admitted, but the school district officers wilfully refuse to pay, or to levy a tax for such purposes, then mandamus is the proper and a sufficient remedy.

(Establishing High Schools.)³⁶ A high school grade of a city system of schools is a part of the common school system. The board of education of cities of the first class has power to decide 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 statutes³⁷ for all school districts. The court only interferes if there is an abuse of their discretion as works an injury. In other words they may establish and maintain various grades.

The statute³⁸ known as the "Barnes Law" has been held constitutional in several cases and it is the duty of the county commissioners to make a levy for maintenance under the Barnes law. It is also permissive to submit to the voters the question of an increased levy for high school purposes. Township high schools established before 1921 are governed by laws relating to the rural high school districts.³⁹

By the terms of the statutes,⁴⁰ all county high schools, except those controlled by the provisions of the Laws of 1919,⁴¹ were disorganized and in their stead were created community high schools. The county high schools were created and established in the Laws of 1886.⁴² The township high schools established under the provisions of former session laws⁴³ are governed by

37 R. S. 72-1724.

38 R. S. 72-3001.

39 Session Laws of Kansas, 1921, ch. 251.

40. R. S. 72-2601, 2801, 2901.

41 Session Laws of Kansas, 1919, ch. 276.

42 Session Laws of Kansas, 1886, ch. 147, sec. 1.

43 Session Laws of Kansas, 1911, ch. 262.

the laws relating to the rural high schools.⁴⁴ The statute⁴⁵ relating to the rural high schools has been held constitutional and it is not of unequal operation throughout the state. It is essential that the notice of an election called to vote upon a proposition to establish a rural high school district shall specifically define the boundaries of such proposed district.

(Election.)⁴⁶ Special and careful provision is made in the statutes⁴⁷ in regard to the election for and the bonds for a rural high school district. Where the petition to vote on the location of a rural high school recited that the proposed school was to be located "within or close to the village of _____," the description was not so indefinite as to invalidate the bonds issued in pursuance of the vote. Notice of the organization of a rural high school district and the location of a building is properly given where notice of the election is twice published in the county where the district is located, the first publication of which is twenty-one days before the election, and the notice of the election is posted on the door of each school house within the district for the same length of time.

A petition for an election giving the proposed election of

44 Session Laws of Kansas, 1913, ch. 278.

45 R. S. 72-3501 to 3506.

46 97 K 804--99 K 185--105 K 134--112 K 134--112 K 421.

47 R. S. 72-3502.

a rural high school as "within _____ Kansas" was sufficiently definite to authorize the district board to secure a site within the unincorporated village of _____. The requirement of the general election law that there be a separate polling place for each township does not apply to an election to vote on establishing and locating a rural high school. The failure to submit the location of the building in the ballots is not fatal, neither is the posting of the notices near the door instead of on the door when no one is misled.

(Dissolution.)⁴⁸ Disorganization is a public matter to be attended to by the attorney general or the county attorney acting in the name of the state and not by private individuals. It is the exclusive duty of the county superintendent of public instruction to execute the statute⁴⁹ when a school district has failed to maintain a school for at least three years, to attach its territory to the adjoining districts, and the county commissioners have no official concern herewith. An adjoining district to which a disorganized school district would be added and its tax roll increased thereby has no special interest in the matter as to enable it to maintain a proceeding in mandamus to compel the disorganization. The enumeration which is required to be made by an elector and to accompany a petition for an election on the disorganization⁵⁰ of a rural high school district should have been made in good faith, and should be at

48 107 K 144-110 K 776--110 K 779--118 K 163--118 K 536--130
K 140--133 K 256.

49 R. S. 72-803 and 804.

50 R. S. 72-3502.

least substantially accurate. The board of education of a rural high school district has no authority to call an election on the disorganization of the district when evidences of indebtedness previously issued by the district are implied. Where a canvassing board⁵¹ declares that an election has resulted in favor of a proposal to establish a rural high school, the correctness of the canvass cannot be challenged in an action brought by the state to enjoin an election called to vote upon the question of disorganizing the school. Mere indebtedness for the use of a building and for the sale of the equipment is not such as to prevent disorganization under the statutes.⁵² In other words, there is no wrong without a remedy. It is also true that teacher's contracts do not constitute evidence of indebtedness and no provision is made for the collection of debts by such disorganized districts.

(Increased Population Exceeding the Statutory Limit.)⁵³

Kansas⁵⁴ has seventeen counties with less than six thousand population and the statutes⁵⁵ provide a means of establishing county seat high schools. The existence and permanency of the school is not affected by an increase in the population of the county above the limit named in the statute.

51 R. S. 72-3505.

52 R. S. 72-3502.

53 R. S. 72-2802.

54 Fifteenth Census of the United States, U. S. Department of Commerce, comp., p. 401, United States Government Printing Office, Washington, D. C. Vol. 1 (Population) 1931, 1263 pp.

55 R. S. 72-2801.

(De facto[#] Districts.)⁵⁶ The Supreme Court has delivered two opinions as regards a de facto district; and both of the opinions have to do with distinguishing between de facto and de jure^{##} districts.

(Who May Attack Corporate Existence.)⁵⁷ The validity of a rural high school district established under the statutes⁵⁸ providing for the organization of a rural high school district, which includes within its boundaries several ordinary school districts, may not be challenged by one of the districts so included even though the one may have been conducting an accredited high school when the district was established. While a school district may sue and be sued, it is not authorized to bring an action questioning the existence, boundaries, or validity of another school district. Such an action can only be brought in the name of the state by its duly authorized officers. This opinion seems to be following the precedent set by other cases in distinguishing who may challenge the existence of a governmental corporation or quasi-corporation.

(Collateral Attacks.)⁵⁹ Where a school district has been organized under a valid law, the validity of its organization

56 18 K 467--29 K 57.

57 77 K 742--97 K 804--114 K 67--116 K 40--132 K 679--133 K 638.

58 R. S. 72-3501 and 3502.

59 33 K 223-45 K 543--112 K 737.

One who performs the duty of an office with apparent right, but without being actually qualified in law so to act.

Lawfully entitled.

cannot be questioned at the suit of a private party. In an action by one school district against another to recover taxes alleged to have been assessed upon the territory of the former, and illegally paid over to the latter, the validity of the organization of such school district cannot be called in question. If the school district bringing the suit had a de facto existence at the time of the tax levy, its organization cannot be attacked in a collateral proceeding. A judgment rendered by a court having complete jurisdiction is not open to collateral attack for fraud or illegality.

(Injunction Suits.)⁶⁰ A school district cannot, by injunction, restrain the collection of taxes on land detached from its territory and included in a newly formed district, nor restrain the school district officers of such newly created district from acting as such, nor control the action of the county superintendent of public instruction in the discharge of his official duties in relation thereto. In an action by a taxpayer to enjoin the collection of taxes, the corporate organization of the taxing district may not be challenged. Private persons have no standing to question the legality of the organization of a rural high school district, by an action to enjoin[#] the election of rural high school district officers.

C. Property and Contracts: Liabilities. (Property.)⁶¹
The school district meeting may order the district officers to

60 52 K 564--107 K 419--113 K 631--114 K 485.

61 69 K 66--92 K 967--103 K 162--120 K 570.

To require.

suspend work on a new school house for which bonds had been issued. The court held that the officers must obey the order. In a case in which the taxpayers enjoined the execution of an oil and gas lease, the court found no cause for action since the carrying out of the terms of the lease would not increase the tax burden. Likewise, a school district which purchases and pays for land as a school site, no deed being executed, and occupies it as such for more than fifteen years, acquires thereby no rights to the underlying oil and gas. A city of the first class may maintain an action against the board of education of such city to recover special assessments levied against school property for improvements.

(Restrictions and Conditions.)⁶² The grantors of a site have no longer any interest in property conveyed when the legal title to the land remained in the trustees[#] and where a building for high school purposes had been maintained for several years. The school officers of a city are the "successors in office" of the officers of a school district and lands given to the school district automatically conveyed to them are subject to the same limitations given the original school district.

(School House Site.)⁶³ Condemnation proceedings⁶⁴ by a school district for a school building site divests the owner

62 43 K 138--93 K 829.

63 62 K 374 65 K 103 97 K 804--100 K 612 102 K 78 108 K 1--110
K 612--116 K 614--120 K 347 118 K 138

64 R. S. 72-503.

Governing body of a county or community high school.

of title, even though he at the time had only an equitable[#] title. Such proceedings are sufficient for that purpose although no notice thereof is provided in that or any other statute or constitutional provision, and although no notice was given the owner. The owner of lands appropriated for public use is entitled to "full compensation" which is measured by the difference between the value of the lands before and after their appropriation. Where a school district board makes an order declaring that the appropriation of certain land is necessary for the purpose of a school house site such order is sufficient to authorize the condemnation of such land for that purpose. A board acting under the statutes⁶⁵ may purchase more than one and one half acres for a school house site. Where the land has been selected for a school house site it is not necessary for the board to try to purchase the land at a reasonable price or procure it otherwise before instituting condemnation proceedings. A board of education proceeded properly under the statutes to select and condemn property for a building. The resident adjoining property owners sought to enjoin the condemnation of the site and construction of the school building until they were paid consequential damages resulting to them but the court held that the injunction could be maintained. It is competent for a school district to acquire more than one site and erect ~~add~~ additional school buildings where

65 R. S. 72-4702.

Valid in equity.

more schools are necessary in the district, and the purchase of such additional sites may be authorized by a majority of those voting at a legally called meeting. Where a school district which included a city of the third class, at a special meeting authorized the purchase of a proposed school house site, the proposed action is to be regarded as the purchase of an additional site rather than a change of site. A city council cannot lawfully devote to school purposes grounds which have been dedicated by the original owner to other public purposes. Dedication for "seminary" purposes means for public school purposes.

