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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

LEAGUE OF WOMEN VOTERS OF WASHINGTON, a Washington non-profit corporation; EL CENTRO DE LA RAZA, a Washington non-profit corporation; WASHINGTON ASSOCIATION OF SCHOOL ADMINISTRATORS, a Washington non-profit corporation; WASHINGTON EDUCATION ASSOCIATION, a Washington non-profit corporation; WAYNE AU, PH.D., on his own behalf; PAT BRAMAN, on her own behalf; DONNA BOYER, on her own behalf and on behalf of her minor children; and SARAH LUCAS, on her own behalf and on behalf of her minor children,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

BRIEF OF APPELLANTS

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 ORIGINAL

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I. INTRODUCTION

The Washington Constitution imposes substantial duties and restrictions on the State's legislative power to provide for public education. The Constitution contains the extraordinary provision that the State's "paramount duty" is to make ample provision for the education of all children residing within its borders. Const. art. IX, § 1. As part of this paramount duty, the Legislature must maintain a "general and uniform" system of public schools under the supervision of an elected Superintendent of Public Instruction ("Superintendent"). Const. art. IX, § 2; art III, § 22. The Constitution also restricts the use of certain state funds exclusively to the support of "common schools," namely, schools that are open to all children, provide a uniform basic education, and are subject to the control of the taxpayers who fund them. Const. art. IX, §§ 2, 3; *Sch. Dist. No. 20 v. Bryan*, 51 Wash. 498, 504, 99 P. 28 (1909) ("*Bryan*"). These constitutional obligations and constraints reflect the founders' conviction that the State's success depends on a centralized and uniform system of basic education subject to voter accountability.

The Charter School Act² departs significantly from the Constitution's requirements. The Act provides for the establishment of experimental charter schools supported by constitutionally restricted state

² Chapter 28A.710 RCW, together with the sections of Titles 28A and 41 RCW added or amended by Initiative 1240 ("I-1240") (collectively, "Charter School Act" or "Act").

and local funds. Charter schools are operated by private organizations not subject to voter control, *see* RCW 28A.710.005(1)(n)(i), .010(6), .020(3); are not required to follow most of the uniform laws and rules applicable to common schools, including components of the constitutionally required basic education and discipline provisions, *see* RCW 28A.710.040(3); and, in many instances, are outside the supervision of the Superintendent, *see* RCW 28A.710.070(1). The Act also unconstitutionally reappropriates local school levies, *see* RCW 28A.710.220(6), (7), and failed to set forth revisions to existing law as required by article II, section 37.

The trial court correctly held that charter schools are not “common schools” under article IX and, therefore, are prohibited from receiving constitutionally restricted funds. The court erred, however, in holding that the Act’s unconstitutional provisions are severable and in ignoring the other significant ways that charter schools violate the specific constitutional obligations and restraints on the Legislature’s paramount duty to provide for public education. Accordingly, this Court should affirm in part, reverse in part, and declare the Charter School Act unconstitutional in its entirety.

II. ASSIGNMENTS OF ERROR

A. The trial court correctly held that charter schools are not “common schools” under article IX, sections 2 and 3 of the Constitution

and, therefore, are prohibited from receiving restricted school construction funds. May charter schools nonetheless receive basic education funds otherwise dedicated to support public common schools where (1) the Legislature designated these tax revenues for the support of common schools; (2) the State has intermingled and failed to segregate constitutionally restricted common school funds; and (3) the State cannot otherwise demonstrate that restricted funds are protected from being spent on charter schools?

B. Whether the Charter School Act's unconstitutional provisions designating charter schools as "common schools" and diverting restricted common school funds to charter schools are not severable because these provisions are necessary to accomplish the legislative purposes of the Act and/or it cannot reasonably be believed that I-1240 would have passed without such provisions.

C. Whether the Charter School Act violates the requirement under article IX, section 2, that the State provide a "general and uniform system of public schools" because charter schools are exempt from most of the uniform laws applicable to public schools, including discipline requirements and components of the basic education program that the Legislature has determined and this Court has confirmed satisfy the "general and uniform" requirements of article IX.

D. Whether the Charter School Act violates the State's paramount duty to make ample provision for education under article IX, section 1, by diverting money from inadequately funded public schools.

E. Whether the Charter School Act unconstitutionally delegates the State's paramount duty under article IX, section 1, because it allows private organizations to define the components of a constitutionally adequate program of basic education.

F. Whether the Charter School Act violates article III, section 22, because it provides that a Charter Commission, rather than the Superintendent, supervise charter schools.

G. Whether the Charter School Act violates article VII, section 2(a), because it requires that funds from local school levies approved by voters for the purpose of supporting public schools be reappropriated to support charter schools.

H. Whether the Charter School Act violates article II, section 37, by revising and/or amending the state collective bargaining laws and the Basic Education Act without setting forth those revisions and amendments in full.

III. STATEMENT OF THE CASE

A. Washington Territory Establishes and Adopts Uniform Standards for Locally Controlled Common Schools.

The Washington Constitution's provisions regarding public education reflect the lessons learned by the State's founders both from Washington's territorial schools and from the struggles of other states. That territorial experience informs a proper understanding of the Constitutional provisions at issue here. *See State ex rel. Gallwey v. Grimm*, 146 Wn.2d 445, 460, 48 P.3d 274 (2002) ("Grimm").

When established in 1853, the Washington Territory was sparsely populated and the few existing schools were funded primarily through donations and tuition. *See* Dennis C. Troth, *History and Development of Common School Legislation in Washington* 86 (Univ. of Wash. Pubs. in Social Sciences 1929) ("Troth"). The "plain and practical" territorial legislators, unlike the intellectual elite who dominated politics in other regions, believed that an educated electorate was necessary to a functioning democracy and economic prosperity. Office of the Sec'y of State, Div. of Archives & Records Mgmt., *Index to the Laws, Memorials and Resolutions Passed by the Washington Territorial Legislature 1853-1887*, at 4 (1993); *see* Message of Acting Governor L. Jay S. Turney to the Ninth Annual Session of the Legislative Assembly, Dec. 19, 1861, *in Messages of the Governors of the Territory of Washington to the*

Legislative Assembly, 1854-1889, at 93 (Univ. of Wash. Pubs. in Social Sciences 1940) (“Experience demonstrates the perfect success of the common school system—that the masses can be educated, and that it is cheaper to educate the people than to punish the vices and crimes incident to ignorance.”). As a result, the territorial legislature established a common school system during its first session. *See* Laws of 1854, An Act Establishing a Common School System for the Territory of Washington. Under that system, common schools were open to all children, supported primarily by local tax levies, and controlled by the local voters through an elected board of directors. *See id.*

Most early common schools floundered due to the lack of reliable funding and quality instructors. *See* Thomas William Bibb, *History of Early Common School Education in Washington* 73-79 (Univ. of Wash. Pubs. in Social Sciences 1929) (“Bibb”); Troth at 87-88, 136. There was no consistency in course offerings, teacher qualifications, or discipline during this “dark era.” *See* Bibb at 73-79. As a result, the quality of education turned largely on where a child lived. *See id.* In 1871, at Governor Edward S. Salomon’s urging, the legislature created a Territorial Superintendent position to bring uniformity to the common school system. Laws of 1871, An Act Establishing a Common School System for the Territory of Washington, ch. 1, § 1; Governor Salomon, Message to

Territorial Legislature (Oct. 2, 1871), *in* Bibb at 75 (deeming it “of the utmost importance . . . to bring uniformity into our public school system”).

In 1877, a common school law was enacted that set a mandatory basic course of study, including reading, writing, arithmetic, physiology, and United States history. Laws of 1877, An Act to Provide a System of Common Schools, tit. 9, § 52. The law established the minimum number of hours in a school day and months in a school year and discipline policies, including suspension and expulsion. *Id.*, tit. 4, § 32; tit. 8, § 49; tit. 9, §§ 54-55. The legislature also created a territorial board of education, which adopted uniform textbooks and methods of instruction, required districts to complete and submit uniform assessment reports, and administered a standardized teacher qualification examination. *Id.*, tit. 2; Bibb at 118-19; Troth at 110-12. Local tax revenues continued to be the primary source of funding. Troth at 86-90. Responsibility for the management of common schools remained with the locally elected school district board of directors. Laws of 1877, *supra* at 7, tit. 4.

By the 1880s, the salient features of common schools in Washington were well established: (1) uniform laws and rules establishing a minimum educational program, including curriculum, textbooks, teacher qualifications, and discipline; (2) centralized supervision of the schools by a Territorial Superintendent; and (3) local

voter control (through elected school boards) over the management of common schools on a day-to-day basis. *See* Bibb at 145 (emphasizing a system of “local autonomy combined with centralized control”).

B. The Delegates Draft a Constitution Protecting the Common School System.

The Washington constitutional convention convened in 1889. Enabling Act, Feb. 22, 1889, c. 180, 25 Stat. 676.³ Like the territorial legislators before them, convention leaders believed that basic education for all citizens was an economic necessity. *See* Troth at 94; Wash. State Historical Soc’y, *Building a State, Washington, 1889-1939*, at 155 (Charles Miles & O. B. Sperlin eds., 1940). Based on the experience of the territory’s “dark era,” a well-organized and amply funded uniform public school system under state control was deemed essential to ensure that an adequate education was offered across the State. Troth at 115.

The delegates drew up an education article proclaiming that:

It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

Const. art. IX, § 1. The delegates rejected the vague language in the original working draft constitution, which would have required only a

³ In 1889, Congress passed a law enabling Washington to become a state. The Enabling Act required the new state government to make provision “for the establishment and maintenance of systems of public schools, which shall be open to all the children.” *Id.*, § 4. The Enabling Act further required that proceeds from the federal land grant constitute a permanent school fund, with the income expended solely in support of the State’s common schools. *Id.*, §§ 10-11.

“thorough and efficient” public school system, *see Grimm*, 146 Wn.2d at 461.⁴

The framers required the Legislature to establish a “general and uniform system of public schools,” Const. art. IX, § 2, and placed “all matters pertaining to public schools” under the supervision of an elected Superintendent, Const. art. III, § 22. These provisions reflect lessons learned during the territorial period that the risks inherent in local experimentation far outweighed the drawbacks of centralized control. *See* Louis Lerado, *Public Schools and the Convention, No. 2*, Tacoma Daily Ledger, July 3, 1889, at 3 (acknowledging a “wholesome objection” to bureaucracies but concluding that a uniform statewide system would be preferable); Bibb at 74, 114-15, 144-45. The Territorial Board of Education submitted an influential report to the delegates emphasizing the importance of a uniform statewide system, including uniformity in books, charts, manuals, methods, and instructors. *See* J.H. Morgan, Washington Territory Superintendent of Public Instruction, et al., *Washington Schools: Pertinent Suggestions to the Constitutional Convention by the Board of Education*, Spokane Falls Review, July 17, 1889.⁵

⁴ W. Lair Hill, *A Constitution Adapted to the Coming State, Suggestions by Hon. W. Lair Hill, Main Features Considered in Light of Experience* 64 (1889).

⁵ Because the recordings from the constitutional convention were lost, courts rely on the Territorial Board of Education Report and editorial articles published during the convention, which heavily influenced the delegates’ debate on public education. *See Fed. Way Sch. Dist. No. 210 v. State*, 167 Wn.2d 514, 524 n.13, 219 P.3d 941 (2009).

The public school system was defined to include “common schools, and such high schools, normal schools and technical schools as may hereafter be established.” Const. art. IX, § 2. Common schools are the only mandatory component of the public school system. *See id.*; *Seattle Sch. Dist. No. 1 of King Cnty. v. State*, 90 Wn.2d 476, 511, 585 P.2d 71 (1978) (“No other state has placed the common school on so high a pedestal.”) (quoting Theodore J. Stiles, *The Constitution of the State and Its Effects Upon Public Interests*, 4 Wash. Hist. Q. 281, 284 (1913) (“Stiles”)); *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 149 Wn.2d 660, 672, 72 P.3d 151 (2003) (the delegates were “practically unanimous” in drawing up an education article that protected common schools above all educational institutions).

At the time the Constitution was drafted, the delegates understood common schools to be defined as they had been since the first territorial common school law: publicly funded schools common to all children and under the supervision of a locally elected board of directors. *Bryan*, 51 Wash. at 504. Voter control through an elected school board was a key feature, allowing local taxpayers (including parents) to control the expenditure of public funds and the hiring and firing of teachers. *Id.*; *see also* Wash. State Planning Council, *A Survey of the Common School*

System of Washington 24 (1938) (tradition of local autonomy in primary education is “cherished” and “intrinsically valuable to us as a people”).

Well aware of the funding problems that plagued the territorial schools, the delegates designated a broad range of funding sources for the exclusive use of common schools. Const. art. IX, §§ 2, 3. The delegates extended constitutional protection to all other appropriations by the Legislature for the use of common schools, including any state tax for common schools. *See id.*⁶ Supreme Court Justice Theodore L. Stiles wrote, reflecting on his participation in the 1889 constitutional convention:

One who carefully reads Article IX might also wonder whether, after giving to the school fund all that is here required to be given, anything would be left for other purposes. But the convention was familiar with the history of school funds in the older states, and the attempt was made to avoid the possibility of repeating the tale of dissipation and utter loss.

Stiles at 284. The delegates rejected a motion that would have permitted use of the common school fund to support “public schools.” Quentin Shipley Smith, *Analytical Index to The Journal of the Washington State Constitutional Convention 1889*, at 686 (Beverly Paulik Rosenow ed., 1999).

⁶ Article IX, section 3 was amended in 1966 to create a permanent construction fund earmarked for the exclusive support of common schools. Prior to the amendment, state common school funds could not be used for construction. *Sheldon v. Purdy*, 17 Wash. 135, 141, 49 P. 228 (1897).

C. The Legislature Establishes—But Fails Adequately to Fund—a Uniform Common School System.

The Legislature established a uniform common school system in its first session. A common school was “defined to be a school that is maintained at the public expense in each school district, and under the supervision of boards of directors.” Laws of 1889, ch. 12, tit. 9, § 44. The board of directors was elected by the local electorate, received and disbursed state and local common school funds, and controlled the day-to-day operations of the common schools. *See id.*, ch. 12, tit. 6. The Legislature adopted uniform courses of instruction, teacher certification, reporting requirements, discipline policies, and minimum school days. *See id.*, ch. 12, tit. 8-9. These have been the features of the common school system since statehood. *See* Tit. 28A RCW. In 1895, the Legislature also adopted the first statewide common school tax to supplement the common school fund established by article IX, sections 2 and 3. *See* Laws of 1895, ch. 68.

Although the Legislature’s conception of a “common school” has remained essentially unchanged, the Legislature has refined the basic education to be delivered by common schools to adapt to changing needs. *See McCleary v. State*, 173 Wn.2d 477, 486-510, 269 P.3d 227 (2012). The most significant change was the Legislature’s recognition that a uniform basic education extended to twelfth grade. Bibb at 105; Troth at

159-61. As early as 1897, the Legislature included “high schools” within the State’s common school system. Laws of 1897, ch. 118, § 1.