(Building Schoolhouse.)⁶⁶ A school district voted bonds to build a school house, and after the contract was let and the old school house torn down proceedings in mandamus were begun to compel the building of two school houses for reasons set forth in the opinion. The court denied the writ of mandamus. A rural high school district and an ordinary school district formed in part from the same territory, each having statutory authority⁶⁷ to erect a school house for its own use, cannot without further legislation unite in the construction of a single building for their joint use.

(Maintenance and repair.)⁶⁸ "The district board shall have the care and keeping of the school house and other property

66 99 K 404--106 K 469--109 K 206.

67 R. S. 72-3505 and 72-1023.

68 22 K 521.

belonging to the district"⁶⁹ a school district is bound by the contract of its board for repairs of its school house, and notwithstanding the fact that a given sum was voted for specified repairs and such sum had already been expended in such repairs.

(Purchase of Equipment.)⁷⁰ "The district board shall provide the necessary apparatus and appendages for the school house...."⁷¹ Not until 1876 was this law enacted and before that time a stereoscope and views was not considered necessary because an opinion was handed down in which a school district board had no power to bind the district to a contract to purchase equipment without a prior affirmative vote of the inhabitants, qualified to vote at a school meeting lawfully assembled.

Under the statutes, a well (construed broadly) is a necessary appendage to a school house. The district is bound to pay for the drilling of a well in a school yard for the purpose of supplying drinking water. A mathematical chart is to be considered both as an appendage and as apparatus. In the unauthorized purchase of school apparatus the director and clerk are not individually liable of the order in payment thereof. It is an offense under the Crimes Act⁷² to attempt to bribe a member or members of the board of education to make

70 21 K 536--25 K 662--29 K 211--30 K 378--42 K 451--105 K 343.

71 R. S. 72-1028.

72 Comp. Laws of 1885.

a contract to put up lightning rods on the school house of a district.

(Use of School Property.)⁷³ "The district board... is hereby authorized to open the school house for the use of religious, political, societies⁷⁴... for public meetings."

The use of a public school house for any private purpose, such as the holding of religious or political meetings, social gatherings, and the like, is unauthorized by law, and may be restrained at the instance of any party injured thereby. It is unlawful even though a majority of the electors and taxpayers assent, to such use and an adequate rent is paid.... If a donor assists in the erection of a school building and expects the public to derive advantages from the building in the aid of the construction of which it is given otherwise than from its use for strictly school purposes does not render the donation unavailable for that purpose.

(Contracts.)⁷⁵ A quasi-municipal corporation like the board of education of a city, is never liable for the consequences of a breach of public duty or the neglect or wrong of its officers unless there is a statute expressly imposing such liability. Since district boards of education are endowed with a corporate nature⁷⁶ they are empowered with the ability to contract. When extra work not embraced in the original

73 15 K 259--106 K 469.

74 R. S. 72-1033.

75 11 K 445--17 K 313--39 K 347--48 K 624--50 K 727--51 K 731--59 K 42--67 K 549--84 K 760--89 K 233-103 K 555--105 K 343--117 K 385.

76 Page 23 of this study.

contract is done on a school building and the members of the board of education oversee the extra work and accept the building, the district is liable for the extra work. When a contract is made for the purpose of drilling a well, supplying drinking water, even though no suitable water is found, the board is bound by contract to pay for the drilling of the well. A contract made by only one member of the school board is void, but it may be ratified and made binding by the action of the school district or by the action of the full school board. A school district which has received, retained, and used for a long period of time school furniture bought for it by the members of the school board, acting separately, without any board meeting, must be deemed to have ratified the purchase, and must pay for the property so obtained for its use. There need be no formal turning over of a school building heating system by a contractor to accomplish a temporary acceptance by the school board. A breach of warranty[#] is sufficient evidence to make a contract void. A school district asks for an extension of the payment of one year for school furniture. The contractor agreed to the extension of time upon the express condition that the school board should pay to him a stated sum. The school board never assented to the condition. The court decided that the time of payment was not extended. A contract for extras is not in error in a contract. The constitutional

[#] Failure to meet a condition.

40

provision⁷⁷ relating to the impairing of the obligations of contracts does not apply to contracts dealing with a department of government, where the subject matter affects the safety and welfare of the public. If one party without the fault of the other fails to perform his part of the contract in such a manner as to enable him to sue upon it, and if the other party has derived a benefit, the law generally implies a promise on the part of the first part to pay such a remuneration as the benefit conferred upon him is reasonably worth, less any damage that may have been sustained by reason of the partial fulfillment of the contract.

(Architect's Contract.)⁷⁸ In case a board of education contracts with a firm of architects to draw plans and specifications for a school building and to perform the incidental services in the erection of a building, and a change in the personnel of one of the partners becomes available, the contract becomes unenforceable. Under a contract, when plans and specifications call for a school house to cost not more than ten thousand dollars, the architect cannot recover for plans and specifications for a school house costing more than that amount.

(Contractor's Bond.)⁷⁹ Not until 1909 did the statutes⁸⁰ specifically require;

77 Revised Statutes of 1923, sec. 10, art. 1 of the Constitution of the United States.

78 94 K 144--115 K 155.

79 96 K 499--97 K 56--117 K 48--126 K 262--129 K 357.

80 R. S. 60-1413.

"That whenever any public officer shall, under the laws of the state, enter into a contract in any sum exceeding one hundred dollars with any person or persons for the purpose of making public improvements...such officers shall take securities from the party contracted with, a bond with good and sufficient securities to the state of Kansas."

A contract between a construction company and a board of education for the erection of a school building provided that the contractor should furnish a bond to be approved by the board; the contractor tendered the bond which the board disapproved; the contract was never completed, and the contractor may not recover thereon. When a building contract calls for an indemnity bond, "according to the laws of the state," a bond given, conditioned for the "faithful performance of the contract according to its terms," guarantees against all damages for the contractor's failure and not merely the payment of debts incurred for labor and material. When the contractor fails to complete the building within the specified time and no notice is given to the bondsmen, as the bond required, the bondsmen are not released unless actual loss resulted therefrom. The guaranty company is not entitled to a release from its obligation, because of alterations in the plans and specifications which are not unreasonable, where the contract specifically provides alterations may be made. A bond for construction work does not include electric wiring unless specifically mentioned. A man furnishing material indirectly through an original contracting material man is not protected in a bond.

(Mechanic's Lien.)⁸¹ Liens of mechanics⁸² may be taken upon school houses. The lien must be sufficiently itemized and the inclusion of non lienable items in good faith[#] does not defeat the lien. In the statement of a lien when materials furnished in the construction of a school house are "lumped off" at a discount of yard prices, the statement is not so uncertain and indefinite as to render it void. A sub-contractor under the provisions of the statutes⁸³ may secure a lien upon a public school house erected by a school district.

D. Finances. (State School Fund Commission.)⁸⁴

"The state superintendent of public instruction, secretary of state, and attorney general shall constitute a board of commissioners for management and investment of the permanent school... funds."⁸⁵

The legislature has the same power over the school fund commission that it has to direct or control any other office or commission. A compromise of a debt to the school fund rests with the legislature. The state may contest a probated will on the ground of its revocation, in the interest of the permanent school fund.

81 13 K 17--17 K 552--44 K 285--46 K 54--84 K 751.

82 R. S. 60-1401.

83 R. S. 60-1403.

84 79 K 234--114 K 741--134 K 685.

85 R. S. 75-2301.

An honest intention to abstain from taking undue advantage of another.

(Fines.)⁸⁶ According to the Constitution of Kansas:⁸⁷

"... proceeds of fines for any breach of the penal laws is for the support of the schools and is applied in the county where the money is paid or the fines collected."

The proceeds of a fine imposed by the Supreme Court in a contempt proceeding should be paid to the county where the liability to the fine was incurred, for the benefit of the school fund. Upon the violation of the conditions of a bond, a forfeiture may be declared, a recovery had and the amount recovered, paid into the treasury of the county and applied to the support of the common schools. Part of the act was declared unconstitutional but this void proposition did not invalidate the whole law.

(Warrants and Orders.)⁸⁸ "The treasurer of each district shall pay out, on the order of the clerk, signed by the director of the district, all public moneys which shall come into his hands for the use of the district."⁸⁹

The treasurer of the school board is authorized to pay out money only upon a warrant duly signed, etc., therefore he and his bondsmen may be sued by the board for failing to pay over money to his successor in office. It is the duty of the director of a school district to sign all orders, drawn by the clerk upon the treasurer of the district, which are authorized by the district board. The acceptance and payment

86 64 K 5--77 K 466--77 K 618--78 K 600-100 K 414--116 K 487.

87 Revised Statutes of 1923, sec. 6, art. 6, of the Constitution of Kansas.

88 16 K 406 16 K 542--27 K 253-28 K 160-29 K 211--42 K 695--63
K 568--88 K 666--102 K 98--120 K 464--124 K 300.

89 R. S. 72-1017.

by the treasurer of the school district of an order drawn on him as treasurer by a teacher is deemed payment on account of an accruing and partly earned claim of the teacher. A school district order is prima facie[#] evidence of indebtedness of the district to a payee. Certain school orders received in payment for an article are invalid for want of power in the school board to purchase the article named. When an action is brought against the school district on a school district warrant which is issued without authority by the board of education, recovery cannot be had. If a school district is indebted to a party, and issues to him a warrant, an assignment of such warrant operates as an equitable transfer of the indebtedness. The courts may properly give judgment for the amount actually due on the indebtedness when a school warrant is issued for a sum in excess of the amount due the creditor. School warrants issued when there are no funds in the treasury with which to pay them are not illegal nor void. When presented for payment they are to be marked "not paid for the want of funds" and they become a floating debt of the district. The purchaser in good faith of school warrants sold to him by the treasurer, valid upon their face, but void because they had been paid, may maintain an action against the school district and recover. He may recover even though the treasurer knew the transaction was not made in good faith.

(Bonds: Authority to Issue.)⁹⁰ A rural high school may

Evidence of fact in law sufficient to establish.

issue bonds under the statutes⁹¹ and when it is proposed to issue bonds to erect a school house in a rural high school district, an injunction may be maintained by the individual taxpayers of such district on the ground of fatal defects and infirmities in the original organization of the district. Where a rural high school district issues bonds before an order is made directing the transfer of a part of the territory of such district to another district, such territory is liable for its proper proportion of such bonded indebtedness. The question of issuing bonds for the construction of a school building may be called on proper petition presented to such board.

A bond election held in a city of the second class is not invalidated by the fact that the proclamation for the election stated that the polls would be open from seven a.m. until seven p.m. instead of from nine a.m. to six p.m. as per the general election proclamation.⁹² At all school elections⁹³ held in a city of the second class the mayor designates the place and time and manner as provided by the general election laws. A board of education has regularly determined the necessity for a school bond election and has certified its action to the mayor, the mayor's duty to call the election is mandatory. The mayor has no excuse from the performance of his statutory duty in that the city has no money set apart to defray the expenses of the school bond election.

91 R. S. 72-3502.

92 R. S. 72-1804.

93 R. S. 14-206.

Community high school districts into which existing county high schools were converted by the statutes⁹⁴ are not high schools within the meaning of the term as used in the act giving school districts power to issue bonds for school houses and have no authority to issue bonds under that statute.

(Bonds: Petition.)⁹⁵ A series of statutes dealing with a particular subject forms a complete and independent method for guidance to official acts and the procedure therein described must be substantially followed. The petition of the electors has served its purpose when it has been presented to the district board and the prayer thereof is granted. After final action has been taken upon such petition by the district board, no petitioner has the right to withdraw his name from the petition. When school district bonds are issued under an act⁹⁶ which provides that the bonds shall specify on their face for what purpose they are issued, but do not, they are not void for want of such specifications. It is not necessary to state in the petition the amount of the consideration for which the bonds were issued. But in a rural high school bond election "the amount of the bonds proposed must be stated in the petition."⁹⁷ The county commissioners may call a second

94 R. S. 72-2501.

95 34 K 231--88 K 603--98 K 696--99 K 1.

96 R. S. 72-2002.

97 R. S. 72-3502.

election if, in the first election, there was a failure to give the statutory notice.

(Bonds: Signature by Agents.)⁹⁸ The signatures to a petition for a bond election may be attached by an agent of the petitioner. Where a person's name is signed by him at his direction and in his presence by another, the signature becomes his own, and it has the same validity as if written by himself.

(Bonds: Notice of Election.)⁹⁹ The call for an election to be held after the creation of a rural high school district to vote upon the question of issuing its bonds for the erection of a building is required to be made by the board of such district. Such an election on the call of the county commissioners is a nullity. Under the rural high school law¹⁰⁰ a bond election may lawfully be conducted in the same manner as an ordinary school district election, and the Australian ballot has no application. School bond election notices on printed blanks and filled in with pen and ink, are in due form and sufficiently comply with the statutory provisions that such notices should be printed on the typewriter. But the notice of the election must be published for the statutory period to make the bonds valid.

98 88 K 603--98 K 200-110 K 739.

99 109 K 206--110 K 739.

100 R. S. 72-3502.

(Bonds: Election.)¹⁰¹ When a bond election is held in a school district and the word "the" is left out of the ballot, "for the bonds" and the same "against the bonds," the omission does not invalidate the election. The Australian ballot does not apply to school district elections held to determine whether or not bonds shall be issued to build a school house. The requirement of the general election law "that there be a separate polling place for each township" does not apply to school elections. The statute¹⁰² recites that "all elections... shall be governed by the general election laws of the state when not contrary to this act" and no doubt is a little confusing.

(Bonds: Limitations on Amount.)¹⁰³ The latest statutes are always considered the expression upon the subject when there is a conflict between two provisions. The statutes¹⁰⁴ prohibit the issue of bonds in cities of the second class in excess of three and three-fourths per cent of the valuation of the taxable property located within the jurisdiction of the board of education. It does not prohibit voting more than that amount. The board of education, however, may apply to the school fund commission for authority to issue bonds in excess of the statutory limit. A valid order granting such authority may not be issued unless the hearing of the application is heard at the county seat.

101 26 K 395--97 K 325--97 K 804--102 K 362.

102 R. S. 72-3502.

103 94 K 670--103 K 288--120 K 768.

104 R. S. 72-1820.

(Bonds: Registration.)¹⁰⁵ A rural high school district may compel the state auditor to register its bonds that have been legally issued, although there is pending in the Supreme Court an appeal from a judgment refusing to enjoin their issuance.

(Bonds: Validity.)¹⁰⁶ Bonds certified by the state auditor as duly issued are valid in the hands of a bona fide[#] purchaser.

(Bonds: Payment.)¹⁰⁷ The school district is a necessary party defendant in an action to enjoin the collection of taxes levied to pay interest on the school district bonds. Bonds may be prevented from being issued if the intention of the voters was misled by the wording on the ballots. A judgment by default in an action to recover on coupons clipped from a bond of a school district cannot be set aside at a subsequent term without statutory reason. When a school bond recites that all acts required to be done in the issuing of bonds have been properly done as required by law, the school district is liable to an innocent holder of such bond. If the school fund commission holds the unmatured bonds of a school district, the school district may not compromise and refund such bonds without the consent of the commission.

105 96 K 647--98 K 696.

106 94 K 695--119 K 314.

107 17 K 360--114 K 74-135 K 429.

One who purchases of another without notice that some third person has a right to, or interest in, such property.

(Taxation: Levy and Assessment.)¹⁰⁸ Under the statutes¹⁰⁹ empowering the voters at an annual school meeting to distribute the amount voted for school purposes as they shall deem properly in the payment of teacher's wages, they may effectively determine the number of teachers to be employed. The power of levying taxes is a legislative function and the power abides only in the annual school meeting to determine the rate of taxation sufficient for the various school purposes. Where taxes have been illegally levied and collected the legislature may, by a curative[#] act, so legalize the same as to render it unnecessary to refund the money to the taxpayers and levy and collect the same. A writ of mandamus will not be issued against a board of county commissioners to compel it to levy taxes upon the taxable property within a school district unless the right is clear and the school district has had an opportunity to be heard. When a lapse of time renders it impossible to grant the relief sought by an appeal from a judgment on an application for a writ of mandamus, the appeal will be dismissed from the Supreme Court. If a landowner pays school taxes without protest in the mistaken belief that his land belongs in a certain school district, such payment is voluntary, and after the taxes have been apportioned and disbursed for school purposes he cannot maintain an action to recover them.

108 17 K 104--39 K 505--75 K 843--80 K 641--85 K 433-96 K
450--99 K 586--99 K 763--121 K 573.

109 R. S. 72-406.

A remedy.

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(Taxation: Rural High School.)¹¹⁰ The statutory provision relating to the time of levying of taxes by a rural high school district, the certification of the same to the county commissioners, and the placing of the same upon the tax roll by the county clerk are directory and failure to act within the prescribed time will not vitiate[#] the levy. A rural high school district at its annual school meeting has no power except to elect a rural high school board which determines how the school shall be conducted and to make the levy of taxes for school purposes. The provisions of the statutes¹¹¹ relative to the procedure to be followed by a school district to increase its levy of taxes at the annual meeting does not extend to rural high school districts whose taxing powers are limited by the provisions of the specific statutes¹¹² for rural high schools. In determining the taxation value of all the property in the proposed rural high school district, an organization is not confined to the first and partial return made by the deputy assessor of the property in the district subject to taxation.

(Taxation: Barnes High School.)¹¹³ When at the general

110 R. S. 82-3506.

111 R. S. 79-1937.

112 R. S. 73-3506.

113 82 K 806--90 K 628--115 K 631--121 K 562--126 K 117.

To render ineffective.

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election held in November, a vote is had in favor of adopting the "Barnes High School Law"¹¹⁴ for the county, that law becomes applicable from the time of canvass, and the obligation is placed upon the county to provide a tax levy for the maintenance during the remainder of the school year of the high schools coming under the provisions of such law. This duty continues until a levy for that purpose is made. It is the duty of the county commissioners to make a tax levy for the maintenance of high schools under the "Barnes Law." "It shall be the duty of the county superintendent of public instruction on or before the twenty-fifth day of June in each year to certify to the board of county commissioners...."¹¹⁵

(Taxation: City School Districts.)¹¹⁶ Where the territorial limits of a first class city school district are enlarged under the statutes¹¹⁷ the situs[#] for taxation of all property in the territory annexed is changed forthwith to the city school district. When the county assessor erroneously listed property in one district when it should have been in another district, the first mentioned district may recover a sum equal to the amount it would have received if its levy had been extended properly. When real property is sold for taxes and is bid in

114 R. S. 72-3001.

115 R. S. 72-3505.

116 62 K 704--101 K 568--115 K 806--116 K 38--134 K 143.

117 R. S. 72-1725.

Location.

by the county treasurer in the name of the county, the accrued interest becomes a part of the taxes and should be disbursed to the several taxing districts as the taxes are disbursed. As to taxes in a city for school purposes, the penalties charged thereon, if they become delinquent, must be "credited to the county fund" while the interest must be paid to the board of education of the city. A petition must show that an election was necessary or it is a mere conclusion of law in reference to taxation for election.