Simply establishing a common school system, however, does not meet the Constitution’s requirements. In *Seattle School District*, 90 Wn.2d at 536-37, the Court concluded that the State was failing to meet its paramount duty to make ample provision for public education. The Legislature also had failed to satisfy its duty to provide “substantive content” to the word “education” in article IX and to the “program it deems necessary to provide that ‘education’ within the broad guidelines.” *Id.* at 518-19. The Court ordered the Legislature to define and fund fully “basic education” and a “basic program of education” by July 1, 1981. *Id.* at 537-38.

The Legislature thereafter adopted significant education reforms identifying the resources and offerings necessary to meet the guarantee of article IX. *See, e.g.*, ch. 28A.150 RCW. In *McCleary*, this Court endorsed these reforms as meeting the requirements of article IX, finding that “basic education” means the four goals of learning, as set forth in RCW 28A.150.210 and that the Essential Academic Learning Requirements (“EALRs”), and the “basic education program” includes the programs outlined in the Basic Education Act of 1977 (Laws of 1977, 1st Exec.

Sess., vol. 2, ch. 359) and E.S.H.B. 2261 (Laws of 2009, vol. 4, ch. 548) (together, “Basic Education Act”). 173 Wn.2d at 521-26.

The Court determined, however, that the Legislature had failed to provide adequate financial support. *Id.* at 537. The Court directed the Legislature to fund fully the basic education program articulated in the Basic Education Act no later than 2018. Order, *McCleary v. State*, No. 84362-7 (Wash. July 18, 2012). To date, the State has not provided full funding to implement the Basic Education Act or shown measurable progress toward meeting the 2018 deadline. *See Orders, McCleary v. State*, No. 84362-7 (Wash. Dec. 20, 2012, Jan. 9, 2014).

D. The Charter School Act Creates a System of Publicly Funded, Privately Operated Schools.

In November 2012, a narrow majority of voters approved I-1240, which allows private organizations to establish and operate charter schools. *See* ch. 28A.710 RCW; CP 199-206. The Act provides for the establishment of forty charter schools in the next five years. *See* RCW 28A.710.150(1).

Charter schools can be approved in two ways. First, the Washington Charter School Commission (“Charter Commission” or “Commission”), which is made up of nine appointed members, RCW 28A.710.070(2), has the power to establish charter schools anywhere in the State, RCW 28A.710.080(1). All Commission members must have a

“commitment to charter schooling as a strategy for strengthening public education.” RCW 28A.710.070. The Commission is an “independent state agency,” not subject to oversight by the Superintendent or the Board of Education. *See* RCW 28A.710.070(1). Second, school districts may apply to the Board of Education for permission to authorize charter schools. RCW 28A.710.080(2). The Commission and approved school districts (referred to as “charter school authorizers”) solicit charter applications, approve or deny applications, and negotiate and execute charter contracts. RCW 28A.710.100(1).

Charter school authorizers have limited authority to monitor performance and legal compliance of charter schools. RCW 28A.710.180. Indeed, the Act provides that oversight cannot “unduly inhibit the autonomy granted to charter schools,” RCW 28A.710.180(2), and must be consistent with the principles and standards developed by yet another private organization, the National Association of Charter School Authorizers (“NACSA”), RCW 28A.710.100(3). Authorizers are only allowed to revoke or decline to renew charter contracts under specified circumstances. RCW 28A.710.200.

Charter schools are not governed by elected local school boards. Instead, charter schools are operated by a “charter school board,” RCW 28A.710.020(3), which is “appointed or selected under the terms of a

charter application to manage and operate the charter school,” RCW 28A.710.010(6). The board is responsible for functions typically handled by the elected school board, including hiring, managing, and discharging employees, receiving and disbursing funds, entering contracts, and determining enrollment numbers. RCW 28A.710.030(1), .050(5).

Charter schools are exempt from all but a small subset of state statutes and rules applicable to public schools. With the exception of “the specific state statutes and rules” identified in RCW 28A.710.040(2), and any “state statutes and rules made applicable to the charter school in the school’s charter contract,” charter schools are “not subject to and are exempt from all other state statutes and rules applicable to school districts and school district boards of directors...in areas such as scheduling, personnel, funding, and educational programs[.]” RCW 28A.710.040(3). Review of the Basic Education Act and other laws applicable to common schools reveals that the waived provisions are both significant and extensive. For example, the section of the Basic Education Act identifying the “minimum instructional requirements” for “basic education” does not apply to charter schools. RCW 28A.150.220. Charter schools are also exempt from the vast majority of Common School Provisions, Title 28A RCW (“Common School Provisions”), including (but not limited to) laws governing curriculum, discipline, and facilities.

See, e.g., ch. 28A.230 RCW (compulsory coursework), ch. 28A.600 RCW (student conduct and discipline), ch. 28A.335 RCW (property). The Act suggests that charter schools must provide a basic education (*i.e.*, the four educational goals identified in RCW 28A.150.210), but limits the program requirements to instruction in the EALRs and participation in the state student assessment system. RCW 28A.710.040(2)(b).

The Charter School Act diverts funds from common schools to charter schools. The Superintendent must allocate common school funds—including constitutionally restricted funds—to each charter school on the same basis as public school districts. *See* RCW 28A.710.220, .230(1). These constitutionally restricted state funds include basic education moneys appropriated by the Legislature in the biennial operating budget for the exclusive use of common schools, RCW 28A.710.220(2), 28A.150.380(1), and moneys from the common school construction fund, RCW 28A.710.230(1). School districts are also required to give funds from local levies to certain charter schools located in the district, whether or not the charter school was authorized by the school district and regardless of whether the voters approved the levy for charter school use. *See* RCW 28A.710.220(6), (7).

E. The Charter School Act Already Has Diverted State Funds from Common Schools.

Implementation of the Act is underway. The Charter Commission delegated review of charter applications to NACSA and approved seven charter schools based on NACSA's recommendations, all located in the Seattle/Tacoma area.⁷ Likewise, the Board of Education adopted rules for school districts seeking to be charter school authorizers and approved the sole application, by Spokane School District, to serve as a charter authorizer. *See* ch. 180-19 WAC. Spokane School District, in turn, delegated review of charter applications to NACSA and, at NACSA's recommendation, approved one charter school.⁸ One charter school is scheduled to open in 2014; the others in 2015.

The eight approved charter schools, when operating at full capacity, will divert more than \$20 million per year of state basic education funds that would otherwise have gone to public schools.⁹ Additionally, during its first year of operation alone, the charter school in

⁷ Wash. Charter Sch. Comm'n, *Recommendation Report Release* (Jan. 27, 2014), *Charter Commission Culminates First Application Process* (Feb. 5, 2014), at <http://listserv.wa.gov/cgi-bin/wa?A0=CHARTER-SCHOOL-COMMISSION>.

⁸ *See* Spokane Pub. Schs., K-12 Options & Innovation Dept., Charter Schools, at <http://www.spokaneschools.org/domain/4163>.

⁹ This projection is based on anticipated student enrollment and budgets contained in the eight approved charter applications. The application approved by Spokane School District ("Pride Prep Application") is available at http://www.spokaneschools.org/cms/lib/WA01000970/Centricity/Domain/4163/PRIDEPrep_Complete%20Application.pdf. Commission-approved applications are available at <http://www.governor.wa.gov/issues/education/commission/applicantArchive.aspx>. The parties intend to file a joint motion to expand the record to include stipulated facts regarding the eight approved charter schools.

Spokane will receive more than \$260,000 of local tax levy dollars that were approved by voters before the adoption of the Charter School Act.¹⁰ The State also has spent a portion of its scarce education budget to establish the Charter Commission, hire an Executive Director, draft and approve rules to implement the Charter School Act, and pay for application review by NACSA. *See* CP 210-22. The state budget for FY 2014-15 appropriates \$584,000 to implement the Act. Laws of 2013, 2d Spec. Sess., ch. 4, part 5, § 501(1)(c).

F. The Trial Court Determined that the Charter School Act Is Unconstitutional in Part.

Appellants filed this lawsuit seeking to declare the Charter School Act unconstitutional and to prevent further implementation of the Act. The sponsor and several supporters of I-1240 (collectively, “Intervenors”) intervened. After considering cross motions for summary judgment, the trial court held that the Act is unconstitutional. CP 1037-46.

Specifically, the trial court held that the Act violates article IX, sections 2 and 3, because charter schools are not “common schools” under the control of local voters and thus are ineligible to receive restricted common school funds. CP 1043. The trial court determined that charter schools could not receive restricted school construction funds. CP 1045. But, without explanation, the trial court incorrectly determined that

¹⁰ Pride Prep Application at 656, *supra* at n.9.

“the provisions [the trial court] has held unconstitutional . . . are severable.” CP 1046. Moreover, the trial court did not discuss how constitutionally restricted non-construction school funds would be impacted by its ruling. *See* CP 1043-45.

Appellants timely filed a Notice of Appeal. The State and Intervenors subsequently filed Notices of Cross Appeal. The parties requested that this Court accept direct review under RAP 4.2(a)(2) and (4).

IV. ARGUMENT

A. **The Act Diverts Restricted Common School Funds in Violation of Article IX, Sections 2 and 3.**

1. Charter schools are not common schools.

Although not expressly defined in the Constitution, the term “common school” as used in the Constitution “has no uncertain meaning” when considered in connection with the undisputed constitutional history and this Court’s decisions defining “common schools” shortly after the Constitution’s adoption. *Bryan*, 51 Wash. at 502. These early cases are particularly instructive of the meaning of terms in the Constitution. *See Grimm*, 146 Wn.2d at 462 (looking at early case law to interpret the term “school”); *State v. Reece*, 110 Wn.2d 766, 779, 757 P.2d 947 (1988) (“early constructions by the courts are relevant to the intent of various constitutional provisions”).

In 1909, this Court definitively addressed the constitutional meaning of “common school.” *Bryan*, 51 Wash. at 504. The Court struck

down a law diverting common school funds to support public schools attached to the State's normal schools (*i.e.*, teacher training colleges). *Id.* at 500. Rejecting the argument that these schools qualified as common schools, the Court concluded that "a common school, within the meaning of our Constitution, is one that is common to all children of proper age and capacity, free, and subject to, and under the control of, the qualified voters of the school district." *Id.* at 504. The Court emphasized the importance of voter control, opining that "[t]he complete control of the schools is a most important feature, for it carries with it the right of the voters, through their chosen agents, to select qualified teachers, with power to discharge them if they are incompetent." *Id.* This definition is consistent with the definition adopted by the Legislature since the first territorial school law. *See supra* at 5-8, 12.

In *State v. Preston*, 79 Wash. 286, 288-89, 140 P. 350 (1914), the Court determined that a similar teacher training school was not a common school under article IX. Although elected school district directors could secure dismissal of teachers, the school's supervisors were chosen by a board of trustees appointed by the Governor. *Id.* at 289.

Based on these cases and constitutional history, the trial court correctly found that charter schools are not "common schools" as that term is used in the Constitution.

2. Diversion of funds to charter schools that otherwise would be distributed to common schools is unconstitutional.

The Constitution requires the Legislature to dedicate state funds to support “common schools.” Const. art. IX, §§ 2, 3. Section 2 provides that “the entire revenue from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.” *Id.* Section 3 establishes a separate construction fund for the sole use of the common schools. Using even one cent of those funds for purposes other than to support common schools is unconstitutional. *Mitchell v. Consol. Sch. Dist. No. 201*, 17 Wn.2d 61, 66, 135 P.2d 79 (1943). This Court has repeatedly struck down laws diverting common school funds to any other purpose. *See, e.g., Leonard v. City of Spokane*, 127 Wn.2d 194, 199, 897 P.2d 358 (1995) (public improvements); *Mitchell*, 17 Wn.2d at 65-66 (transportation to private schools); *State ex rel. State Bd. for Vocational Educ. v. Yelle*, 199 Wash. 312, 316-17, 91 P.2d 573 (1939) (vocational rehabilitation); *Sheldon*, 17 Wash. at 141 (interest on school district bonds); *Bryan*, 51 Wash. at 505 (schools attached to teacher training colleges); *Preston*, 79 Wash. at 288-89 (same).

Under the Charter School Act money that is dedicated to common schools is unconstitutionally diverted to charter schools. A key element of the Act is to fund charter schools on the same basis as common schools.

The Superintendent must distribute money from the constitutionally restricted basic education allocation—a portion of which is derived from the state levy on real property designated for support of common schools, RCW 84.52.065 (hereinafter, “common school property levy”)—to charter schools on the same basis as common schools. *See* RCW 28A.710.220(2). In other words, the source of funds for the operation of charter schools is the basic education moneys that are otherwise dedicated to the operation of common schools.

The constitutional delegates, however, set aside certain property and other moneys to establish a permanent fund for the exclusive use of common schools, referred to in article IX as the “common school fund.” Anticipating that revenue and interest on the common school fund would prove insufficient to offer every child in the State a basic education, the delegates also extended constitutional protection to any “state tax for common schools” in article IX, section 2.

In *State Board for Vocational Education*, 199 Wash. at 316, this Court addressed the restrictions on the use of basic education funds allocated to common schools. The Court struck down a law that would have diverted tax revenues allocated to the common schools to support a vocational rehabilitation program operated by a state board. *Id.* As the Court explained, it was “beside the question” that the vast majority of state

funds distributed to the common schools under the common school funding laws in place at that time—whether derived from tax revenues or “cash on hand”—could have been allocated to other purposes in the first instance. *Id.* The constitutional protection afforded to common school appropriations is not dependent on the source of the revenue (*i.e.*, the type of tax or other funding source) or the account in which the funds are held (*i.e.*, the general fund or other state fund). Rather, the Court held that all money “allocated to the support of the common schools...constitute[s] a ‘state tax for the common schools’ in contemplation of Art. IX, § 2, of the constitution.” *Id.* The Court continued: “once appropriated to the support of the common schools,” funds cannot “subsequently be diverted to other purposes.” *Id.* The Court cautioned that to hold otherwise “would be calamitous.” *Id.* at 317.

Under the Act, charter schools receive funds from the Legislature’s basic education allocation for the common schools. *See* RCW 28A.710.220(2). As in *State Board for Vocational Education*, the Legislature’s intent to dedicate all basic education funds to support the common schools is evident from the plain text of the school funding laws. By statute, all of the basic education funds in the biennial operations budget are designated for the exclusive use of the common schools. RCW 28A.150.380(1) (“The state legislature shall, at each regular session in an

odd-numbered year, appropriate for the current use of the common schools such amounts as needed for state support to school districts during the ensuing biennium for the program of basic education under RCW 28A.150.200.”) (emphasis added). These funds “made available by the legislature for the current use of the common schools” are then distributed annually by the Superintendent to “each school district of the state operating a basic education instructional program.” RCW 28A.150.250 (emphasis added). That the specific common school property levy is only a portion of the state funds used to support common schools does not alter the protection afforded to the entire basic education allocation as a “state tax for common schools,” within the meaning of article IX, section 2. The Act unconstitutionally reallocates these restricted funds to charter schools, which do not qualify as common schools.