(Taxation: Excessive Levy.)¹¹⁸ An excessive levy for a joint school district may be enjoined by a taxpayer. A school district by a three-fourths favorable vote cast at an election duly held after notice thereof, may authorize the making of a levy in excess of the four and one-half mills for school purposes.

(Taxation: County High School Aid.)¹¹⁹ In the Laws of 1911¹²⁰ regarding aid to high schools in counties of less than 10,000 inhabitants was intended to authorize the granting of aid for the maintenance of a high school in school districts regardless of the character of the schools previous to the granting of such aid.

(Taxation: Causes for Action.)¹²¹ When an action is brought against the treasurer and the sheriff of a county to

118 88 K 1--123 K 325.

119 92 K 961.

120 R. S. 72-3101.

121 26 K 490--33 K 206.

restrain the collection of taxes levied by a school district, upon the ground that the levies are excessive, the final injunction will not be granted until the officers of the district directly interested in the collection of the taxes are made parties defendant. If a county treasurer, by mistake, overpays a school district his cause of action to recover such overpayment dates from the time of overpayment.

E. Officers. (State Officers.)¹²² The state board of education¹²³ or any member of it has the right of access to books and records of the board at any time during reasonable hours, whether the board is in session or not. The state superintendent of public instruction does not have the power to refuse state certificates to teachers, or certificates to institute conductors or instructors, or to reject applications for such certificates for the renewal thereof. The state superintendent of public instruction does not have the power to make rules and regulations concerning the issuing of certificates. The state superintendent of public instruction does not have authority to rank accredited schools and colleges in the state of Kansas. The state board may meet at any time that it deems necessary, without being called together by its chairman, the state superintendent of public instruction. The state board of health has no power to make a regulation that no person shall be admitted to the public schools until after he has been successfully vaccinated.

122 64 K 507-- 111 K 830.

123 R. S. 72-102.

(County Officers.)¹²⁴ The fact that a county superintendent of public instruction did not hold his office at the place where the county seat was originally located did not render void his acts of changing boundary lines of a certain school district and creating a new district.¹²⁵ The statutes¹²⁶ providing for conditions of eligibility for the office of county superintendent of public instruction has been held constitutional. Under the statutes¹²⁷ authorizing the county to render aid in maintaining high schools in certain counties, it is the duty of the county superintendent of public instruction to certify to the county commissioners and county treasurer, the amount of aid necessary for such schools. The county superintendent of public instruction is vested with authority to determine the question as to which high school is the most convenient of access to pupils and that officers decision and recommendation, in the absence of fraud or bad faith, is controlling upon the county commissioners and courts. The court has also construed the statutes¹²⁸ regarding the salaries of county superintendents of public instruction.

124 41 K 531--50 K 560--60 80 K 641--89 K 850--97 K 91--101
K 568--120 K 332-121 K 287--133 K 528.

125 R. S. 72-214.

126 R. S. 72-202.

127 R. S. 72-3101.

128 R. S. 27-116 and 28-320.

It is a duty¹²⁹ of the county clerk to extend upon the tax roll the proper levies upon all property. This is a ministerial function. A mistake of the county clerk in extending upon the tax rolls an assessment against the property in a school district at a less rate than that levied at the annual meeting does not deprive the school district of its right to the sum collected. Annexed territory to a city school district must be included in the extension of the levy upon the property if the annexation is completed in sufficient time to collect and make extensions before November 1.

The power of the county commissioners to hear appeals from the county superintendent of public instruction is special and limited, and when the appeal is decided, the county commissioners may not take up and rehear the appeal later without notice.

The county treasurer is authorized by statutes¹³⁰ to disburse funds in his hands belonging to schools of his county by check or draft. He is a ministerial officer. Any settlement attempted to be made by him as to matters in dispute concerning the distribution of public funds in his hands is without authority, and such unauthorized acts on his part will not work an estoppel against the county with regard to the public funds in his hands.

(District Officers.)¹³¹ In a dispute in regard to the

129 R. S. 72-1014, 72-1031, 72-1702, 72-1814, and 72-3506.

130 R. S. 72-1018.

131 13 K 41--36 K 617--76 K 173--99 K 404--123 K 495--130 K 421.

officers of the school district the court held that an injunction will lie in favor of the clerk and treasurer de facto in a particular instance. When an official board is disqualified by interest or other sufficient circumstances from maintaining an action of public concern which it would otherwise be their duty to bring, such action may be brought on the relation of the county attorney in the name of the state.¹³² Where a school district brings an action to abate a public nuisance, it must show that it has sustained damages peculiar to itself. In one opinion it is held that since no other agreement exists between one school district and another school district, the first mentioned district is free from any obligation to furnish rooms for the community high school. Officers of a school district may testify in respect to transactions had with a deceased person.

(District Officers: Powers and Authority.)¹³³ The discretion of the school board in the control of schools is not subject to judicial interference. However a member of a board of education, who accepts money to influence his opinion, judgment, and action in favor of letting or causing to be let a contract for cleaning school buildings is guilty of bribery. The misnomer of a school district by name and style in which the law says a school district may be sued renders a judgment against said corporation by wrong name void. When it appears from the alternative writ of mandamus that a long and com-

132 R. S. 19-702.

133 8 K 224--10 K 238--12 K 573 52 K 574--64 K 507 73 K 588--81 K 593--102 K 137--105 K 343--110 K 25--127 K 651.

licated accounting must precede a final disposition of a case the court will not attempt by mandamus to determine the rights of the parties. The occupancy of land for thirty years does not convey to the school district the right to give an oil and gas lease to a third person to permit him to take from the land oil and gas for commercial purposes.

A common school district has authority under the statutes¹³⁴ to add subjects to its course of study so as to include what is commonly known as a high school course. It has been held that the policy of the board in not granting a diploma to a student cheating in an examination is proper if such rule was made and followed by the school as a measure for the discipline of the school. It also has authority to construct a building needed for school purposes and to issue and sell bonds for that purpose. The fact that such a building might be designed so that it can be used in part for dramatic and athletic instruction does not deprive the school district of its authority to construct such building. A writ of mandamus will not issue to compel a board of education of a city of the second class to employ an additional teacher. The board of education of a city of the second class has no authority to deny a child of school age admission because such child has not been given smallpox vaccination.

A contractor is entitled to his pay when the director of

a board of education directs a discontinuance of work when a contract has been completed. In an action against a school district, a clerk and a director may answer and it is taken as the answer of the district.¹³⁵

(District Officers: Treasurer.)¹³⁶ Where a person is duly elected to the office of school district treasurer, and fails to qualify within twenty days thereafter, but has sufficient cause for such failure, he may afterward qualify and hold the office. When a man is elected to the office of treasurer to succeed himself and continues to perform the duties of said office for a year and then gives a bond which is executed according to law and approved by the director and clerk and afterward, a week or ten days, the county superintendent of public instruction appoints the same man as treasurer of said district upon the theory that a vacancy exists because the bond was not given within the twenty days after the election of said treasurer. The court held that no vacancy existed to be filled by appointment of the county superintendent of public instruction and that the appointment was void. A school district treasurer may be legally elected on a lawfully adjourned day after the annual school district meeting. In an action by a school district to recover from a bank money which had been misappropriated by the school district treasurer, it is not error to instruct the jury that

¹³⁵ R. S. 72-1004.

¹³⁶ 12 K 121--19 K 204--22 K 529--33 K 7--47 K 413--71 K 728
121 K 163--124 K 121--126 K 122.

the bank is liable to the school district for money misappropriated when the bank received the money from another bank for the use of the treasurer. The treasurer is liable for loss of funds on deposit.¹³⁷ A bond enacted to secure the bank deposits cannot be recovered on by the board although assented to by it. In the case of the breach of any condition of the bond¹³⁸ of a school district treasurer, if the director neglect or refuse to prosecute an action, any householder may cause such prosecution to be instituted in the name, and for the benefit of the school district, and may maintain and prosecute the action to final judgment. In an action by a school district against its former treasurer and his sureties, allegations of the due organization of the school district, and the execution of the official bond of the treasurer are admitted unless denied under oath. The treasurer of a school district is the legal custodian¹³⁸ of its funds and liable to the district therefor. It is a duty¹³⁹ at the close of his term of office to hand over to his successor all moneys remaining in his hands as such treasurer. The books and annual reports of the treasurer of a school district, purporting to contain an account of the moneys collected and expended by him in an action by the district to recover a balance of moneys

137 R. S. 72-1016.

138 *ibid.*

138 R. S. 72-1016.

139 R. S. 72-1017 to 1020.

alleged to be in his hands, are not conclusive. They are to be weighed with other evidence by a jury, and the accounts therein may be explained and controverted by such treasurer. Where the statute¹⁴⁰ requires a report in writing to be made by the treasurer of a school district at the end of each year, showing the moneys received, and the moneys disbursed, with vouchers therefor, which report is to be recorded by the clerk of the district, and where the above is done it is not error to rule out from the testimony, a private account kept by the treasurer.

(District Officers: Election, Tenure, and Removal.)¹⁴¹

Each member of the school board of a district school "shall hold his office for three years and until his successor shall be elected and qualified."¹⁴² When a school district is organized and a special meeting is called to elect the members of its first school board, the officers thus elected serve until the next regular school district meeting, but no longer, if at such meeting their successors are elected and qualify as the afore mentioned statute provides. One legally elected to an office, who has not resigned or been removed therefrom may not be deprived of it merely because some of the electors of the district chose to treat the office as vacant. At an election the electors voted to fill the assumed vacancy. There was no vacancy. A resignation of a public office to be effect-

140 R. S. 72-1020.

141 40 K 472-45 K 31--49 K 552--51 K 300--90 K 778--106 K
863--108 K 101--110 K 133--111 K 81--113 K 252--119 K 216.

142 R. S. 72-1001.

ive must be made with the intention of relinquishing the office, and it will then be of no effect unless presented to the officers having authority to receive and to act upon the resignation. A statement by an officer that he contemplates a resignation, or that his statement may be regarded as a resignation upon a certain contingency, which does not occur, is without effect. Temporary absence of a public officer from a district in which he was elected cannot be regarded as a resignation.

The clerk of a school board whose term of office has expired may be required by mandamus to post the notices for a school district meeting where a legal petition was presented to him before the expiration of his office. A person having at some time prior been legally elected the clerk of a school district, still in the possession of the office, claiming the rightful possession thereof, and also claiming to be lawfully entitled to hold the same, cannot be convicted under the statutes¹⁴³ for neglecting or refusing to deliver the records, books, and papers belonging to the office to one not in possession of the office, but claiming the same under a subsequent election.

The ouster law of 1911¹⁴⁴ providing for the removal of unfaithful public officials and prescribing a procedure therefor relates only to such officials as are specifically named therein, and does not deal with the matter of unfaithful

143 R. S. 72-1022.

144 Session Laws of Kansas, 1911, ch. 237.

district treasurers. The removal of the school district treasurer is specifically and adequately covered by another statute.¹⁴⁵ A person elected, and who has entered upon the discharge of his duties as a school officer, cannot be deprived of his office upon the ground that he has neglected or refused to perform any duty required of him, without notice, and a hearing before some competent officer or tribunal. Until a forfeiture of his right to his office has been ascertained and declared, the county superintendent of public instruction has no authority to appoint another person in his stead. The school board is the general representative of the school organization as a corporation and it is the proper party to commence action as a plaintiff. A man enters into a contract with a school district to erect a school building. He is elected a member of the board of education when the contract was only partially completed, the court would not invest him with the extraordinary remedy of quo warranto to invest him with the office he seeks.

When a member of the school board tenders his resignation and, without formal action being taken thereon, a successor is chosen, and is recognized as such, such recognition is tantamount to an acceptance of the resignation, and by virtue thereof the title to the office of the member who resigned became extinguished. The remedy of quo warranto rests some-

145 R. S. 72-1003.

what in judicial discretion, and when no wrongful motive is shown and the condition and welfare of the district would not be aided by ouster it will be denied. The duties of a trustee of a community high school include his acting as treasurer in the event he is so named and, his bond as trustee covers his duties as treasurer.

(Actions on Bonds.)¹⁴⁶ An action¹⁴⁷ on the bond of the treasurer of a school district to recover a balance not paid over to his successor in office must be in the name of the school district and not in the name of such successor as treasurer. If such action is brought and prosecuted in the name of the successor of such office it is error for which the judgment will be reversed. In the case of the breach of any condition of the bond¹⁴⁸ of a school district treasurer, if the director neglects or refuses to prosecute an action, any householder of the district may cause such prosecution to be instituted in the name, and for the benefit of, the school district, and may maintain and prosecute the action to final judgment. Where the treasurer of a school district resigns his office, removes from the district and county in which he had lived, and neglects to pay over to his successor in office the money in his hands as such treasurer belonging to the district,¹⁴⁹ no demand is necessary therefore, to maintain a

146 11 K 9--11 K 15--18 K 356--45 K 31--71 K 728.

147 R. S. 72-1021.

148 R. S. 72-1016.

149 R. S. 72-1021.

suit on the official bond of such treasurer for the recovery of the money so wrongfully retained. The board of education is the general representative of the school organization as a corporation and it is the proper party to commence action as a plaintiff.

(District Officers: Liability.)¹⁵⁰ A rural high school district is not liable in tort[#] for injuries sustained by a workman employed to assist in the creation of a high school building. Where there is no want of authority in a school district to improve a site and construct a school building, and labor is performed, and the material purchased in excess of the bonds voted to build a schoolhouse, and the district, with knowledge of the outstanding warrants issued for such excess cost, accepts the building without protest and enjoys its use and occupancy, such district cannot repudiate the indebtedness and escape liability. The sureties on a bond given upon the appointment of a school district treasurer are not liable for any default after the commencement of a term to which he is elected following his appointment.

F. District Meetings.¹⁵¹ In the statute relating to school district meetings which provides that "special meetings may be called by the district board, or upon a petition signed by ten resident taxpayers of the district,"¹⁵² the word "may" is used in a permissive sense. A special meeting of a school district

150 15 K 168--120 K 413--134 K 47.

151 25 K 707--80 K 667--99 K 404--112 K 66.

152 R. S. 72-401.

Private or civil wrong or injury.

called without authority or approval of the school board is not a legal meeting and can transact no legal business for the district.

The annual meeting of a school district does not have power¹⁵³ to prescribe a course of study that must be carried into execution by the school board. A school district cannot be compelled to follow the full four year high school course of study prescribed by the state board of education. The election of a director is valid if the place of meeting calls for a certain place in the posted notices and the board holds the meeting in another building but places a messenger in front of the advertised building to direct patrons to the second said meeting place.

G. Teachers, Principals, and Superintendents. (Teacher's Certificates.)¹⁵⁴ The statutes¹⁵⁵ provide that the county superintendent of public instruction "may" indorse the unexpired second and first grade certificates regularly issued in other counties when presented to him. It is the imperative duty of the county superintendent of public instruction to indorse a teacher's unexpired certificate issued in another county unless valid reasons exist for withholding such indorsement. The test of the teacher's right to such indorsement is the existence or non-existence of such valid reason, which may be inquired into by a court of competent jurisdiction.

153 R. S. 72-406.

154 88 K 861--94 K 366.

155 R. S. 72-1326.

(Superintendent of City Schools.)¹⁵⁶ The superintendent of schools of a city of the first or second class is a public officer and an employee of the board of education. He can be removed only for "incompetency, cruelty, negligence, or immorality,"¹⁵⁷ after notice of a fair hearing. The tenure of office of a superintendent of cities of the second class is fixed at a term of one or two years as the board of education may deem expedient.¹⁵⁸ A rule adopted by a board of education to the effect that the term of office of the superintendent of cities of the second class "shall continue during the pleasure of the board" is in conflict with the statutes and is void.

(Teacher's Contracts: Removal and Dismissal.)¹⁵⁹

"The district board in each district shall contract with and hire qualified teachers for and in the name of the district, which contract shall be in writing, and shall specify the wages per week or month as agreed upon by the parties, and such contract shall be filed in the district clerk's office; and, in conjunction with the county superintendent, may dismiss for incompetency, cruelty, negligence or immorality."¹⁶⁰

When the power is vested in a school board of a school district composed of three members, to contract with and hire a teacher for and in the name of the district, and a written contract is signed by two members of the board in the absence of each other, without consultation with each other, and without any meeting of the district board, such contract is not

156 103 K 480.

157 R. S. 72-1608.

158 ibid.

159 10 K 283--27 K 129--28 K 345--30 K 268--42 K 695--69 K 162--69 K 651--83 K 580--89 K 225-100 K 569--117 K 256--129 K 659--132 K 268--134 K 464

160 R. S. 72-1026.

binding upon the school district. A contract between a teacher and the school board must be in writing, but it is not necessary that it be reduced to writing during a session of the board. It may be made in parol[#] at the session and may be reduced to writing and signed after the board has adjourned. A school teacher, who without the consent of the school board absented herself from school for one week, could not be peremptorily discharged by the board for negligence without the concurrence of the county superintendent of public instruction. The school district is not relieved from liability to the teacher under the contract for employment. When a school board, with a county superintendent of public instruction, dismisses a teacher, as provided by the above law, in the absence of fraud, such action is final. The tribunal to determine upon a teacher's dismissal need not formally organize, provided they act in conjunction. A school teacher may be dismissed even though one member of the school board fails to meet with the county superintendent of public instruction. This tribunal is not a court, and need not act with the formality of a court. A clause inserted in a teacher's contract, reserving the right to discharge a teacher at any time he fails to give satisfaction, is valid. The school board may also insert a stipulation "that if by inability or neglect of said teacher the interests of the school shall suffer the board shall have the power to annul this contract after one month's notice." When there is a stipulation "that it may be terminated by either party...when

Verbal.

there exists some reasonable ground thereof," it is within the power of the school district to terminate it because of insufficient funds to pay the running expenses, where no bad faith is disclosed. A contract is unenforceable when an applicant for a position as teacher deceived the board as to the fact that he had a certificate. A clerk's record may disclose the action of the board in hiring a teacher and the teacher's acceptance; then the board rescinds its action. There was no contract. A school board, having only such powers as are conferred upon school boards in charge of the common schools has no power to make a valid contract of employment with a teacher prior to the annual meeting provided for by the statutes. The rights of majority may be conferred upon a minor but it does not dispense with the statutory minimum age requirement of eighteen years of age as one of the qualifications for a public school teacher.

Where a board orders the school closed before the teacher's contract expires, either on the ground that the older boys were needed at farm work or on account of the prevalence of a contagious disease in the community, the teacher is entitled to his salary for the full term. A proceeding in mandamus cannot be maintained against the director of a school district to compel him to sign a warrant drawn by the clerk on the treasurer for a teacher's salary when there is a controversy over the right of the teacher to compensation.

H. Pupils. (Admission and Attendance.)¹⁶¹ Provision is made in the statutes¹⁶² for the admission and transportation of pupils in adjoining districts. A resident of a school district in which no school is held is entitled to the school privileges of an adjoining district in which he owns land. One who lives eight miles from the schoolhouse in his district may recover the additional expense of sending children to another school. An owner of land in a consolidated school district, who lives outside the district is entitled to a writ of mandamus to require the transportation of his child to and from school within the district. A non resident of a high school district in a county operating a high school under the Laws of 1921¹⁶³ is not entitled to have his children attend such high school without paying tuition where it does not appear that there are a sufficient number of pupils of high school advancement in his community to organize another high school. The Laws of 1915¹⁶⁴ as amended by the Laws of 1921¹⁶⁵ relative to the admission of non-resident pupils in high schools in certain counties and providing for the payment of tuition of such pupils is valid and constitutional.