Compounding this problem, the State has failed to segregate constitutionally restricted moneys from other state funds. The State cannot demonstrate that these restricted moneys are protected from being spent on charter schools. *Cf. State Bd. for Vocational Educ.*, 199 Wash. at 317; *Leonard*, 127 Wn.2d at 199 (act violated article IX, section 2, because it diverted revenues that under the existing statutory scheme would otherwise be used to support the common schools). Historically, the state common school funds were maintained in a separate public

school account and distributed to the common schools by the Superintendent. *See, e.g., State Bd. for Vocational Educ.*, 199 Wash. at 314-15. While many constitutionally restricted state funds continue to be maintained in separate accounts (*e.g.*, common school construction fund, gas taxes for transportation purposes, bonds for capital purposes), since at least 1967, the constitutionally restricted common school property levy revenues have been deposited in the State's "general fund," which is used for the basic education allocation. *See* RCW 84.52.067; Laws of 1967, Exec. Sess., ch. 133, § 2. There is no way to track the restricted common school funds or to ensure that these dollars are used exclusively to support the common schools.

In addition to the diversion of basic education funds, the Act diverts funds from the common school construction fund established under article IX, section 3. The school construction fund, unlike other restricted common school funds, continues to be held in a segregated account. *See* RCW 28A.515.320. The trial court correctly held that the Charter School Act's provisions authorizing diversion of these restricted funds is unconstitutional, *see* RCW 28A.710.230(1).

The Constitution directs the Legislature to establish and fund common schools and restricts the Legislature's power to divert funds committed to common schools for other purposes even if related to

education. Const. art. IX, §§ 1-3. The Charter School Act's diversion of basic education funds allocated to the support of the common schools and common school construction funds is unconstitutional.

3. The Act's unconstitutional provisions are not severable.

The Act must be stricken in its entirety because its unconstitutional common school provisions are not severable. A legislative act is unconstitutional in its entirety if its invalid provisions are not severable and "it cannot reasonably be believed that the legislative body would have passed one without the other" or "elimination of the invalid part would render the remaining part useless to accomplish the legislative purposes." *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 227-28, 11 P.3d 762 (2000), *opinion corrected*, 27 P.3d 608 (2001). The presence of a severability clause is not dispositive of whether the legislative body would have enacted the remainder of an act. *Id.* at 228.

The Act purports to define charter schools as common schools and to fund charter schools in the same manner as the State's common schools. *See, e.g.*, RCW 28A.710.005(1)(m) (defining charter schools as common schools), .020(1) (same), .020(2) (same), .070(1) (defining charter schools as part of "common school system"), .220(2) (operations funding), .230(1) (common school construction funds). Voters were promised that the Act would create an additional form of common school funded with existing

common school moneys. CP 550 (I-1240 Voters' Pamphlet) (characterizing charter schools as "another enrollment option" that would "not change" state funding, which "would be provided in the same manner" and "based on the same funding criteria"). The Act was characterized misleadingly as a zero-sum game. CP 549 (describing fiscal impact as a "shift [in] revenues, expenditures and costs"). The question of severability thus depends on whether the voters would have supported the Act if they understood charter operations and construction would have to be funded separately from the State's common schools. Especially in light of this Court's well-publicized *McCleary* decision finding the State's common school funding woefully inadequate, the answer is no.

It is impossible to believe that the voters would have passed an initiative diverting already deficient school funds to charter schools without I-1240's representations that charter schools would share the same key features and be funded in the same manner as all other common schools. *See Leonard*, 127 Wn.2d at 201 (refusing to sever funding mechanism). Voters would have insisted, at the least, on a separate funding mechanism to ensure that common school funds would not be diverted to private organizations' charter experiments. Nor can it be believed that voters would have passed an initiative to open forty new charter schools without a mechanism to fund construction. Charter

schools will not have a source of funding to construct and rehabilitate adequate facilities: state operations funds generally cannot be used for construction purposes, *see* RCW 28A.320.330, and charter schools do not have the power to levy taxes or issue bonds, RCW 28A.710.030(2). While the Act purports to allow charter schools to use existing common school facilities for no or below market rent, RCW 28A.710.230(2), (3), (5), such use would be unconstitutional where the facility was built with restricted common school funds. *See Moses Lake Sch. Dist. No. 161 v. Big Bend Cmty. Coll.*, 81 Wn.2d 551, 559, 503 P.2d 86 (1972) (considering whether facility was acquired with restricted common school funds).

Moreover, not only would all references to “common schools” need to be stricken from the Charter School Act, the funding laws in the Common School Provisions would also need to be rewritten. In particular, the Court would have to eliminate RCW 28A.150.380(1)’s designation of the allocation for basic education in the biennium budget as “for the current use of the common schools,” and the directive to the Superintendent in RCW 28A.150.250(1) to allocate basic education funding “made available by the legislature for the current use of the common schools.” The Court lacks authority to revise the purpose and distribution of funds in this manner. *See* Const. art. II, § 1.

The unconstitutional provisions here go to the heart of the Act, namely, the type of schools that will be established and the manner in which they will be funded. The Act is not severable.

B. Charter Schools Violate the General and Uniform Requirement of Article IX, Section 2.

As the trial court acknowledged, charter schools do not have to comply with the instructional components of the basic education program established by the Legislature and endorsed by this Court, nor do they have to comply with discipline laws and policies applicable to public schools. CP 1043. Accordingly, charter schools do not provide the constitutionally required general and uniform basic public education. Const. art. IX, § 2.

In addition to the common school mandates, the constitutional delegates required that the Legislature ensure that all children have access to an adequate and uniform education regardless of where they happen to live. *See* Const. art. IX, § 2. The delegates considered the potential benefits of local experimentation and the risks of centralized control and concluded that statewide standards are necessary to ensure that no child's education suffers due to geographic happenstance or differing local school policies. *See supra* at 9. Article IX, section 2 therefore directs the Legislature to "provide for a general and uniform system of public

schools.” *See Grimm*, 146 Wn.2d at 461 (delegates rejected proposal to require merely a “thorough and efficient” public school system).

To satisfy the uniformity requirement, the Legislature must adopt laws that apply equally to all public schools. As this Court has explained, the term “uniform” means that ““every child shall have the same advantages and be subject to the same discipline as every other child.””

Fed. Way Sch. Dist., 167 Wn.2d at 524 (quoting *Bryan*, 51 Wash. at 502).

Moreover, the Court has specified:

A general and uniform system, we think, is, at the present time, one in which every child in the state has free access to certain minimum and reasonably standardized educational and instructional facilities and opportunities to at least the 12th grade—a system administered with that degree of uniformity which enables a child to transfer from one district to another within the same grade without substantial loss of credit or standing and with access by each student of whatever grade to acquire those skills and training that are reasonably understood to be fundamental and basic to a sound education.

Id. (quotation omitted).

Title 28A RCW’s Common School Provisions, which include the Basic Education Act, satisfy the “general and uniform” requirement. *Id.* at 525 (citation omitted). In so holding, this Court highlighted the uniform requirements for education programs, curriculum, teacher certification, and minimum instructional hours. *Id.* at 524-25. The Common School Provisions also establish uniform policies on classroom discipline and

facilities standards. *See, e.g.*, RCW 28A.150.300 (corporal punishment), RCW 28A.600.410-.480 (suspension, expulsion, exclusion from classroom), ch. 28A.335 RCW (property).

The Act unconstitutionally exempts charter schools from the vast majority of the Common School Provisions. *See* RCW 28A.710.040(3) (exempting charter schools from laws “in areas such as scheduling, personnel, funding, and educational programs”). Most significantly, as described *supra* at 16, charter schools are not required to offer many of the mandatory components of the basic education program described in the Basic Education Act, including minimum instructional hours and certain basic programs, RCW 28A.150.220. As a result, charter school students will not have access to the program the Legislature has deemed necessary “to acquire those skills and training that are reasonably understood to be fundamental and basic to a sound education.” *See Fed. Way Sch. Dist.*, 167 Wn.2d at 525 (quotation omitted).¹¹

Although the trial court acknowledged these exemptions, the court inaccurately portrayed charter schools as offering a “standardized education” based on “the requirements the charter schools must comply

¹¹ Charter schools also are exempt from compulsory coursework and activities, such as physiology, hygiene, and physical education, chapter 28A.230 RCW, which have been components of the mandatory common school curriculum since the territorial legislature adopted uniform standards in 1877, *see* Laws of 1877, tit. 9; *see also Wagner v. Royal*, 36 Wash. 428, 433-34, 78 P. 1094 (1904) (a common school’s adoption and enforcement of a different course of study would destroy uniformity required by Constitution).

with, namely educational goals, student assessments, and EALR's." *See* CP 1043. But this Court has made clear that article IX requires more than just shared goals—the specific program of basic education must also be the same. *See Seattle Sch. Dist.*, 90 Wn.2d at 518-19. The Act does not require charter schools to provide elements of the “basic education program” required by article IX, section 1, as defined by the Legislature and approved by the Court. Simply stating that charter schools must provide a basic education fails to pass constitutional muster. *See id.* (“substantive content” necessary for constitutionally sufficient basic education).

Charter schools cannot be equated with specialized schools and supplemental education programs designed to serve the special needs of certain students, such as incarcerated youth, ch. 28A.193, .194 RCW; and blind or deaf students, ch. 72.40 RCW. Unlike charter schools, these specialized schools are separate from—and not subject to—the “general and uniform” requirement of section 2. *See Tunstall ex rel. Tunstall v. Bergeson*, 141 Wn.2d 201, 221-22, 5 P.3d 691 (2000). Charter schools, by contrast, are intended as a substitute for the local uniform public school, rather than a supplement to meet the educational needs of a discrete student population.

The fact that the program of basic education is “not etched in constitutional stone” does not save the Act. *See McCleary*, 173 Wn.2d at 526. Appellants do not dispute that the State’s basic education program has evolved over time and that the Legislature has discretion to replace components of the program that no longer serve “the same educational purpose or should be replaced with a superior program or offering.” *Id.* at 527. But the Act does not replace the minimum components of the basic education program approved in *McCleary* with any other program. Rather, the Act intentionally leaves private organizations to define the program of basic education. RCW 28A.710.005(1)(n)(viii) (The Act will “[a]llow public charter schools to be free from many regulations so that they have more flexibility to set curriculum[.]”).

Moreover, as the trial court correctly found (but inexplicably discounted), charter schools are not subject to the same discipline policy, CP 1043, an area that this Court has identified as an essential component of the “general and uniform” requirement. *See Fed. Way Sch. Dist.*, 167 Wn.2d at 524 (uniform includes being “subject to the same discipline as every other child”) (quoting *Bryan*, 51 Wash. at 502). Under the Common School Provisions, public schools utilize a range of disciplinary tools, including short-term suspension (up to ten days), long-term suspension (generally up to one year), and expulsion. RCW 28A.600.010-

.020. Charter school students are not subject to discipline under these uniform laws, or any other state regulations or district rules.

In short, the Constitution requires the uniform application of school laws in a unitary public school system that provides a uniform basic level of education. The Act, on its face, violates the “general and uniform” requirement by creating a separate class of schools exempt from most of the uniform school laws—including many of the programs that ensure students will acquire the skills and training fundamental and basic to a sound education.

C. The Act Interferes with the State’s Paramount Duty to Provide Ample for Basic Education under Article IX, Section 1.

The Charter School Act’s diversion of funds to a separate class of schools impedes the State’s ability to comply with this Court’s directive to provide ample funding for basic education. In *McCleary*, 172 Wn.2d 477, this Court held that the education program in the Basic Education Act is constitutionally adequate but that the State must provide full funding to implement that program by 2018. The Act siphons funds from the basic education program that this Court held is funded inadequately. The trial court summarily determined that this constitutional claim “is not one that can be considered as part of a facial challenge.” CP 1045. But a facial challenge is proper because there is no set of facts under which the Act will do anything other than interfere with and impede the State’s

constitutional duty to fully fund basic education. *See, e.g., City of Redmond v. Moore*, 151 Wn.2d 664, 669, 91 P.3d 875 (2004) (successful facial challenge requires no set of circumstances where statute can be constitutionally applied).

The State has fallen well short of its paramount duty to amply fund education and is under Court order to implement and fund the Basic Education Act by 2018. The Court ordered the Legislature to lay out a detailed plan for meeting the 2018 deadline and to submit annual progress reports demonstrating steady, real, and measurable progress. Order, *McCleary v. State*, No. 84362-7 (Wash. July 18, 2012). According to the Court, the Legislature failed to set out a plan or make any “forward movement” in the 2012 budget session. Order, *McCleary v. State*, No. 84362-7 (Wash. Dec. 20, 2012). Following the 2013 legislative session, this Court observed that “[l]ooking at the gross numbers, the overall increased investment in basic education is only a modest 6.7 percent above current funding levels that violate the constitution, and there are not even two full budget cycles left to make up the sizable gap before the school year ending in 2018.” *See* Order, *McCleary v. State*, No. 84362-7, at 3 (Wash. Jan. 9, 2014). As a result, this Court further concluded that “it is incumbent upon the State to demonstrate, through immediate, concrete action, that it is making real and measurable progress, not simply

promises.” *Id.* at 8. Indeed, the State remains at least \$7 billion short of the funds needed to carry out a course of basic education. *See* CP 207-09.

The Charter School Act is a step backward in the full funding of basic education. Instead of implementing and funding the Basic Education Act, the Act creates a new set of school programs that need to be funded separate and apart from the programs approved by this Court. The State’s Office of Financial Management found that the Act will have a fiscal impact on public schools by shifting state funds to charter schools. *See* CP 549. Local voters and their elected school board have no way to prevent this diversion of funds: the Charter Commission is authorized to establish a charter school anywhere in the State without approval from the public schools that will suffer the financial consequences. RCW 28A.710.080(1). Thus, the Charter School Act violates article IX, section 1 by impeding the State’s ability to fulfill its paramount duty to fund amply basic education.

D. Delegation of the State’s Paramount Duty to Private Organizations Violates Article IX, Section 1.

The Legislature’s constitutional obligation to define a basic education program that meets the requirements of article IX, section 1 cannot be delegated to private organizations. But the Charter School Act does just that. Even if such delegation were proper, the Act fails to

provide sufficient standards, guidelines, and procedural safeguards to ensure that the State's paramount duty will be satisfied.

This Court has said that the Legislature has a constitutional duty to provide substantive content to “basic education” and the components of the “basic education program” required under article IX. *See McCleary*, 173 Wn.2d at 521; *Seattle Sch. Dist.*, 90 Wn.2d at 518-19. Neither can be delegated to a private organization running a charter school. *See id.* In *Seattle School District*, 90 Wn.2d at 518-19, the Court held that the Legislature had violated article IX by failing to define the components of a program of basic education and, through that omission, improperly delegating that task to other public officers like the Superintendent or school district boards. In *McCleary*, 173 Wn.2d at 526, the Court held that the Legislature had cured this constitutional deficiency by adopting the Basic Education Act, which requires public schools to offer the components of the basic education program set forth in therein, including the minimum instructional requirements identified in RCW 28A.150.220.