A board of education of cities of the first class may require the graduates of parochial schools to pass an examination

161 77 K 786--79 K 202--81 K 385--99 K 167--99 K 824--107 K 14-113 K 746--133 K 346.

162 R. S. 72-701.

163 Session Laws of Kansas, 1921, ch. 242.

164 Session Laws of Kansas, 1915, ch. 314.

165 Session Laws of Kansas, 1921, ch. 242.

for admission to the high school, while admitting graduates of the public school without such an examination and the graduates of a parochial school cannot obtain a right to enter by court action. But when the graduates of a parochial school have successfully passed the same examination as the graduates of the public school, they are entitled to enter the city high school without further examination. Regarding compulsory school attendance, a child who attends a private denominational or parochial school is not a truant.... A parent who takes his pupil out of a public school and sends it regularly to a private denominational or parochial school for such periods as said school is in session cannot be subjected to the penalties of the truancy law. If children, in going to and from a school, are exposed to obvious daily dangers to life, they should not be compelled to attend such school.

(Exclusion of pupils.)¹⁶⁶ A child of school age should not be excluded¹⁶⁷ from school unless it is clear that its conduct or moral character is such as to warrant exclusion in the public interest. A rural high school principal does not have adequate remedy at law to expel students without limitation as to time.

(Separate schools.)¹⁶⁸ The statutory act¹⁶⁹ providing for separate schools for white and colored children in cities of the first class is not invalid. In cities of the second class neither superintendent nor board of education has authority to

166 128 K 507--130 K 248.

167 R. S. 72-1029.

168 26 K 1--66 K 672--72 K 629--76 K 361--79 K 202--98 K 397--115 K 328--129 K 852-- 131 K 160.

169 R. S. 72-1724.

separate pupils of the negro race from those of the white race on account of race or color unless so authorized by statute. The legislature has not passed any act establishing separate schools for the education of the white and colored children and the boards of education of cities of the second class have no power to exclude colored children from any schools of the city, where there is no reason for their exclusion except merely that they are colored. Discrimination on account of color is forbidden by statute in all high schools of the state, except the high schools of a single city (Kansas City). The court denied an injunction to prevent the board of education from carrying out an order transferring a colored pupil from a school maintained for white children to one maintained for colored children. In the provisions of the statutes¹⁷⁰ a board of education of a city of the first class has the implied power and authority to expend moneys raised by taxation to pay for the transportation of colored children who live remote from the schools provided for their use.

(Tuition.)¹⁷¹ Students in a community high school may attend any other high school outside the boundary of the community high school and the trustees of the community high school shall pay the tuition fees of two dollars per week for actual attendance.¹⁷² A board of trustees of a community high school does not have authority to buy buses to transport pupils to school or to pay the expense of such transportation.

Where pupils residing in a county which does not operate

170 R. S. 72-1724.

171 104 K 818--110 K 587--119 K 117--120 K 316--121 K 832--
122 K 213--124 K 175--126 K 51--127 K 292--127 K 793.

172 R. S. 72-2505.

its high school system under the Barnes Act¹⁷³ attend high school in an adjacent county which does operate under that act, the statutory authority¹⁷⁴ governs such cases. High school pupils residing in a county operating under the Barnes high school law but in a community remote from or not convenient of access to a high school in that county, and without a sufficient number of pupils of high school advancement to organize and maintain another high school may attend a high school in an adjacent county operating under that law. The tuition for such pupils must be paid by the board of county commissioners of the county of the residence of the pupils, on the recommendation of the county superintendent of public instruction in which the school attended is situated. Before a board of education of a city situated in a county operating under the Barnes high school law can recover, from the board of county commissioners of another county operating under the same law, tuition for pupils coming from the latter county, the board of education must show that the county superintendent of public instruction of the county against which the action is brought recommended the payment of tuition.

The parent of a high school pupil residing in a rural high school district cannot send the pupil to another high school and compel the county to pay the tuition therefor.

In an action to recover from a county for the tuition¹⁷⁵ of

173 R. S. 72-3013 and 72-3014.

174 R. S. 72-2505.

175 R. S. 72-3801.

pupils residing in a school district of that county in which there is no high school, who attended an accredited high school in an adjacent county, the action is supported. For the purpose of paying tuition of non resident pupils admitted to high school, a levy¹⁷⁶ should be made on all the taxable property in the county except property of the district or city in which there is maintained a four-year accredited high school or a rural high school.

(Transportation of pupils.)¹⁷⁷ The provisions in the statutes¹⁷⁸ referring to pupils "who live three or more miles, by the usually traveled road, from the school attended," does not limit such distance to that actually traveled over and along a public road or highway but includes the additional distance from the residence where the pupils live to such road to the school house in which they attend. This act is a legal enactment. The statute¹⁷⁹ gives the board the option to furnish such transportation, or in lieu thereof to allow as compensation therefor a sum not less than fifteen cents a day. When a parent chooses to convey his children to school in a rural district adjacent¹⁸⁰ to that of his residence, he is not entitled to compensation for their conveyance at the expense of the home district although the school houses in both districts are more than three miles from his residence. The district board of a

176 R. S. 72-3802.

177 67 K 609--103 K 573--118 K 751--120 K 52--121 K 41--127
K 751--128 K 53.

178 R. S. 72-601.

179 R. S. 72-601.

180 R. S. 72-702.

consolidated school or union school district is authorized by the statutes¹⁸¹ to adopt special regulations for transporting pupils to school, subject to the approval of the county superintendent. The action of the county superintendent is conclusive, in the absence of bad faith or bad conduct.

I. Textbooks: Instruction. (Course of study.)¹⁸² It is within the discretion of the school district board to provide for instruction in music by a separate and qualified teacher. The uniform course of study prepared by the state board of education authorizes the teaching of music in such schools.¹⁸³

(Textbooks.)¹⁸³ The board of education of a city has no power to adopt and use in its schools other books than those adopted¹⁸⁴ by the state school book commission, except such proper books of reference as may reasonably be used as such. Where other and costlier readers than those prescribed by the state school book commission are being used in the public schools, such use is unlawful and should be enjoined. The uniformity act¹⁸⁵ requires the use of the same textbooks in all the schools in order to lessen the expense while insuring the quality. A contract entered into between the school book commission and the author of a primary reading chart to supply the needs of the state for such chart does not compel a school board to

181 R. S. 72-603.

182 97 K 49.

183 88 K 830--89 K 168--133 K 376.

184 R. S. 72-1105

185 Session Laws of Kansas, 1897, ch. 179.

purchase one of the charts for use in the district school. The authority¹⁸⁶ of the school book commission to contract for and purchase texts in electroplate form upheld; electroplating and engraving by the state printing plant is not mandatory.

(Religious Instruction.)¹⁸⁷ "No sectarian or religious doctrine shall be taught...but nothing in this section shall be construed to prohibit the reading of the Holy Scriptures."¹⁸⁸ A teacher who repeats the Lord's Prayer and the twenty-third Psalm as a morning exercise, without comment or remark, in which the pupils are not required to participate, is not conducting a form of religious worship or teaching sectarian or religious doctrine.

J. Actions.¹⁸⁹ Where an attorney appears in an action on behalf of a school district without having been authorized by the school district meeting¹⁹⁰ the director has full authority to control the litigation. If the attorney refuses to comply with the director's wishes the director should apply for a substitution of attorneys. A petition against a school district for recovery of money only, must show that the district was indebted or obligated to pay. The district court has jurisdiction to pass on any claim of plaintiff for damages, including reasonable attorney's fees in this court as well as in the district court.

186 R. S. 72-4103.

187 69 K 53.

188 R. S. 72-1722.

189 10 K 238--21 K 538--67 K 847--79 K 407--92 K 168

190 R. S. 72-1004.

K. Miscellaneous.¹⁹¹ Any information attempting to charge an offense under the statutes¹⁹² authorizing conviction for trespassing should contain an averment[#] of the amount of damages committed, or the value of the property injured. A bequest in trust to the trustees of an incorporated educational institution is to be held as a perpetual fund for the higher young men selected by such trustees for the Christian ministry, and as such is an educational trust, which is a public charity. A building used exclusively by a society of the young women students of the State University as a literary hall and dormitory is exempt from taxation. The legislature can compel a city where the State University is located to issue its bonds in the aid of the University and to levy and collect a tax to pay such bonds. The act is not repugnant to the constitutional provision against conferring corporate powers by a special act, nor is it in conflict with the provision for a uniform rate of assessment and taxation.

191 19 K 189--75 K 700--79 K 234--92 K 1021.

192 R. S. 21-2435.

a positive statement of facts.

CHAPTER IV

SUMMARY AND CONCLUSIONS

The aim of this study has been to survey the problem and subject of school law as to what questions form the bulk of school litigation. It was prepared with the purpose of pointing out and emphasizing the nature of school law as shown in the decisions of the Supreme Court of Kansas. The scope of the investigation included all the opinions on public school litigation as taken from the Kansas Supreme Court Reports. The data were collected on cards and later classified for analysis and diagnosis.

School Law in Kansas is being changed constantly to meet new phases of government. It is apparent that problems which cause trouble in school administration may be said to be caused in large part by overlapping of jurisdiction, financial relationships and questions which involve corporation or quasi-corporation legal concepts. Upon the character and nature of these laws depends the educational policy of the state.

1. The writer tabulated 464 cases in public school law. These opinions were 2.33 per cent of the total opinions (19,911) delivered during the 71-year period (1862-1932).
2. Two ten-year periods deviate somewhat from the other ten-year periods.
3. The volume peak of the interpretation of school law as

well as all statutory laws was reached during the period of 1912-21. Rural high school litigations account for much of the upward trend in volume in the school law cases and tend to show that the organization of a rural high school district is rather complicated and the wording of the statutes is often ambiguous. However, it should be added that, when a new school law is enacted or an old school law is amended, there follows a period when many school litigations are found.

4. There was an exceedingly small number of school litigations found in the Supreme Court during the first ten years that Kansas was organized as a state. Also, this was the period of reconstruction directly following the Civil War.

5. A fewer number of school cases appears during the period 1922-32 than in the period just preceding it. This may be due to the fact that the rural high school law had been well interpreted by this time.

6. The legislative acts in regard to organizing and establishing Kansas school districts remained practically unchanged from 1862 until 1915. Therefore it can be readily understood how the rural high school can be called the storm center of Kansas school litigations.

7. Nine counties of Kansas have had no Supreme Court cases in school law and 21 counties have had only one

case appealed.

8. Shawnee County with 20 cases holds a commanding lead in the number of cases in school law. This is likely due to the fact that the attorney-general has been obliged to start a case for interpretation in an inferior court.

Since the state offices are in Topeka, and Topeka is located in Shawnee County, it is convenient to begin proceedings in that county.

9. Wyandotte County and Reno County each have 12 cases in school law.

10. The mean number of cases of school law coming to the Supreme Court from the appellate district courts was 3 per county.

11. Thirty per cent of the total cases of school law were appealed from 10 counties of Kansas and these same 10 counties make up approximately 23 per cent of the state's population.

12. Thirty per cent of the cases in school law are original proceedings in mandamus.

13. The ratio of the Supreme Court cases in school law to the population is one case for approximately 269,000 inhabitants. The ratio for Kansas is much the same as Thiel¹ found for the western states (one case to about 218,000 inhabitants).

14. The writer found one case in school law for every 12,496 square miles of territory .

¹ Thiel, Richard B., "An Analysis of the Nature and Frequency of Supreme Court Cases in School Law for the Calendar Year 1927," in JOURNAL OF EDUCATIONAL RESEARCH, Vol. 19, No.3, pp. 177-82.

15. Of the total number of points of school law passed upon, approximately one-half involved two types of organization, namely, the district schools and the schools of the cities of the first and second class. This is to be expected because these two types of organization have been functioning since Kansas became a state.

16. School lands have occupied a prominent position in the school cases in the Supreme Court. The complicated nature of the school land law and the large number of school land sections granted to the state of Kansas by the United States for school purposes account in part for such a large number of school land litigations. However, there has been no school land litigations in the Supreme Court since the year 1921.

17. Of the total number of 559 points of school law passed upon, 274, or 49.02 per cent, pertain to territorial organization and administration.

18. The cases affecting the taxpayer's pocketbook compose 40.61 per cent of the school litigation points.

19. The Kansas points in school law conform rather definitely to those of the United States² as a whole.

20. Controversies affecting teachers are small in number. These comprise but 4.29 per cent of the total. Most of these grew out of appointment and dismissal of the teacher. It is evident that the number of disciplinary matters was negligible.

² Ibid.

21. Approximately 11 per cent of the total opinions are obsolete cases in which the law has been amended or repealed.

This study shows with decisiveness that the great storm centers in school litigation is in the administration of the school's finances and in establishment and creation of school districts. That the number of statutes governing and regulating these matters is large, is common knowledge. It is apparent that the management of the district's finances lies in the direction of more capable supervision by the educational administrators. It is generally agreed that the lay public is not well informed as to the administrative practices in public school law. The successful superintendent, more than ever, must be conversant with the business administration of the schools and well informed on legal matters pertaining to his profession.

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APPENDIX A

DATE	COMPILER	SCHOOL CASES		TOTAL IN VOLUME
		NO.	COUNTIES INCLUDED#	
1	Ja'62-Oct'63	E. V. Banks	0	50
2	Jl'63-Mar'64		1 Atchison	40
3	Jl'64-Aug'66		0	57
4	Ja'65-May'68		0	75
5	May 68-May'69		0	93
6	Ja'70-Jl'70	W. C. Webb	0	58
7	Ja'71		0	63
8	Ja'71-Jl'71		2 Atchison-Neosho	98
9	Ja'72-Jl'73		0	80
10	Jl'72-Ja'73		2 Crawford-Wyandotte	102
11	Ja'73-Jl'73		3 Shawnee-Nemaha-Lyon	81
12	Jl'73-Ja'74		4 Jackson-Doniphan-Elk- 0 in Q.W.	99
13	Ja'74-Jl'74		3 Nemaha-Doniphan-Atchison	76
14	Jl'74-Ja'75		0	104
15	Jl'75		5 Nemaha(2)-Cherokee-Brown- Pottawatomie	98
16	Ja'76-Jl'76		5 Butler-Coffey-Lyon-Miami- Washington	104
17	Jl'76-Ja'77		6 Saline(2)-Osborne-Morris- Nemaha-Anderson	121
18	Ja'77-Jl'77		3 Republic-Crawford-Coffey	105
19	Jl'77-Ja'78		4 Allen-Osborne-Crawford- Montgomery	105
20	Ja'78-Jl'78		4 Montgomery(2)-Greenwood- Barton	129
21	Jl'78-Ja'79	A. M. F. Randolph	1 Bourbon	120
22	Ja'79-Jl'79		4 Lyon-Pawnee-Marshall- 0 in M	132

APPENDIX A (continued)

K	DATE	COMPILER	SCHOOL CASES		TOTAL IN VOLUME
			NO.	COUNTIES INCLUDED	
23	Jl'79-Ja'80	A. M. F. Randolph	0		158
24	Jl'80-Ja'81		1	Nemaha	161
25	Ja'81		4	Allen-Sedwick-Wilson-Reno	145
26	Jl'81-Ja'82		5	Wilson-Elk-Franklin- Atchison-0 in M	130
27	Ja'82		3	Marion-Reno-0 in M	127
28	Ja'82-Jl'82		3	Marion-Sumner-Dickinson	139
29	Jl'82-Ja'83		2	Stafford-Chase	140
30	Ja'83-Jl'83		2	Bourbon-Osage	130
31	Jl'85-Ja'84		0		153
32	Ja'84-Jl'84		2	Pawnee-McPherson	142
33	Ja'85-Jl'85		5	Shawnee-Jefferson-Harper Hodgeman-0 in M	131
34	Jl'85-Ja'86		1	Chautauqua	130
35	Ja'86-Jl'86		1	Meade	122
36	Jl'86-Ja'87		1	Clay	142
37	Jl'87		0		154
38	Jl'87-Ja'88		0		142
39	Ja'88-Jl'88		5	Pratt(2)-Bourbon-Brown- 0 in M	173
40	Jl'88-Ja'89		3	0 in M(2)-0 in Q.W.	171
41	Ja'89		2	Cloud-0 in M	147
42	Ja'89-Jl'89		2	Finney-0 in H. C.	130
43	Ja'90		3	Shawnee-Labette-Jackson	157
44	Ja'90-Jl'90		2	Atchison-Republic	159
45	Jl'90-Ja'91		4	Wyandotte-Cheyenne-Harvey- 0 in M	179
46	Ja'91-Jl'91		2	Lyon-Wabaunsee	156

APPENDIX A (continued)

K	DATE	COMPILER	SCHOOL CASES		TOTAL IN VOLUME
			NO.	COUNTIES INCLUDED	
47	J1'91-Ja'92	A. M. F. Randolph	1	Smith	167
48	Ja'92		4	Neosho-Brown-Douglas- 0 in M	168
49	Ja'92-J1'92		2	Atchison-Ellis	113
50	J1'92-Ja'93		2	Wyandotte-Elk	120
51	Ja'93-J1'93		5	Clay-Lyon-0 in M(2)- 0 in Q.W.	128
52	J1'93-Ja'94		3	Jefferson-0 in M(2)	155
53	Ja'94-J1'94		2	Rawlins-Labette	149
54	J1'94-Ja'95		0		149
55	Ja'95-Ji'95		0		113
56	J1'95-Ja'96		0		146
57	Ja'96-Ja'97	G.C.Clemens	1	Sumner	147
58	Ja'97-J1'97		2	0 in M(2)	137
59	Ja'98-J1'98		4	Sumner-0 in M(3)	135
60	Ja'98-J1'99	T. E. Dewey	2	Jefferson-0 in Q.W.	129
61	J1'99-Ja'00		3	Riley-0 in M(2)	111
62	J1'00-J1'01		2	Wyandotte-Sedgwick	130
63	Ja'01-J1'01		4	Harper-Dickinson-Marion- Seward	158
64	Ja'02		5	Shawnee-Labette-Sumner- Ford-0 in M	138
65	Ja'02-J1'02		3	Allen-Neosho-0 in M	147
66	Ja'03		2	Kingman-0 in M	124
67	Ja'03-J1'03		3	Leavenworth-Atchison- Shawnee	143
68	Ja'03-Ja'04		0		123
69	Ja'04-J1'04		7	Shawnee(3)-Chase-Kearney- Johnson-Russell	140
70	J1'04-Ja'05		2	Douglas-0 in M	136

APPENDIX A (continued)