The Charter School Act, however, delegates to private organizations the authority to define a basic education program. *See, e.g.*, RCW 28A.710.040(3), .130(1)(n) (charters define their own instructional program). The Act is therefore unconstitutional under *Seattle School District* and *McCleary*. The delegation is especially problematic because

it is made to private organizations. *See United Chiropractors of Wash., Inc. v. State*, 90 Wn.2d 1, 5, 578 P.2d 38 (1978).

Even if the Legislature could delegate its paramount duty (which it cannot), any delegation must be accompanied by sufficient standards, guidelines, and procedural safeguards to ensure that the duty will be satisfied. *See id.* at 4. The trial court erroneously found that the Charter School Act's "education standards" and "process to apply, to renew and to revoke a charter school" are sufficient to ensure that the State will satisfy its paramount duty. *See* CP 1044. They are not.

In evaluating the delegation at issue, "it is imperative to consider the magnitude of the interests which are affected by the legislative grant of authority." *Matter of Powell*, 92 Wn.2d 882, 892, 602 P.2d 711 (1979). Here, the interests at stake are paramount. *Seattle Sch. Dist.*, 90 Wn.2d at 511 ("superior in rank, above all others, chief, preeminent, supreme, and in fact dominant"). The trial court acknowledged that a delegation of this paramount duty may be subject to a "higher burden." CP 1044.

The Act unconstitutionally delegates to private organizations in at least three ways. First, the Act brushes aside most of the standards necessary to ensure students receive an adequate education and provides no guidelines as to what a charter school should substitute as a basic education. *See* RCW 28A.710.040. Simply stating that charter schools

must offer a basic education, without providing parameters for the program, does not provide sufficient safeguards to ensure that the State's paramount duty will be met.

Second, the Act fails to provide sufficient procedural safeguards to control arbitrary action and abuse of discretion. Although there is "a process to apply, to renew and to revoke a charter school," CP 1044, closer inspection reveals that oversight by authorizers is limited, as are the tools available to authorizers to compel compliance. In fact, the Act's supposed accountability measures are far more limited than the measures applicable to public schools:

- The Act does not allow an authorizer to intervene in the day-to-day management of a charter school, to limit enrollment, to control resource allocation, or to revoke the Act's general waiver of the Common School Provisions. Oversight cannot "unduly inhibit the autonomy granted to charter schools," RCW 28A.710.180(2), and must be consistent with the standards developed by NACSA, RCW 28A.710.100(3). An elected school district board, by contrast, manages the public schools in the district and controls enrollment, the allocation of resources, and other school policies. *See* RCW 28A.150.230.
- Authorizers are only allowed to revoke or decline to renew charter contracts under certain specified circumstances and, even then, only after a lengthy administrative process. RCW 28A.710.200. A school district board has broad discretion to close public schools after 90 days' notice. RCW 28A.335.020.
- The Act's funding provisions do not permit any discretion in the distribution of funds by the Superintendent, RCW 28A.710.220(2) (Superintendent "shall allocate funding for a charter school"), or local school boards, RCW 28A.710.220(6), (7). Local school boards otherwise have discretion in how to

allocate state and local funds among the public schools within the district. *See* RCW 28A.150.230.

- The Act requires charter schools to “comply” with health, safety and civil rights laws but, by its plain terms, does not subject charter schools to penalties for non-compliance applicable to public schools. RCW 28A.710.040(2)(a).

Third, the Charter School Act fails to set forth guidelines relating to the conversion of a public school into a charter school. *See* RCW 28A.710.010(8) (allowing conversion of an existing public school into a charter school). The Act requires only that a conversion application include a petition signed by a majority of parents or teachers at the school, RCW 28A.710.130(3), and that the conversion charter school provide sufficient capacity to allow any enrolled student to remain after the conversion, RCW 28A.710.050(3). The Act does not offer any guidance on implementation procedures, what options students who do not want to attend the conversion charter would have, or whether teachers and other staff would continue to be employed at the school. Of significant concern, the Act does not guide how a conversion charter school would accommodate programs for special needs students housed at the school. The conversion charter school will not be required to offer programs for highly capable students under RCW 28A.185.010 through 28A.185.030, or supplemental instruction and services for underachieving students through the learning assistance program under RCW 28A.165.005 through

28A.165.065, although these programs are part of a constitutional basic education program, RCW 28A.150.220(d), (g). There is no requirement that school districts adopt a process for reassignment. Indeed, there may not be any feasible alternative to the student's former public school, particularly in rural school districts.

In sum, the Charter School Act is an unconstitutional delegation of the Legislature's duties under article IX to define and implement the required basic education program.

E. The Act Violates Article III, Section 22 Because Certain Charter Schools Are Not Supervised by the Superintendent.

Article III, section 22 of the Constitution provides that “[t]he superintendent of public instruction shall have supervision over all matters pertaining to public schools[.]” The Charter School Act is a dramatic departure from article III, section 22, in that an independent Charter Commission—rather than the Superintendent—authorizes and supervises charter schools. *See, e.g.*, RCW 28A.710.070(1).

The trial court correctly determined that “[t]he Commission is not supervised by the Superintendent.” CP 1044. This determination alone necessitates a conclusion that the Act violates article III, section 22. Inexplicably, the trial court proceeded to conclude, however, that because the Superintendent retains certain powers and duties under the Act, the court could not conclude that the Act constitutes a facial violation of that

provision. *See* CP 1044-45. That the Superintendent retains certain limited powers and duties, however, is wholly insufficient for the Act to pass constitutional muster. The Superintendent's supervisory authority under article III, section 22 is self-executing and cannot be taken away through legislation. Const. art. III, § 22 (Superintendent "shall" have supervision) (emphasis added); *see also* Op. Wash. Att'y Gen. 2009, No. 8 (no legislative authority to vest supervision over basic education program "in any other officer not under the Superintendent[']s supervision."); Op. Wash. Att'y Gen. 1998, No. 6 (assignment of "supervision" responsibilities to some other agency or officer "would be directly inconsistent with the express language of the Constitution").

The Charter School Act facially violates the Constitution by delegating all meaningful supervisory authority over charter schools to the Charter Commission. The Commission is an "independent" agency responsible for management, supervision, and enforcement of the charter schools it authorizes. RCW 28A.710.070(1). Thus, the Commission is not similar to existing public school boards, which are supervised by the Superintendent. *See, e.g.*, RCW 28A.315.005 (providing that "the Washington charter school commission" and "local school district boards of directors" are separate bodies in the school governance structure). And while the Act purports to grant supervision over charter schools to the

Superintendent, it does so only to the extent not otherwise provided by the Act. RCW 28A.710.040(5). Put another way, under the Act, the Superintendent retains only those supervisory powers that are not delegated to the Commission. *See id.*

The “supervision” required by article III, section 22 is not merely the right to oversee teacher certification and student assessments as the trial court suggests. *See CP 1044-45.* Supervision “over all matters” necessarily includes the powers to authorize, manage, and correct the actions of the public schools, which powers are delegated to the Commission under the Act. RCW 28A.710.070(1). This Court and the Attorney General have explained that “supervision” includes, at a minimum, “the power to review all the acts of the local officers, and to correct, or direct a correction of, any errors committed by them. Any less power than this would make the ‘supervision’ an idle act—a mere overlooking without power of correction or suggestion.” *Op. Wash. Att’y Gen. 1975, No. 1* (quoting *Great Northern Ry. Co. v. Snohomish Cnty.*, 48 Wash. 478, 484-85, 93 P. 924 (1908) (citations omitted)). Consequently, the Superintendent’s preparation of school documents, issuance of teaching certificates, reporting to the Legislature, visiting schools, and revising the statewide assessment system do not equate to supervision.

In sum, the Act creates a separate system of charter schools under the supervision of the independent Charter Commission and strips the Superintendent of the constitutional supervisory authority “over all matters pertaining to public schools.” Const. art. III, § 22.

F. The Act Changes the Purpose of School District Levies without Voter Approval in Violation of Article VII, Section 2.

The Charter School Act unconstitutionally requires school districts to use levy funds for a purpose not approved by the voters. School district levies must be approved by voters in the district. Const. art. VII, § 2(a).¹² Monies levied for a specific purpose cannot be applied for a different purpose. *See Sheldon*, 17 Wash. at 141 (striking down a state law that diverted local levy funds raised for the support of the common schools to another purpose as unconstitutional) (citing Const. art. VII, § 5 (“every law imposing a tax shall state distinctly the object of the same to which only it shall be applied.”)).¹³ In violation of this principle, the Act on its face requires the diversion of levy funds approved by voters to support local public schools instead to support charter schools that did not exist when the levy passed. *See RCW 28A.710.220(6), (7)*.

¹² Article VII, section 2(a) of the Constitution requires that a proposition “to levy an additional tax for a school district shall be authorized by a majority of the voters voting on the proposition, regardless of the number of voters voting on the proposition[.]”

¹³ *See also O’Byrne v. City of Spokane*, 67 Wn.2d 132, 136-37, 406 P.2d 595 (1965) (rerouting highway); *George v. City of Anacortes*, 147 Wash. 242, 245-46, 265 P. 477 (1928) (construction of public project three blocks from voter-approved location); *Hayes v. City of Seattle*, 120 Wash. 372, 374-75, 207 P. 607 (1922) (similar).

The trial court held Appellants' constitutional challenge to the levy provisions is not justiciable based on its erroneous belief that the Act's levy provisions are optional. *See* CP 1045. To the contrary, the Act does not afford the school district any discretion to withhold levy funds from qualifying charter schools. RCW 28A.710.220(6) states that "the school district must allocate levy moneys to a conversion charter school." *Id.* (emphasis added). Further, RCW 28A.710.220(7) makes charter schools approved by a school district eligible for levy funds approved before the charter school existed.

Moreover, the diversion of levy funds is not a hypothetical or remote possibility. Voters in most school districts have agreed to pay additional taxes to support their local public schools. *See McCleary*, 173 Wn.2d at 537-38. These local funds are often necessary for public schools to offer the minimum basic education program set forth in the Basic Education Act. *See id.* For example, in February 2012, Spokane school district voters approved a levy "for support of the District's General Fund education programs and operation expenses." CP 256. A charter school opening in Spokane in the Fall of 2015 will receive a portion of those levy funds, which were approved before I-1240 was even placed on the ballot. *See* CP 253-60.¹⁴ Thus, if the Act is permitted to stand, Plaintiff Donna

¹⁴ *See* Pride Prep Application, at 656, *supra* at n.9.

Boyer, a taxpayer in the Spokane School District, will see more than \$260,000 of local tax dollars reappropriated from the Spokane district's education programs to support a privately operated charter school. Indeed, voters in twenty-one of thirty-nine counties—including Spokane County—rejected I-1240. CP 199-206.

Under the Act, levies approved by voters to support public schools will be used for private charter schools that are substantively different than the public schools the voters intended to support. The Constitution prohibits such a reappropriation without resubmission to the school district voters. *See Sheldon*, 17 Wash. at 140-42; Op. Wash. Att'y Gen. 1961-62, No. 59 (“If the school district desires to use the money in the building fund” derived from a special levy “for general fund purposes the matter must be resubmitted to the voters[.]”).

G. I-1240 Failed to Apprise Voters of Changes to Existing Law in Violation of Article II, Section 37 Procedural Safeguards.

Article II, section 37 of the Constitution requires that all proposed laws, including initiatives, set forth in full changes to existing law. I-1240 violated article II, section 37 by failing to disclose significant changes to existing state collective bargaining laws and to the education program in the Basic Education Act. As this Court has explained, article II, section 37 was designed to avoid the “mischief” caused by new enactments that

require examination and comparison to be understood. *Yelle v. Bishop*, 55 Wn.2d 286, 299, 347 P.2d 1081 (1959).

The Charter School Act provides that charter employees are covered by state collective bargaining laws. RCW 41.56.0251, .59.031. But the Act does not make the state collective bargaining laws applicable to charter employees. *See Steele v. State ex rel. Gorton*, 85 Wn.2d 585, 592, 537 P.2d 782 (1975). Rather, the Act fundamentally alters the collective bargaining laws by changing the rights of public employees to organize themselves into bargaining units. Specifically, “[a]ny bargaining unit or units established at the charter school must be limited to employees working in the charter school and must be separate from other bargaining units in school districts, educational service districts, or institutions of higher education.” RCW 41.56.0251; *see also* RCW 41.59.031. But under RCW 41.56.060, school employees generally can organize district-wide based on different factors such as employee type (e.g., principals, supervisors, nonsupervisory employees) and employer type (e.g., vocational-technical institutes and programs for juveniles in adult correctional facilities). *See also* RCW 41.59.080. I-1240 failed to show it was amending RCW 41.56.060 and 41.59.080 as applied to charter employees.

The trial court incorrectly characterized the Act's failure to set forth changes to existing law, concluding that "the scope of the act is sufficiently complete that the rights can be determined without referring to any other statute. Nor have Plaintiffs' [*sic*] demonstrated that any other statute is rendered erroneous by the adoption of the Initiative." CP 1046. But this is not the proper standard. Rather, to avoid an article II, section 37 violation, a proposed law must "accurately set[] forth the law it seeks to amend as it existed *at the time of the legislature's action.*" *Wash. Citizens Action of Wash. v. State*, 162 Wn.2d 142, 153, 171 P.3d 486 (2007) (internal quotation omitted, emphasis in original).

Here, I-1240 failed to set forth the collective bargaining laws it amended. As a result, voters would have to separately review those laws to understand that the Act fundamentally changes how employees in charter schools can organize. Thus, the Act improperly amends existing bargaining unit laws. *See Wash. Educ. Ass'n v. State*, 93 Wn.2d 37, 40-41, 604 P.2d 950 (1980).

Likewise the Charter School Act improperly amends the requirements of the Basic Education Act, including waiving the basic education program required by the Constitution, *see* RCW 28A.150.220. This amendment was accomplished through subterfuge: I-1240 purported to require charter schools to offer a "basic education," but does not specify

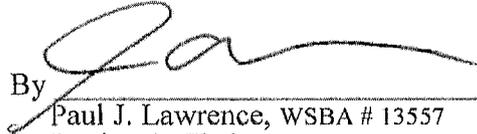
the components of the basic education program that are waived, including the minimum instructional requirements set forth in RCW 28A.150.220. *See* RCW 28A.710.040. There is no way that voters could have understood the impact of I-1240 without devoting hours to a careful comparison between the Charter School Act and the Basic Education Act. The trial court failed to address this separate violation of article II, section 37, which renders the Act unconstitutional on its face.

V. CONCLUSION

Washington's Constitution adopts mandatory education directives governing the establishment and funding of the State's public schools. The Charter School Act introduces a fundamental change in education policy that conflicts with these constitutional directives. Accordingly, this Court should hold, as a matter of law, that the Charter School Act is unconstitutional and prevent further implementation of the Act.

RESPECTFULLY SUBMITTED this 25th day of April, 2014.