K	DATE	COMPILER	SCHOOL CASES		TOTAL IN VOLUME
			NO.	COUNTIES INCLUDED	
71.	Ja'05-Jl'05	L.H.Graham	2	Kingman-Ness	160
72	Jl'05-Ja'06		4	Rawlins-0 in M(3)	109
73	Ja'06		3	Trego-Wyandotte-0 in M	126
74	Ja'06-Jl'06		3	Johnson-0 in M(2)	145
75	Ja'07		4	Neosho-Reno-Trego-0 in M	137
76	Ja'07-Jl'07		4	Jewell-Wallace-Sedgwick 0 in M	151
77	Jl'07-Ja'08		7	Saline-Haskell-Cowley-Lane-Scott-Ford-0 in M	112
78	Ja'08-Jl'08		6	Wyandotte-Hodgeman-Sumner-Sedgwick-Shawnee-0 in M	141
79	Jl'08-Ja'09		6	Sedgwick-Allen-Douglas-Ford-Ness-0 in M	139
80	Ja'09-Jl'09		6	Seward-Ness-Edwards(2)-Reno-0 in Q.W.	127
81	Jl'09-Ja'10		4	Rooks-Reno-Clark-0 in M	141
82	Ja'10		9	Allen-Wilson-Gray-Kearney-Osborne-Rawlins-0 in M(3)	146
83	Jl'10-Ja'11		6	Butler-Franklin-Lane-Clark-Reno-0 in M	138
84	Ja'11	Oscar L. Moore	5	Saline-Haskell-Cheyenne-Clark(2)	151
85	Ja'11-Jl'11		3	Finney-Crawford-0 in M	132
86	Jl'11-Ja'12		7	Trego-Kiowa-Ness-Grant-Finney-Reno-Commanche	155
87	Ja'12-Jl'12		2	0 in M(2)	140
88	Jl'12-Ja'13		6	Allen-Barton-Shawnee(2)-0 in M(2)	124
89	Ja'13		4	Sumner-McPherson-Marion-Douglas	161
90	Ja'13-Jl'13		4	0 in M(2)-0 in Q.W.	145
91	Jl'13-Ja'14		1	Crawford	169
92	Ja'14-Jl'14		7	Douglas-Crawford-0 in M(2)-Clark-Seward-Sedgwick	182
93	Jl'14-Ja'15		2	Trego-Elk	114

APPENDIX A (continued)

K	DATE	COMPILER	SCHOOL CASES		TOTAL IN VOLUME
			NO.	COUNTIES INCLUDED	
94	Ja'15	Oscar L. Moore	5	Smith, Finney-Greenwood- Dickinson-0 in M	127
95	Ja'15		0		138
96	Ja'15-Jl'15		5	Haskell-Stevens-Stanton- Ford-0 in M	196
97	Ja'16		7	Harvey-Stanton-Shawnee- Barton-Anderson-Jefferson- Sedgwick	201
98	Ja'16-Jl'16		6	Reno-Barton-0 in M(4)	197
99	Jl'16-Ja'17		8	Allen-Labette-Harvey- 0 in M(5)	186
100	Ja'17		6	Kearney-Hamilton-Wood- son-Allen-Riley-Ottawa	144
101	Ja'17-Jl'17		2	Gove-Sedgwick	200
102	Ja'18		6	Wyandotte-Hamilton-Ford- Montgomery-0 in M(2)	211
103	Ja'18-Jl'18		8	Labette-Butler-0 in M(2)- Ness-Rush-Brown-Gray	246
104	Ja'19		3	Finney-Greenwood-0 in M	201
105	Ja'19-Jl'19		3	Labette-Shawnee-Reno	173
106	Ja'20		4	Brown-Leavenworth-0 in M(2)	192
107	Ja'20-Jl'20		7	Dickinson-Pottawatomie- Kearney-Ford-Gray-0 in M-McPherson	160
108	Jl'20-Ja'21		3	Morris-Hamilton-0 in M	202
109	Ja'21-Jl'21		3	Pawnee-Doniphan- Pottawatomie	168
110	Jl'21-Ja'22		9	Shawnee-Rooks-Rice-Trego- Greenwood-Wilson-0 in M(3)	200
111	Ja'22-Jl'22		4	Reno-Marion-Kingman- 0 in M and Q.W.	199
112	Jl'22-Ja'23		8	Kingman-Rice-Allen-Pratt- Lincoln-Ottawa-0 in M(2)	201
113	Ja'23		5	Republic-Scott-Rooks- Decatur-0 in M	196
114	Jl'23		4	Ness-Doniphan-0 in M(2)	212
115	Ja'24		7	Montgomery-Shawnee-Sumner Wyandotte-Rooks-Seward- 0 in M	203

APPENDIX A (continued)

K	DATE	COMPILER	SCHOOL CASES		TOTAL IN VOLUME
			NO.	COUNTIES INCLUDED	
116	Ja'24-Jl'24	Oscar L. Moore	7	Douglas-Wyandotte-Johnson-Stafford-0 in Q.W.-0 in M(2)	172
117	Jl'24-Ja'25		6	Bourbon-Shawnee-Decatur-Sedgwick-Wyandotte-) in M(2)	172
118	Ja'25	E.H.Hatcher	3	Saline(2)-Meade	195
119	Jl'25		6	Leavenworth-Reno-Linn-Clay-Graham-0 in M	194
120	Ja'26		9	Linn-Woodson-Labette-Reno-Johnson-Scott-Elk-0 in Q.W.-0 in M	197
121	Ja'26-Jl'26		7	Neosho-Pratt-Clark-Jackson-Stafford(2)-0 in D.J.	229
122	Jl'26-Ja'27		3	Allen-Nemaha-0 in M	190
123	Ja'27		3	Labette-Shawnee-0 in M	198
124	Jl'27		4	Butler-Reno-Anderson-Greenwood	192
125	Ja'28		0		170
126	Jl'28-Ja'29		7	Wyandotte-Sedgwick-0 in M-Kingman-Thomas-Geary-0 in Q.W.	207
127	Jl'28-Ja'29		4	Greenwood-Kingman(2)-Wallace	199
128	Ja'29-Jl'29		5	Cheyenne-Ottawa-Ford-0 in M-0 in Q.W.	186
129	Jl'29-Ja'30		4	Cowley-Shawnee-0 in M(2)	180
130	Ja'30		4	Edwards-Sheridan-Jewell-0 in M	172
131	Jl'30	H.F.McCue	2	Shawnee-0 in M	156
132	Ja'31		2	Clay-Wyandotte	172
133	Ja'31-Jl'31		5	Stafford-Ford-Ottawa-Pottawatomie-Shawnee	156
135	Jl'31-Ja'32		5	Scott-Sherman-Johnson-Douglas-0 in Q.W.	184
135	Ja'32 (Incomplete) (June 4, 1932)		1	0 in M	145
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0 in M--original in Mandamus.
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 0 in H.C.--original in habeas corpus.

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1.	26. 44
2. 259	27. 253-129
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23.	48. 624-565
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25. 662-709-467	50. 727-560

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51. 792-87-300	76. 361
52. 564	77. 742-786
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55.	80. 227-641-667
56.	81. 593-385
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58.	83. 186-778-456-580
59. 501-42-762-501	84. 248
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63. 1-668-75	88. 666-603-199-861-830-1
64. 6-612	89. 850-225-168
65. 237	90. 624-621-628-778
66.	91. 639
67. 609-847	92. 967-961-782
68.	93. 829
69. 66-162-651-53	94. 459-670-695-366
70. 434	95.
71. 728	96. 647
72. 629	97. 804-325-56-91-549
73. 32	98. 696-1-442-200-435-397
74.	99. 167-185-404-1-824-180
75. 843	100. 59-612-414-569

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101. 231-568
102. 784-98-137
103. 162-288-757-480-573
104. 478-53-818-153
105. 134-320-743-343
106. 514-469
107. 14-144-404-419-439
108. 604
109. 552-206
110. 613-776-779-317-739-25-786
111. 820-598-830-81
112. 60-421-264-737-66-266
113. 441-631-252-398-746
114. 67-85-741-485
115. 328-526-434-806
116. 325-40-614
117. 332-493-163-48-256
118. 526-751
119. 223-74-314-216-117-249
120. 347-321-570-413-464-768-332-316
121. 132-562-573-832-287-41
122. 701-213
123. 325-495-378
124. 300-121-175-257-89

APPENDIX C

TECHNIQUE CARD USED FOR COLLECTING DATA

Jl 1920 107 K 419 Rural High School: Election

Hays Bealmer 66 al. v Emma Hildebrand as
County Superintendent.
Gray County.

Private persons have no standing to
question the legality of the organization
of a rural high school district, by an
action to enjoin election of rural high school
district officers.

Jl 1929 128 K 507 Exclusion of Pupils:

Mrs. J. A. Nutt v Board of Education of
Goodland.
Original in Mandamus.

A child of school age should not be ex-
cluded from school unless it is clear that its
conduct or moral character is such as to
warrant exclusion in the public interest. Facts
in this particular case held insufficient to
warrant such exclusion.

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APPENDIX E

DEFINITION OF TERMS

1. appellate--jurisdiction to hear cases which have been tried in inferior courts.
2. averment--a positive statement of facts.
3. Board of education---governing body of cities of the first and second class.
4. bona fide--one who purchases of another without notice that some third person has a right to, or interest in, such property.
5. competent--capable to act.
6. curative--a remedy.
7. de facto--one who performs the duty of an office with apparent right, but without being actually qualified in law so to act.
8. de jure--lawfully entitled.
9. enjoin--to require.
10. equitable--validity in equity.
11. good faith--an honest intention to abstain from taking undue advantage of another.
12. habeas corpus--write directing and commanding a person held, to be produced.
13. mandamus--high prerogative writ with directions to do a specific thing.
14. obsolete cases--opinions in which the law has been amended or repealed by later statutes.
15. parol--verbal.
16. prima facie--evidence of fact in law sufficient to establish.
17. quo warranto--by what authority.
18. school board--governing body of cities of the third class, rural high schools, and district schools.

APPENDIX E (continued)

19. situs--location.
20. tort--private or civil wrong or injury.
21. trustees--governing body of a county or community high school.
22. vitiate--to render ineffective.

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