PACIFICA LAW GROUP LLP

By 

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Attorneys for Appellants

RECEIVED
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STATE OF WASHINGTON
Apr 25, 2014, 3:40 pm
BY RONALD R. CARPENTER
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No. 89714-0

RECEIVED BY E-MAIL

SUPREME COURT OF THE STATE OF WASHINGTON

LEAGUE OF WOMEN VOTERS OF WASHINGTON, a Washington non-profit corporation; EL CENTRO DE LA RAZA, a Washington non-profit corporation; WASHINGTON ASSOCIATION OF SCHOOL ADMINISTRATORS, a Washington non-profit corporation; WASHINGTON EDUCATION ASSOCIATION, a Washington non-profit corporation; WAYNE AU, PH.D., on his own behalf; PAT BRAMAN, on her own behalf; DONNA BOYER, on her own behalf and on behalf of her minor children; and SARAH LUCAS, on her own behalf and on behalf of her minor children,,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

PROOF OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, competent to be a witness in the above action, and not a party

1

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thereto; that on the 25th day of April, 2014 I caused to be served a true copy of the following:

1. Brief of Appellants;
2. Appendix to Brief of Appellants; and
3. Proof of Service upon:

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Colleen G. Warren
Aileen B. Miller
Rebecca R. Glasgow
Assistant Attorney General of
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- via first-class U.S. mail (Appendix CD Only)
- via email
- via electronic court filing
- via hand delivery

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*Attorneys for Amicus Stand for Children-
Washington, Washington Roundtable,
Technology Alliance and Teachers
United*

I declare under penalty of perjury under the laws of the State of
Washington that the foregoing is true and correct.

DATED this 25th day of April, 2014.


Dawn Taylor

OFFICE RECEPTIONIST, CLERK

To: Dawn Taylor
Cc: colleenw@atg.wa.gov; daves@atg.wa.gov; micheleradosevich@dwt.com; noahp@atg.wa.gov; brian.moran@orrick.com; aileenm@atg.wa.gov; rmckenna@orrick.com; harrykorrell@dwt.com; patriciaholman@dwt.com; josephhoag@dwt.com; rebeccag@atg.wa.gov; donnaalexander@dwt.com; aardinger@orrick.com; Paul Lawrence; Jessica Skelton; Jamie Lisagor; Bill Hill; Cindy Bourne
Subject: RE: League of Women Voters v. State: Cause No.: 87914-0

Received 4/25/14

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Sent: Friday, April 25, 2014 3:35 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: colleenw@atg.wa.gov; daves@atg.wa.gov; micheleradosevich@dwt.com; noahp@atg.wa.gov; brian.moran@orrick.com; aileenm@atg.wa.gov; rmckenna@orrick.com; harrykorrell@dwt.com; patriciaholman@dwt.com; josephhoag@dwt.com; rebeccag@atg.wa.gov; donnaalexander@dwt.com; aardinger@orrick.com; Paul Lawrence; Jessica Skelton; Jamie Lisagor; Bill Hill; Cindy Bourne; Dawn Taylor
Subject: League of Women Voters v. State: Cause No.: 87914-0

Good afternoon.

Attached please find the Brief of Appellants and the Proof of Service for filing in the above-referenced matter.

The Appendix to the Brief of Appellants has been placed on a CD and is being delivered to the Court today via legal messenger and to the parties via U.S. Mail.

Should you have any difficulty with the attachments, please do not hesitate to contact me.

Thank you.

Dawn M. Taylor
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Matthew J. Segal; Sarah C. Johnson
& Taki V. Flevaris



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Washington State Supreme Court

No. 89714-0

APR 29 2014
E
Ronald R. Carpenter
Clerk

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

LEAGUE OF WOMEN VOTERS OF WASHINGTON, a Washington non-profit corporation; EL CENTRO DE LA RAZA, a Washington non-profit corporation; WASHINGTON ASSOCIATION OF SCHOOL ADMINISTRATORS, a Washington non-profit corporation; WASHINGTON EDUCATION ASSOCIATION, a Washington non-profit corporation; WAYNE AU, PH.D., on his own behalf; PAT BRAMAN, on her own behalf; DONNA BOYER, on her own behalf and on behalf of her minor children; and SARAH LUCAS, on her own behalf and on behalf of her minor children,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

APPENDIX TO BRIEF OF APPELLANTS

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Appellants hereby submit a CD containing excerpts from the following authorities cited in the Brief of Appellants:

Session Laws¹

1. Laws of 1854, An Act Establishing a Common School System for the Territory of Washington.
2. Laws of 1871, An Act Establishing a Common School System for the Territory of Washington.
3. Laws of 1877, An Act to Provide a System of Common Schools.
4. Laws of 1889, ch. 12.
5. Laws of 1895, ch. 68.

Supreme Court Orders from *McCleary v. State*²

6. Order, *McCleary v. State*, No. 84362-7 (Wash. July 18, 2012).
7. Order, *McCleary v. State*, No. 84362-7 (Wash. Dec. 20, 2012).
8. Order, *McCleary v. State*, No. 84362-7 (Wash. Jan. 9, 2014).

¹ Session laws are available at http://www.leg.wa.gov/CodeReviser/Pages/session_laws.aspx.

² Supreme Court orders and other pleadings from *McCleary v. State* are available at http://www.courts.wa.gov/appellate_trial_courts/SupremeCourt/?fa=supremecourt.McCleary_Education.

Opinions of Washington Attorney General

- 9. Op. Wash. Att’y Gen. 1961-62, No. 59.
- 10. Op. Wash. Att’y Gen. 1975, No. 1.
- 11. Op. Wash. Att’y Gen. 1998, No. 6.
- 12. Op. Wash. Att’y Gen. 2009, No. 8.

Other Authorities

- 13. Dennis C. Troth, *History and Development of Common School Legislation in Washington* (Univ. of Wash. Pubs. in Social Sciences 1929).
- 14. J.H. Morgan, Washington Territory Superintendent of Public Instruction, et al., *Washington Schools: Pertinent Suggestions to the Constitutional Convention by the Board of Education*, Spokane Falls Review, July 17, 1889.
- 15. Louis Lerado, *Public Schools and the Convention, No. 2*, Tacoma Daily Ledger, July 3, 1889.
- 16. *Messages of the Governors of the Territory of Washington to the Legislative Assembly, 1854-1889* (Univ. of Wash. Pubs. in Social Sciences 1940).
- 17. Office of the Sec’y of State, Div. of Archives & Records Mgmt., *Index to the Laws, Memorials and Resolutions Passed by the Washington Territorial Legislature 1853-1887* (1993).

18. Quentin Shipley Smith, *Analytical Index to The Journal of the Washington State Constitutional Convention 1889* (Beverly Paulik Rosenow ed., 1999).

19. Theodore J. Stiles, *The Constitution of the State and Its Effects Upon Public Interests*, 4 Wash. Hist. Q. 281 (1913).

20. Thomas William Bibb, *History of Early Common School Education in Washington* (Univ. of Wash. Pubs. in Social Sciences 1929).

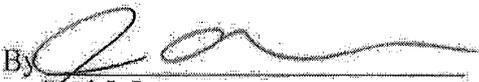
21. W. Lair Hill, *A Constitution Adapted to the Coming State, Suggestions by Hon. W. Lair Hill, Main Features Considered in Light of Experience* (1889).³

22. Wash. State Historical Soc'y, *Building a State, Washington, 1889 1939* (Charles Miles & O. B. Sperlin eds., 1940).

23. Wash. State Planning Council, *A Survey of the Common School System of Washington* (1938).

RESPECTFULLY SUBMITTED this 25th day of April, 2014.

PACIFICA LAW GROUP LLP

By 
Paul J. Lawrence, WSBA # 13557
Jessica A. Skelton, WSBA # 36748
Jamie L. Lisagor, WSBA # 39946
Attorneys for Appellants

³ Available at <http://lib.law.washington.edu/waconst/Sources/Hill%20Constitution.pdf>.

Tab 1

STATUTES

OF THE

TERRITORY OF WASHINGTON:

BEING THE CODE PASSED BY THE

LEGISLATIVE ASSEMBLY,

AT THEIR FIRST SESSION BEGUN AND HELD AT
OLYMPIA, FEBRUARY 27TH, 1854.

ALSO CONTAINING

THE DECLARATION OF INDEPENDENCE, THE CONSTITUTION OF
THE UNITED STATES, THE ORGANIC ACT OF WASHING-
TON TERRITORY. THE DONATION LAWS, &C. &C.

PUBLISHED BY AUTHORITY.

OLYMPIA:
GEO. B. GOUDY, PUBLIC PRINTER.

1855.

up the share, devise, or legacy of any other devisee, legatee, or heir, the probate court, upon the petition of the person entitled to contribution or distribution of such estate, shall order the same to be made according to equity, and enforce such order with like effect as decrees in courts of equity.

Sec. 49. The term "will," as used in this act, shall be so construed as to include all codicils, as well as wills.

Sec. 50. All courts and others concerned in the execution of last wills, shall have due regard to the direction of the will, and the true intents and meaning of the testator, in all matters brought before them.

Sec. 51. If the probate court shall be satisfactorily informed that any person has in his possession the will of any testator, and refuses to produce the same for probate, such court shall have power to summon such person, and compel him by attachment to produce the same.

Sec. 52. This act shall take effect and be in force from and after the first day of May next.

AN ACT ESTABLISHING A COMMON SCHOOL SYSTEM FOR THE TERRITORY OF WASHINGTON.

CHAPTER I.

SCHOOL FUND.

- Sec. 1. School fund, how provided.
2. Each board of county commissioners shall levy taxes for school purposes; appropriation thereof.
3. All fines and forfeitures to be applied to school purposes.

Sec. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the principal of all moneys accruing to this territory from the sale of any land heretofore given, or which may hereafter be given by the congress of the United States for school purposes, shall constitute an irreducible fund; the interest accruing from which shall be annually divided among all the school districts in the territory, proportionally to the number of children or youth in each between the ages of four and twenty-one years, for the support of common schools in said districts, and for no other use or purpose whatever.

Sec. 2. For the purpose of establishing and maintaining common schools, it shall be the duty of the county commissioners of each county

to lay an annual tax of two mills on a dollar, on all taxable property of the county, as shown by the assessment rolls made by the county assessors for the same year, and to include the same in their warrant to the collector, and the said collector shall proceed to collect the said tax in the same manner as the other county tax is collected; and the said money so collected shall be paid over to the county treasurer, to be appropriated for the hire of school teachers in the several school districts, to be drawn in the manner hereinafter prescribed.

Sec. 3. For the further support of common schools, there shall be set apart by the county treasurer, all money paid into the county treasury, arising from all fines for a breach of any penal laws of this territory. Such moneys shall be paid into the county treasury, and be added to the yearly school fund raised by tax in each county, and divided in the same manner.

CHAPTER II.

COUNTY SUPERINTENDENTS.

- Sec. 1. Provisions for the election of county superintendents.
2. Superintendent to qualify and take an oath.
 3. Superintendent to divide his county into districts, keep a map and lay off new districts.
 4. Notice of the formation of a district, and proceedings thereon.
 5. Examination of teachers; certificates to be given.
 6. Superintendent to visit schools yearly; his duties as visitor.
 7. Annual report of superintendent.
 8. Annual apportionment of school fund to be made, and notice thereof to be given.
 9. Distribution of school fund, how made.
 10. Superintendent to collect fines, take care of lands, &c.
 11. Trespass on school lands indictable; punishment therefor.
 12. Compensation of superintendent.

Sec. 1. There shall be elected by the legal voters of the respective counties, at the annual elections, a county superintendent of common schools for each county, who shall hold his office for the term of three years, and until his successor is duly qualified.

Sec. 2. The superintendent shall qualify within ten days after notice of his election, by taking an oath faithfully to discharge the duties of his office, and to the best of his ability promote the interest of education within his county; which oath shall be in writing and placed on file in the county clerk's office.

Sec. 3. It shall be the duty of the superintendent to divide such portion of his county as shall be inhabited, into convenient school districts; to define the boundaries and numbers; and to prepare and keep in his

office a map of the districts of the county upon which the lines and boundaries of each district shall be clearly defined; he shall lay off new districts, or divide old ones when the public good shall require it.

SEC. 4. Whenever any school district shall be formed by the superintendent, it shall be his duty to prepare a notice in writing of the establishment of such district, describing its boundaries, and to deliver the same to some taxable inhabitant of such district, who shall have asked for the formation of the same. It shall be the duty of said inhabitant, within two weeks after the receipt of such notice, to notify the other inhabitants of the district of the time and place of the first district meeting, which time and place he shall fix by written notices, and which shall be posted up in three public places in the district, at least ten days previous to the time of meeting. In case the inhabitants fail to attend in sufficient numbers to do business as hereafter directed, notice may be renewed at such times as may be thought proper.

SEC. 5. It shall be the duty of the superintendent to examine all persons who wish to become teachers in his county; he shall examine them in orthography, reading, writing, arithmetic, English grammar and geography; and if he be of the opinion that the person examined is competent to teach said branches, and that he or she is of good moral character, he shall give such person a certificate, certifying that he or she is qualified to teach a common school in said county; such certificate shall be for the term of one year only, and may be revoked sooner by the superintendent for good cause.

SEC. 6. The superintendent shall visit all the schools taught in his county by a qualified teacher, at least once a year; he shall give such information and encouragement as he may think necessary, and endeavor to promote the introduction of a good and uniform system of school books throughout the county.

SEC. 7. It shall be the duty of the superintendent to receive the district reports hereinafter provided for, and keep them on file in his office; and he shall at least ten days before the first Friday in November of each year, make out from the district reports, a statement of the number of the scholars in the county; the number of school libraries; the number of school houses; the number of districts; in how many districts a school has been kept in the past year; what school books are principally used; what proportion of all the scholars in the county have attended school for the past year, and the amount of money paid to teachers. This statement, together with such other information and suggestions as he may deem important to the cause of education, he shall file in his office, and may, if convenient, publish it in some newspaper in this territory.

SEC. 8. It shall be the duty of the superintendent, at least fifteen days

before the first Friday in November of each year, to make an apportionment of the school fund in the county treasury among the several school districts in their respective counties, in proportion to the number of persons in the district over the age of four, and under twenty-one years, and certify the amount due to each district, which shall be drawn as hereafter directed; and he shall forthwith notify the clerks of the school districts of the amount due their respective districts.

Sec. 9. When the districts shall have complied with the law, as hereafter directed, it shall be the duty of the superintendent to issue orders on the county treasury in favor of the clerks of the districts, for the amount of the school funds appropriated to each; on the presentation of which order, the treasurer of the county shall pay over to the clerks of the districts all moneys due the respective districts, and the clerks shall endorse on said order a receipt for so much as shall be paid thereon, and they shall also sign a duplicate receipt, which shall be deposited with the superintendent, who shall credit the treasury of the county therewith, and charge the same to the proper district.

Sec. 10. The superintendent shall, in the name of the county, collect, or cause to be collected, all moneys due the school fund from fines, or from any other source in his county; and until the legislature shall make some provision for the disposal of the school lands given by congress to the territory for school purposes, it shall be the duty of the superintendent to preserve said lands from injury and trespass; and when it shall come to his knowledge that any trespass has been committed on such lands, he shall make complaint of the same before the grand jury of the proper county, at the first regular term of court after he has obtained a knowledge of such trespass; and all fines and other moneys thus collected shall be paid over to the treasurer of the county for the use of common schools, and divided in said county in the same manner as other school funds.

Sec. 11. Any person trespassing upon or injuring the school lands, as mentioned in the preceding section, shall be liable to be indicted for the same, and upon conviction, shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars.

Sec. 12. The said superintendent shall be allowed out of the county treasury, in compensation for his services, the sum of twenty-five dollars a year. The county commissioners may, in their discretion, if they think the services rendered demand it, increase his salary to any sum not exceeding five hundred dollars a year.

CHAPTER III.

SCHOOL MEETINGS.

- SEC. 1. School meetings may be called ; a quorum.
 2. Powers of such meeting.
 3. Organization of school meetings, and proceedings therein.
 4. Term of office of directors.
 5. Director to qualify and take an oath.
 Oath to be filed.
 6. Duties of the directors in each district.
 7. Two directors a quorum.
 8. Further duties of the directors.

CLERKS.

9. Election of clerks.
 10. Duties of clerks.
 11. Annual report of clerk.
 What it shall contain.
 12. Accounts to be kept by clerk.
 To pay over funds to successor.
 13. Annual school meetings to be held.
 Notice thereof to be given.
 14. Qualification of voters at school meeting.
 15. Adjournments of meeting may be made.
 16. Power of school meeting to levy taxes ; library.
 17. Notice of taxes to be levied, must be given in notices calling the meeting.
 18. Organized district a body corporate ; duties of directors.
 19. How taxes may be assessed by directors.

TEACHERS.

20. Teachers to procure certificates, keep and file a register, &c.

SEC. 1. A school meeting may be called at any time for the purpose of organizing a new district, as provided in section four, under the title of county superintendent. No number less than five legal voters shall constitute a quorum, to do business in any district meeting.

SEC. 2. Such school meeting shall have power to do all necessary business the same as the regular annual school meeting would have.

SEC. 3. Such meeting when assembled, shall organize by the appointment of a chairman and secretary. It shall then proceed by ballot to elect three directors. Of those so elected, the person having the highest number of votes, shall hold his office for the term of three years, and the person having the next highest number, shall hold his office for two years, and the person next highest one year, and each shall continue in office until his successor is elected and qualified. In case two or more persons of those so elected, receive an equal number of votes, the duration of their term of office shall be determined by lot, in presence of the chairman and secretary.

SEC. 4. The term of office of a director not elected at the regular annual meeting, shall continue for the term of one, two or three years, as he may have been elected, from the next annual school meeting, unless such

director shall be elected to fill vacancy, in which case he shall continue in office for the unexpired term. So that at every annual school meeting after the first, there shall be elected one school director for the term of three years.

SEC. 5. The directors shall qualify within ten days after their election, by taking an oath or affirmation faithfully to discharge the duties of the office, to the best of their abilities; and to promote the interest of education within their district. This oath shall be in writing and filed with the clerk of the district.

SEC. 6. It shall be the duty of the directors of every school district:

1st. To call special meetings of the district whenever they shall deem it necessary;

2d. To make out a tax list of every district tax, containing the names of the taxable inhabitants in the district, and the amount of tax payable by each inhabitant set opposite his name;

3d. To annex to such tax list a warrant directed to the clerk of the district for the collection of the sums in such list mentioned, including five per cent. for the fees of said clerk;

4th. To purchase or lease a site for the district school house as designated by a meeting of the district, and to build, hire or purchase, keep in repair and furnish such school house with necessary fuel and appendages out of the funds collected and paid to the clerk for such purpose, and to have the custody and safe keeping of the district school house;

5th. To contract with and employ teachers: *Provided*, That no teacher shall be employed, who shall not produce a certificate from the county superintendent as is required by law, of good moral character, and qualification to teach a district school;

6th. To give orders to the teachers on the district clerk for their wages.

SEC. 7. Any two of said directors shall constitute a quorum to do business.

SEC. 8. It shall be the duty of the directors to visit and examine the school or schools of their respective districts, at least twice in each term; they shall endeavor to procure the introduction of a good and uniform system of school books in their district; and when the teacher experiences difficulty in the government of the school, it shall be his duty to refer the cases of disorderly scholars to the directors, who shall decide how such scholars shall be punished, or whether they shall be dismissed from school.

CLERKS.

SEC. 9. The first annual school meeting shall also elect a district clerk, who shall continue in office for the term of three years. He shall qualify within ten days after his election, by giving bond to the district directors

in such sum as they may require, that he shall well and truly perform the duties of his office, and pay over all moneys coming into his hands by virtue of his office, as by law directed. If a clerk be elected to fill a vacancy, he shall continue in office for the unexpired term; and if elected at the first meeting, not being the regular annual meeting, he shall continue in office three years from the next annual meeting.

Sec. 10. It shall be duty of the clerk of each district :

1st. To record the proceedings of his district in a book, to be provided for that purpose by the district ;

2d. To give notice of annual or special meetings ;

3d. To procure a list of all persons in the district between the ages of four and twenty-one years ;

4th. To collect all district taxes which he shall be required by the warrant from the directors to collect within the time limited in each warrant for its return ; and he shall have the same authority to enforce the collection of such tax as the county collector has for collecting the county tax, and he shall be allowed five per cent. for collecting ;

5th. To retain a copy of all reports made to the county superintendent relating to the affairs of the district.

Sec. 11. It shall be the duty of the clerk to furnish the county superintendent at least twenty days before the first Friday in November of each year, a report containing the number of scholars in his district, over four and under twenty one years of age ; how long a school has been kept in his district the past year ; what school books are principally used ; what proportion of the scholars in the district have attended school ; and the amount of money paid to teachers.

Sec. 12. The clerk of each district shall, at the close of each year of his office, make out in writing a just and true account of all moneys received by him for the use of the district, and the manner in which the same shall have been expended, which account shall be read at the annual district meeting. The clerk shall pay over all moneys remaining in his hands belonging to the district, to his successor, when his successor has legally qualified, and upon a refusal or neglect so to do, the directors shall forthwith bring suit upon his bond.

Sec. 13. There shall be an annual school meeting held in each district upon the first Friday in November ; and notices of all annual or special meetings shall be in writing, signed by the directors or the clerk of the district, and shall state the object for which the meeting is called ; and shall be posted up in three public places in the district, at least six days previous to the holding of such meeting.

Sec. 14. Every inhabitant over the age of twenty-one years, who shall have resided in any school district for three months immediately preceding

any district meeting, and who shall have paid, or be liable to pay any tax except road tax in said district, shall be a legal voter at any school meeting, and no other person shall be allowed to vote.

Sec. 15. Any school meeting shall have power to adjourn from time to time, as occasion may require.

Sec. 16. A school meeting legally called, shall have power by the vote of a majority present, to levy a tax on all the taxable property in the district, as the meeting shall deem sufficient to purchase, or lease a suitable site for a school house, and to build, hire or purchase a school house and keep it in repair, and to furnish the same with necessary fuel and appendages, and to levy an additional tax on the district, for the purchase or increase of a district library, globes, maps and such apparatus as the interest and well being of the school shall require. The library shall consist of such books as the district meeting shall direct.

Sec. 17. In all cases when a tax is to be levied, it shall be stated in the notices given of the meeting, for what purpose or purposes a tax is to be levied.

Sec. 18. When a district is organized, it shall be to all intents and purposes a body corporate, capable of suing and being sued, and fully competent to transact all business appertaining to schools or school houses in their own district; and it shall be the duty of the directors to prosecute or defend any demands for or against their district, and notice shall be served upon one of the directors of any suit brought against a district.

Sec. 19. All district taxes shall be assessed by the directors according to the valuation of property made for the assessment of county taxes, and shall be collected by the clerk of the district, with an addition of five per cent. on the same, which the clerk shall receive for his services. Any person aggrieved by an excessive assessment of the directors of any school district, may have the same reduced by his own affidavit or any competent testimony, to the satisfaction of the clerk.

TEACHERS.

Sec. 20. It shall be the duty of every teacher of a common school, to procure a certificate of qualification and good moral character, before entering on the duties of a teacher. It shall be his duty to keep a register of the names of the children attending school, their age, the time when they begin, the time they continue, and of their daily attendance, which register shall be filed with the clerk of the district at the close of every term.

CHAPTER IV.

MISCELLANEOUS PROVISIONS.

- SEC. 1. Minutes of the first meeting, how kept.
2. Who to be chairman and secretary of each meeting.
3. Meetings may alter repeal or modify their proceedings.
4. Power of meeting to levy tax.
5. Districts failing to organize, debarred the use of the funds ; proviso.
6. Funds to be apportioned to organize districts only.
7. When a district shall be allowed to draw the county school fund.
8. When county superintendent shall issue an order for the funds of a district to the clerk thereof.
9. Districts failing to comply with the law to forfeit their claim to the fund.
10. When a school shall be free.
11. Directors may permit scholars now resident to attend.
12. Holding other office not to disqualify superintendent, director or clerk.
13. Librarian may be appointed.

SEC. 1. The minutes of the first school meeting shall be signed by the chairman and secretary, and delivered to the clerk of the district, who shall file the same in his office.

SEC. 2. In all school meetings, the directors whose term of office shall first expire, shall act as chairman, and the clerk of the district shall act as secretary.

SEC. 3. Districts shall have power to repeal, alter or modify their proceedings from time to time, as occasion may require.

SEC. 4. District meetings legally called, shall have power to levy a tax upon the property of the district for any purpose whatever, connected with, and for the benefit of schools, and the promotion of education in the district.

SEC. 5. Any new district failing to organize and report to the county superintendent, the number of children over four and under twenty-one years of age in said district, at least twenty days before the first Friday in November, or any district having been organized for the term of one year or more, failing to report to the county superintendent, as is required in section eleven, of the chapter entitled "school meetings," in this act, shall not be entitled to any portion of the county school fund for the year: *Provided*, That if the clerk of any school district shall fail to make such report, any inhabitant of such district may make such report verified on oath, and the county superintendent shall receive it, the same as if made by the clerk.

SEC. 6. The county superintendent shall apportion all the county school fund for that year among those districts only which have organized and reported according to law.

SEC. 7. No district shall be allowed to draw the county school fund

from the treasury, apportioned to it, until it shall raise an amount by tax or otherwise in said district to be expended in paying teachers and building school houses in said district, equal to the amount to which such district is entitled out of the county school fund; nor until it shall satisfy the county superintendent, that a school has been kept in said district by a qualified teacher, for at least three months during the year immediately following the apportionment.

SEC. 8. When the clerk of any district shall satisfy the county superintendent, that an amount has been raised by tax or otherwise in his district, for the support of teachers, equal to the amount apportioned to them from the county fund, and that a school has actually been kept by a qualified teacher as provided in the preceding section, the superintendent shall then issue an order on the county treasury in favor of the clerk of said district, for the amount to which such district is entitled, out of the county school fund.

SEC. 9. Any district failing to comply with the provisions of the two preceding sections for the term of one year after any apportionment, shall forfeit its apportionment, and the amount thereof, shall be again added to the county school fund, and divided again among all the districts.

SEC. 10. Whenever a school is kept in any district, the teacher of which shall be supported out of the general county school fund, or by tax on the district as aforesaid, such school shall be open and free to all children between the ages of four and twenty-one years, in such district.

SEC. 11. The directors of any district may permit scholars living out of the district, to attend school, with or without charge, as they may deem proper.

SEC. 12. No person shall be disqualified to hold the office of county superintendent, district director or clerk, on account of holding any other office within the territory at the same time.

SEC. 13. It shall be the duty of the directors to appoint a suitable person for librarian, when the district shall have procured a library.

Passed April 12, 1854.

AN ACT IN RELATION TO COUNTIES.

- SEC. 1. The counties in this territory to be bodies corporate, for certain purposes.
2. The conveyances for the use of the county to have the same effect as if made to the county.
2. Provisions for the change of the limits of counties.
4. When counties are divided, the property thereof to be equally divided.
5. Debts to be apportioned in the manner prescribed in the preceding section.
6. Actions against counties to be brought in the district court.

Tab 2

STATUTES

OF THE

TERRITORY OF WASHINGTON,

MADE AND PASSED

**AT A SESSION OF THE LEGISLATIVE ASSEMBLY BEGUN AND HELD AT OLYMPIA
ON THE SECOND DAY OF OCTOBER, 1871, AND ENDED ON THE
THIRTIETH DAY OF NOVEMBER, 1871.**

NINETY-SIXTH YEAR OF INDEPENDENCE.

PUBLISHED BY AUTHORITY.

**OLYMPIA:
PROSCH & McELROY, PRINTERS.
1871.**

SEC. 5. The same fees shall be allowed for the services of writs of summons and subpoenas in chancery, that are now allowed for services of complaints and notice.

SEC. 6. The first paragraph of section 363, of the act to which this is amendatory, shall be amended so as to authorize, in addition to the judgment debtor or his representatives, any person who may be interested in the said property, to likewise appear and file his objections thereto and be heard thereon.

The following portion of paragraph four of said section, is hereby repealed, viz:

“An order confirming a sale shall be a conclusive determination of the regularity of the proceedings concerning such sale as to all persons in any other action, suit or proceeding whatever.”

Passed the House of Representatives November 24, 1871.

J. J. H. VAN BOKKELEN,

Speaker of the House of Representatives.

Passed the Council November 28, 1871.

H. A. SMITH,

President of the Council.

Approved November 29, 1871.

EDWARD S. SALOMON,

Governor of Washington Territory.

AN ACT

ESTABLISHING A COMMON SCHOOL SYSTEM FOR THE TERRITORY
OF WASHINGTON.

CHAPTER I.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the Legislature shall, in joint convention during its present session, and every two years

hereafter, elect a Territorial superintendent of common schools, who shall hold his office for two years and until his successor is duly elected and qualified.

SEC. 2. It shall be the duty of said Territorial superintendent to disseminate intelligence in relation to the method and value of education.

SEC. 3. He may examine all who apply to him for certificates to teach school, and his certificate shall be valid in the whole Territory, and he shall be entitled to receive the same fees for certificates as county superintendents. He may call a teachers' convention at such time and place as he shall deem conducive to the educational interests of the Territory. He shall prepare and forward to county superintendents printed blanks, designating the questions he desires answered, on or before October first of each year.

SEC. 4. It shall be the duty of all the county superintendents of schools to forward to the Territorial superintendent a copy of their annual report forthwith, and they shall also state what school books would give most general satisfaction in their respective counties.

SEC. 5. It shall be the duty of the Territorial superintendent to make out a report from the reports of the county superintendents, and any other means of information he may have, of the condition of the schools in the Territory, and shall state what school books seem to be most popular in the Territory. He shall also recommend some series of school books to be introduced throughout the Territory, and he may make any suggestions he may think best for the promotion of education. He shall publish his Territorial report in some leading newspaper of the Territory, with a request that other papers copy.

SEC. 6. He shall make a report to the Legislature at its next regular session and every regular session thereafter, within ten days after convening, embodying all the information mentioned in section 5, and any other information and recommendations he deems advisable.

SEC. 7. The Territorial superintendent shall receive as a

salary out of the Territorial treasury, three hundred dollars annually, which shall include office rent, stationery, printing and all other incidental expenses of his office; and the Territorial auditor shall issue an order for said amount, which shall be paid by the treasurer out of any funds not otherwise appropriated.

SEC. 8. The Territorial superintendent shall qualify within sixty days after notice of his election, by filing in the office of the Secretary of the Territory, an oath that he will faithfully discharge the duties of the office according to the best of his abilities. Whereupon the Governor shall issue to him a commission the same as to other Territorial officers; and in case of vacancy from any cause the Governor may appoint to fill the vacancy until the meeting of the next Legislature.

CHAPTER II.

SEC. 1. That the principal of all moneys accruing to this Territory from the sale of any lands heretofore given or which may hereafter be given by the Congress of the United States for school purposes, shall constitute an irreducible fund, the interest accruing from which shall be annually divided among all the school districts in the Territory proportionally to the number of children or youth in each, between the ages of four and twenty-one years, for the support of common schools in said district, and for no other use or purpose whatever.

SEC. 2. For the purpose of establishing and maintaining common schools, it shall be the duty of the county commissioners of each county to levy an annual tax of four mills on a dollar on all taxable property of the county as shown by the assessment rolls made by the county assessor for the same year, and to include the same in their warrant to the collector, and the said collector shall proceed to collect the said tax in the same

manner as other county tax is collected, and the said money so collected shall be paid over to the county treasurer to be appropriated for the hire of school teachers in the several school districts, to be drawn in the manner hereinafter prescribed; neither shall it be lawful for any county treasurer to receive county orders in payment for county school tax nor to pay out any school money on county orders.

SEC. 3. For the further support of common schools, there shall be set apart by the county treasurer all moneys paid into the county treasury arising from all fines for a breach of any law regulating licenses for the sale of intoxicating liquors, or for the keeping of bowling alleys or billiard saloons, or from any penal laws of this Territory. Such moneys shall be paid into the county treasury and be added to the yearly fund raised by tax in each county and divided in the same manner.

SEC. 4. That it shall be the duty of the county auditor of each county to report to the county superintendent of common schools, at least twenty days before the first Friday in November of each year, the amount of school tax levied in their respective counties for that year, and that it shall be the duty of the clerk of the district court, at the close of every term thereof, to report to the superintendent the amount of fines imposed during said term of court; and that it be the duty of all justices of the peace to report to the superintendent, at least twenty days before the first Friday of November of each year, the amount of fines imposed and collected by them for the past year.

CHAPTER III.

COUNTY SUPERINTENDENTS.

SEC. 1. There shall be elected by the legal voters of the respective counties in Washington Territory, a county superintendent of common schools for each county, who shall be elected at the general election of 1872, and at the regular election held

biennially thereafter, who shall hold his office for the term of two years and until his successor is elected or appointed and qualified. And in case of a vacancy occurring in said office by removal, death or otherwise, the county commissioners of each county are authorized to appoint a county school superintendent as in all other cases of vacancies in their respective counties, who shall qualify in the same manner as the elected superintendent, and perform all the duties of the office according to this law, for the unexpired term for which he was appointed, and until his successor is elected and qualified.

SEC. 2. The superintendent shall qualify within ten days after notice of his election, by taking an oath to faithfully discharge the duties of his office, and to the best of his ability promote the interest of education within his county, which oath shall be in writing and placed on file in the county auditor's office.

SEC. 3. It shall be the duty of the superintendent to district the whole county, so that every resident of the county shall be included in some district, and to divide such portion of his county as shall be inhabited, into convenient school districts, to define the boundaries and numbers, and to keep in his office a map of the districts of the county, upon which the lines and boundaries of each district shall be clearly defined. He shall lay off new districts or divide old ones where the public good shall require it.

SEC. 4. Whenever any school district shall be formed by the superintendent, it shall be his duty to prepare a notice in writing of the establishment of such district, describing its boundaries, and to deliver the same to some taxable inhabitant of such district who shall have asked for the formation of the same. It shall be the duty of said inhabitant, within two weeks after the receipt of such notice, to notify the other inhabitants of the district of the time and place of the first district meeting, which time and place he shall fix by written notices, and which shall be posted up in three public places in the district, at least ten days previous to the time of meeting. In case the inhabitants

fail to attend in sufficient numbers to do business, as hereinafter directed, notice may be renewed at such times as may be thought proper.

SEC. 5. It shall be the duty of the county superintendent to be at the county seat on the third Friday and Saturday of May and November of each year, for the purpose of examining teachers and for the transaction of other business, and he shall give ten days public notice of the same by posting up handbills or otherwise. And any person or district applying on different days for the transaction of such business, shall pay the superintendent a reasonable compensation for his trouble, and not exceeding the sum of two dollars, and any teacher examined on a different day shall pay the superintendent the sum of two dollars.

SEC. 6. It shall be the duty of the superintendent to examine all persons who wish to become teachers in his county; he shall examine them in orthography, reading, arithmetic, defining, penmanship, English composition, English grammar and geography, history of the United States; and if he be of the opinion that the person examined is competent to teach said branches, and that he or she is of good moral character, he shall give such person a certificate certifying that he or she is qualified to teach a common school in said county; such certificate shall be for the term of one year only and may be revoked sooner by the superintendent for good cause; but in the examination of the teachers he may make a distinction according to qualification, granting a certificate of qualification to teach in any specified district if the applicant therefor be qualified for the school of such district, and not a county certificate, which certificate, so granted, shall only be for six months, and may for good cause be sooner revoked.

SEC. 7. The superintendent shall visit all the schools in his county once a year; he shall give such information and encouragement as he may think necessary, and endeavor to promote the introduction of a good and uniform system of school books throughout the county, for which service he shall receive three dollars for each school visited, and the same mileage for going

to and returning from said school that sheriffs receive in the county in which they reside, to be paid out of the county treasury of said county.

SEC. 8. It shall be the duty of the superintendent to receive the district reports hereinafter provided for, and keep them on file in his office, and he shall, on or before the first day of January of each year, make out from the district reports a statement of the number of scholars in the county, the number of school libraries, the number of school houses, the number of districts, in how many districts the school has been kept the past year, what school books are principally used, what proportion of all the scholars in the county have attended school for the past year, and the amount of money paid to teachers. This statement, together with such other information and suggestions as he may deem important to the cause of education, he shall file in his office, and may, if convenient, publish it in some newspaper in this Territory.

SEC. 9. It shall be the duty of the superintendents, on or before the first Monday of January and July of each year, to make an apportionment of the school fund in the county treasury, among the several school districts in their respective counties, in proportion to the number of persons in the district over the age of four and under twenty-one years, and certify the amount due each district, which shall be drawn as hereinafter directed, and shall forthwith notify the clerks of the school districts of the amount due their respective districts.

SEC. 10. When the district shall have complied with the law as hereinafter directed, it shall be the duty of the superintendent to issue orders on the county treasury in favor of the clerks of the districts for the amount of the school fund appropriated to each, on the presentation of which order the treasurer of the county shall pay over to the clerks of the districts all moneys due their respective districts, and the clerks shall endorse on said order a receipt for so much as shall be paid thereon, and they shall also sign a duplicate receipt which shall be deposited

with the superintendent, who shall credit the treasury of the county therewith and charge the same to the proper district.

SEC. 11. The said superintendent shall be allowed out of the county treasury, in compensation for his services, the sum of twenty-five dollars a year. The county commissioners may, in their discretion, if they think the services rendered demand it, increase his salary to any sum not exceeding five hundred dollars a year; but in all cases where the salary exceeds the sum of twenty-five dollars, one-half of the excess shall be paid out of the school fund: *Provided, also,* That a proper allowance shall be made in addition thereto, for necessary books and stationery, and for the preparing of the map required by section 3.

SEC. 12. The school superintendent of each county shall, in all cases, be a qualified teacher of any school within the county for which he is elected.

CHAPTER IV.

SEC. 1. A school meeting may be called at any time for the purpose of organizing a new district, as provided in section four, chapter two. No number less than five legal voters shall constitute a quorum to do business in any district meeting.

SEC. 2. Such school meeting shall have power to do all necessary business the same as the regular school meeting would have.

SEC. 3. Such meeting, when assembled, shall organize by the appointment of a chairman and secretary. It shall then proceed by ballot to elect three directors; of those so elected, the person having the highest number of votes shall hold his office for the term of three years, and the person having the next highest number shall hold his office for two years, and the person next highest, one year, and each shall continue in office until his successor is elected and qualified. In case two or more persons

of those so elected receive an equal number of votes, the duration of their term of office shall be determined by lot in the presence of the chairman and secretary.

SEC. 4. The term of office of a director not elected at the regular annual meeting, shall continue for the term of one, two or three years as he may have been elected, from the next annual school meeting, unless such director shall be elected to fill a vacancy, in which case he shall continue in office for the unexpired term, so that at every annual school meeting after the first, there shall be elected one school director for the term of three years.

SEC. 5. The directors shall qualify within ten days after their election, by taking an oath or affirmation faithfully to discharge the duties of the office to the best of their abilities, and to promote the interests of education within their district. This oath shall be in writing and filed with the clerk of the district.

SEC. 6. It shall be the duty of the directors of every school district:

1. To call special meetings of the district whenever they shall deem it necessary, and when a vacancy occurs by death, resignation or otherwise, the directors shall call a special meeting of the district to fill such vacancy.

2. To make out a tax list for their district whenever an assessment has been made, containing the names of all persons liable to pay taxes in the district, and the amount payable by each inhabitant, set opposite his or her name.

3. To annex to such tax list a warrant directed to the clerk of the district, for the collection of the sums in such list mentioned, including such per centage for fees of clerk as they may deem just, not exceeding five per cent.

4. To purchase or lease a site for the district school house, as designated by a meeting of the district, and to build, hire or purchase, keep in repair and furnish such school house with necessary fuel and appendages, and such privies and outhouses as decency requires, out of the funds collected and paid to the clerk

for such purposes, and to have the custody and safe keeping of the district school house.

5. To contract with and employ teachers; and they shall require a teacher to get a certificate from under the hands of the Territorial or county superintendent. No engagement with a teacher shall be valid so as to entitle any district to draw their apportionment of public money, unless such examination has been previously made.

6. To give orders to the teachers on the district clerk for their wages.

7. To discharge any school teacher for neglect of duty or any cause that, in their opinion, renders his or her service unprofitable as a teacher, by first paying him or her for what time he or she may have been teaching.

SEC. 7. Any two of said directors shall constitute a quorum to do business.

SEC. 8. It shall be the duty of the directors to visit and examine the school or schools of their respective districts, at least twice in each term. They shall endeavor, in connection with the county superintendent, to procure the introduction of a good, uniform system of school books in their district.

CLERKS.

SEC. 9. The first annual school meeting shall also elect a district clerk, who shall continue in office for the term of three years. He shall qualify within ten days after his election, in the same manner as the directors, and give a bond to the district directors in such sum as they may require, that he shall well and truly perform the duties of his office, and pay over all moneys coming into his hands by virtue of his office as by law directed. If a clerk be elected to fill a vacancy he shall continue in office for the unexpired term, and if elected at the first meeting, not being the regular annual meeting, he shall continue in office three years from the next annual meeting.

SEC. 10. It shall be the duty of the clerk of the district

1. To record the proceedings of his district in a book to be provided for that purpose by the district.
2. To give notice of annual or special meetings.
3. To procure a list of all residents in the district between the ages of four and twenty-one years.
4. To give due notice, at least ten days before any tax that may be assessed shall be collected, by written or printed notices in three of the most public places in the district.
5. To collect all district taxes which shall be required by the warrant from the directors to collect, within the time limited in each warrant for its return, and he shall have the same authority as the county collector to enforce the collection of such tax, and he shall be allowed for collecting, such per centage as the directors may deem proper.
6. To retain a copy of all reports made to the county superintendent relating to the affairs of the district.

SEC. 11. It shall be the duty of the clerk to furnish the county superintendent, within ten days after the first Friday in November of each year, a report containing the number and names of persons in his district over four and under twenty-one years of age, how long a school has been kept in his district by a qualified teacher during the past year, what school books are principally used, what proportion of the scholars in the district have attended school, and the amount of money paid to teachers or otherwise expended.

SEC. 12. The clerk of each district shall, at the close of each year of his office, make out in writing a just and true account of all moneys received by him for the use of the district, and the manner in which the same shall have been expended, which account shall be read at the annual district meeting. The clerk shall pay over all moneys remaining in his hands belonging to the district to his successor, when his successor has legally qualified, and upon refusal so to do the directors shall forthwith bring suit upon his bond.

SEC. 13. District clerks shall be treasurers of their respective districts.

SEC. 14. All moneys coming into the hands of the district clerk shall remain in the hands of the clerk or clerks, subject to the order of the directors, and shall not be paid out in any other way.

TEACHERS.

SEC. 15. It shall be the duty of every teacher of a common school to procure a certificate of qualification and good moral character, before entering on the duties of a teacher. It shall be his or her duty to keep a register of the children attending school, their age and the time when they began, the time they continue and of their daily attendance, and with the same, he or she shall give a list of the text books principally used in his or her school, and said register and list of books shall be in duplicate and filed with the clerk of the district at the close of every term, properly certified to by the teacher, the one copy for the use of the clerk and the other shall, by the clerk, be furnished to the county superintendent with his annual report.

SEC. 16. No books or publication of a sectarian or denominational character shall be used in any district or public school, neither shall any sectarian or denominational doctrine be taught therein, and any school district, the officers of which shall knowingly allow any school to be taught in violation of this section, such officer or officers assenting to the same, shall be liable to a fine of one hundred dollars to be paid into the common school fund of the county.

SEC. 17. Seventy-two days of school actually taught shall constitute a quarter.

CHAPTER V.

MISCELLANEOUS PROVISIONS.

SEC. 1. The minutes of the first school meeting shall be signed by the chairman and secretary, and delivered to the clerk of the district, who shall file the same in his office.

SEC. 2. In all school meetings the director whose term of office shall first expire, shall act as chairman, and the clerk of the district shall act as secretary.

SEC. 3. Districts shall have the power to repeal, alter or modify their proceedings from time to time as occasion may require.

SEC. 4. District meetings, legally called, shall have power to levy a tax upon the property of the district for any purpose whatever, connected with and for the benefit of schools and promotion of education in the district.

SEC. 5. Any new district failing to organize and report to the county superintendent the number of children over four and under twenty-one years of age in said district, within ten days after the first Friday in November, or any district having been organized for the term of one year or more, failing to report to the county superintendent as required in section eleven of the chapter entitled "clerks" in this act, shall not be entitled to any portion of the county school fund for the year: *Provided*, That if the clerk of any school district shall fail to make such report according to law, the superintendent shall notify directors and they may make the report within twenty days after the time required by law, and the county superintendent shall receive the same as if made by the clerk.

SEC. 6. No district, except those organized less than one year, shall be allowed to draw its apportioned county school fund from the treasury until it shall satisfy the county superintendent that a school has been kept in the district by a qualified teacher for at least three months, except as hereinafter provided.

SEC. 7. When the clerk of any school district shall satisfy the county superintendent that any amount has been raised in his district for the support of teachers or building school houses, and that a school has actually been kept by a qualified teacher, as provided for in the preceding section, the superintendent shall issue an order on the county treasurer, in favor of the clerk of

such district, for its apportionment of county school funds in the treasury to the credit of such district.

SEC. 8. Any district failing to comply with the provisions of the two preceding sections for the term of one year after any apportionment, shall forfeit its apportionment, and the amount thereof shall be again added to the county school fund and divided again among all the districts.

SEC. 9. Districts having less than fifteen scholars between the ages of four and twenty-one years, and which, in the opinion of the directors are not able to support a school, shall be excepted from the requirements of the three preceding sections, and may, by organizing and reporting to the superintendent according to law, draw their proportion of the school money without being required to comply with the provisions of the school law any further than the said organization and report is concerned; and in such districts, three legal voters shall constitute a quorum to do business, and it shall be the duty of the clerk of such districts to let out all county school funds so received, at interest, for the use of the district, on good security, until such time as it may be required for school purposes in said district. The clerk of the district and his securities shall also be responsible for such money: *Provided*, That if the term of three years shall elapse before such weak district shall have at least three months school, such districts shall not be entitled to any apportionment of the county school funds after the expiration of the said three years, until they shall have complied with the law in the same manner as regularly organized districts are required to do.

SEC. 10. When a district is organized, it shall be to all intents and purposes a body corporate, capable of suing and being sued, and fully competent to transact all business appertaining to schools or school houses in their own district; and it shall be the duty of the directors to prosecute or defend any demand for or against their district, and notice shall be served upon one of the directors of any suit brought against the district.

SEC. 11. The directors of any school district may permit

scholars who are not residents, to attend school in their district with or without charge, as they may deem proper.

SEC. 12. Any persons desirous of sending any scholar or scholars out of their district to any other school, may do so by first getting a permit in writing from the directors in the district where they reside, and such scholar or scholars so sent to school out of their district, shall be entitled to their equal proportion of the public school fund belonging to their district: *Provided*, That such parent or guardian shall get a certificate from the teacher where such child or children have attended school, showing the number of days of attendance, with the price of such schooling, but in no case shall a parent or guardian draw more money than will be sufficient to pay the schooling of such scholar during their attendance out of their school district.

SEC. 13. Upon the presentation of such certificate to the clerk of the district in which such scholar or scholars reside, the clerk shall pay to such parents or guardian the apportionment due them out of the funds belonging to said district, taking their receipt for the same, which receipt shall be endorsed on said certificates, showing the amount actually received, and signed by the party receiving the money, and said certificate, so endorsed, shall be a sufficient voucher to the credit of the clerk in making his settlement with the directors or in paying over to his successor the fund belonging to said district.

SEC. 14. When the clerk of any such school district shall have failed to draw from the county treasury the apportionment for said district, either by reason of not complying with the requirements of section seven of this chapter, or otherwise, then the certificate shall be presented to the county superintendent who shall issue an order on the county treasurer in favor of the person or persons entitled to receive the same, and a receipt in due form shall be given to the treasurer for the amount paid, the duplicate of which shall be endorsed on the certificate in the hands of the superintendent, who shall credit the treasury of the county therewith and charge the same to the proper district

in the same manner as when paid to the clerk according to section ten, chapter two.

SEC. 15. Any scholar having thus received his or her portion of school money, cannot be entitled to any further benefit out of the fund of said district in case of a school being taught therein, until after the next annual apportionment is made.

SEC. 16. In all cases when a tax is to be levied, it shall be stated in the notice given of the meeting for what purpose or purposes the tax is to be levied.

SEC. 17. If a district meeting be held and levy a tax on all the taxable property in the district, the property of non-residents shall be assessed in equal proportion with the rest by the directors of the district.

SEC. 18. The directors may add such per centum, not exceeding five, as they may deem requisite, to remunerate the clerk for his services as collector, but the amount shall be specified and added as a separate item in the schedule or account of taxes so levied or assessed, and when any person shall pay the same within ten days after the notice of such tax is made public by the clerk, in accordance with the fourth clause of section ten, of chapter three, the per centage shall be deducted, but in all other cases it shall be collected.

SEC. 19. There shall be an annual meeting held in each district upon the first Friday in November, and notice of all annual or special meetings shall be in writing, signed by the directors or the clerk of the district, and shall state the object for which the meeting is called, and shall be posted up in three public places in the district at least ten days previous to holding such meeting.

SEC. 20. Every inhabitant over the age of twenty-one years who shall have resided in any school district for three months immediately preceding any district meeting, or who shall have paid or be liable to pay any tax except road tax in said district, shall be a legal voter at any school meeting, and no other person shall be allowed to vote, and in the selection of a site for a

school house, for raising a tax, no person shall be allowed to vote except persons liable to pay a school tax.

SEC. 21. Any school meeting shall have power to adjourn from day to day as occasion may require.

SEC. 22. A school meeting, legally called, shall have power by a vote of a majority present, to levy a tax on all taxable property within the district.

SEC. 23. The tax payers may, with the consent of the directors of their district, perform by labor their portion of taxation for the erection of school houses and shall be so returned by the clerk of said district.

SEC. 24. No person shall be disqualified for the office of county superintendent, district director or clerk, on account of holding any other office within the Territory at the same time.

SEC. 25. It shall be the duty of the directors to appoint a suitable person for librarian when the district shall have procured a library.

SEC. 26. School superintendents, directors and clerks shall be competent to administer oaths or affirmations in any case occurring under the provisions of this act.

SEC. 27. Where, in any county, any of the moneys mentioned in chapter two, section three of this act, are by existing laws set apart to any other fund or for any other purpose, this act shall not be so construed as to affect the disposition of said funds so set apart.

SEC. 28. Failure of a clerk to make out his report in proper time shall not work a forfeiture of the apportionment to his district, if the report shall reach the superintendent before he apportions the fund.

SEC. 29. No order of the superintendent shall be drawn upon the county treasurer in favor of any district which fails to have or keep up its organization, and any district having been for three years recognized as an organized district by the inhabitants of the same and by the superintendent, shall, so long as it complies with the forms of law, be to all intents, for the purposes of this act, a legal district.

SEC. 30. Any person or persons asking any action of the superintendent which shall affect the boundaries of any district, shall notify the clerk of said district, in writing, of his intention to ask for the same, stating what action is or will be asked, and the time (not less than ten days) when the same will be heard, and shall file a certified copy of the said writing with the superintendent.

SEC. 31. When satisfied such notice has been given, the superintendent shall proceed to examine the case, unless for good cause further time is asked by either party, or in the absence of either party he may consider substantial justice cannot be done, in which case he must set some future time for its consideration.

CHAPTER VI.

SEC. 1. All guardians, parents and other persons in this Territory having, or who may hereafter have, the immediate custody of any child or children between the ages of eight and sixteen years, shall send the same to school at least three months in each year said child or children may remain under their supervision: *Provided*, That if the person or persons having the custody of said child or children shall not be able to pay for its or their education as provided in this section, and shall satisfy the school directors of that fact, such child or children shall be admitted free of cost.

SEC. 2. All time lost to any child or children in consequence of a school not being taught the required length of time, or from any other good reason, shall be made up the ensuing year or so soon as such disability is removed and a school is taught a sufficient time in their district to allow of such amend.

SEC. 3. In all cases where any person or persons having the custody of any child or children, shall fail to send said child or children to school the required length of time, provided that an

opportunity has offered and no good reason can be shown for the failure, then said person or persons shall pay to the school clerk of his or their school districts, on the presentation of a warrant from the school directors, the sum of one hundred dollars, to be collected the same as any special school tax, and to be incorporated into the school fund and used for school purposes in said school district; but the county commissioners shall have power to remit fines arising by virtue of this act when in their opinion justice demands a remission.

SEC. 4. All acts and parts of acts in any manner conflicting with any of the provisions of this act, be and the same are hereby repealed.

SEC. 5. This act to take effect from and after the first day of January, A. D. 1872.

Passed the House of Representatives November 22, 1871.

J. J. H. VAN BOKKELEN,

Speaker of the House of Representatives.

Passed the Council November 28, 1871.

H. A. SMITH,

President of the Council.

Approved November 29, 1871.

EDWARD S. SALOMON,

Governor of Washington Territory.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT IN RELATION TO ROADS, FERRIES, BRIDGES AND TRAVEL ON PUBLIC HIGHWAYS," APPROVED DECEMBER 2, 1869.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section fifteen of the act to which this is amendatory, be amended to read as follows:

Tab 3

L A W S

OF THE

TERRITORY OF WASHINGTON

ENACTED BY THE

LEGISLATIVE ASSEMBLY,

IN THE YEAR 1877.

Published by Authority.

OLYMPIA:

C. B. BAGLEY, PUBLIC PRINTER.

1877.

by paying to the owner of the tract upon which said dike is constructed one-half of the cost and expense of the construction thereof, and any person as [so] adopting the dike or ditch of another without contributing his half share of the cost or expense thereof shall be liable for his said half share, which may be recovered in a civil action in any court of competent jurisdiction, or the owner of the dike or ditch as [so] used, may secure a lien upon the tract of land bounded by said dike for the amount due for the use of said dike in accordance with the provisions of the law securing a lien to materialmen and mechanics: *Provided always*, That when such dike has become the common boundary of two adjacent tracts, it shall be and remain the common boundary, and the persons owning the said tracts shall be mutually liable for the expense of keeping it in repair, share and share alike.

SECTION 3. This act to take effect from and after its passage.

Approved, November 9th, 1877.

AN ACT

TO PROVIDE A SYSTEM OF COMMON SCHOOLS.

TITLE I.

SUPERINTENDENT OF COMMON SCHOOLS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That a superintendent of public instruction shall be appointed by the governor, by and with the advice and consent of the Legislative Council, and shall enter upon the duties of his office on or before the twentieth day after his appointment, and shall hold his office for the term of two years, or until his successor is appointed and qualified, and shall execute a bond in the penal sum of two thousand dollars, with two good and sufficient sureties, to be approved by the secretary of the Territory, conditioned upon the faithful discharge of his or her official duties.

SECTION 2. The superintendent shall have general supervision of public instruction, especially of the county and dis-

trict school officers and the public schools of the Territory, and shall report to the governor biennially, on or before the first day of October of the years in which the regular sessions of the Legislature are held. The governor shall transmit said report to the Legislature, and whenever it is ordered printed, a sufficient number of copies shall be delivered to the superintendent of public instruction to furnish two copies to be deposited in the Territorial library, and one copy to each county superintendent of common schools, to be held by him as public property, and delivered to his successor in office, and one copy to each local school officer within the Territory. Said report shall contain a statement of the condition of the Territorial university and public schools in the Territory, full statistical tables, by counties, showing among other statistics the number of school children in the Territory, the number attending public schools and the average attendance; the number attending private schools, the amount raised by county and district taxes or from other sources of revenue for school purposes, the amount expended for salaries of teachers and for building and furnishing school houses, and the statement of the plans for the management and improvement of schools.

SECTION 3. The superintendent of public instruction shall superintend the printing and transmitting of such blanks, forms, rules and regulations for the use and government of the public schools, school officers and teachers as the board of education may authorize.

SECTION 4. It shall be the duty of the superintendent of public instruction to travel in the different counties of the Territory where common schools are taught, so far as possible without neglecting his other official duties as superintendent of public instruction, during at least three months in each year, for the purpose of visiting schools, of consulting with county superintendents and addressing public assemblies on subjects pertaining to public schools.

SECTION 5. The superintendent of public instruction shall keep his office at some place where there is a post-office, and he shall receive a salary of six hundred dollars per annum, which shall be paid quarterly out of the Territorial treasury. He shall also submit, quarterly, a statement of expenditures for traveling expenses, stationery, postage and other necessary expenses connected with his office, which shall be audited by the Territorial auditor, who shall issue a warrant on the Territorial treasurer for the payment of such amounts as shall be found to have been properly incurred: *Provided*, That said expenditures shall not exceed three hundred dollars in any one year.

SECTION 6. The superintendent of public instruction shall, at least once a year, hold a Territorial teacher's institute, over

which he shall preside, at such time and place as may be determined upon, either by the institute or Territorial board of education, and he shall, so far as practicable, aid in establishing county institutes.

SECTION 7. The superintendent of public instruction shall be *ex-officio* President of the board of education.

SECTION 8. Before entering upon the discharge of the duties of his office the superintendent shall subscribe, before an officer duly authorized to administer oaths, the following:

I do solemnly swear (or affirm) that I will support the Constitution of the United States, the Organic Act of the Territory, and that I will faithfully discharge the duties of the office of Territorial superintendent of schools, according to law and the best of my knowledge and ability; so help me God.

Subscribed and sworn before me this——day of——
A. D. 187—.

Which being duly attested, shall be filed with the secretary of the Territory.

SECTION 9. The superintendent shall, at the expiration of his term of office, deliver over, on demand, to his successor, all property, books, documents, maps, records, reports and other papers belonging to his office, or which may have been received by him for the use of his office.

TITLE II.

BOARD OF EDUCATION.

SECTION 10. The governor shall appoint, by and with the advice and consent of the Legislative Council, one suitable person from each judicial district, who, together with the Territorial superintendent, shall constitute the Territorial board of education, who shall hold their offices for two years. They shall be notified of their appointment in the same manner as may be prescribed by law for giving notice to other Territorial officers, and within twenty days after receiving such notice, shall qualify by taking a similar oath to that which is required by this act to be administered to the superintendent of public instruction. They shall serve until their successors are appointed and qualified.

SECTION 11. The meetings of the board shall be held annually, at Olympia, on the first Monday of April.

SECTION 12. Said board shall have power:

First. To adopt a uniform series of text-books throughout the Territory whenever they can secure the exchange of the books now in use for new ones, without cost or expense to the people, and the series of text-books so adopted shall not be changed until the expiration of five years from their adoption, unless the publishers of such books shall, after such adoption, cause the prices thereof to be increased above the prices charged by other publishers for books of corresponding grades, or shall thereafter publish the books of the series adopted of an inferior quality, either in material, workmanship, or otherwise. Said board shall, before adopting any series of text-books, give notice that they will examine all text-books submitted to them, and said examination shall be by a public discussion of the merits of said books, in open board; and the series of books exhibiting the highest merit, shall be adopted as the series to be used in all the schools in this Territory, and notice of the time when such competition shall take place, shall be published in one paper of general circulation in each judicial district, for a period of six weeks prior to the date when such public competition shall occur.

Second. To prescribe rules for the general government of the public schools that shall secure regularity of attendance, prevent truancy, secure efficiency and promote the true interests of the schools; they shall prepare or cause to be prepared, blank forms for reports of teachers, directors, county superintendents and for other necessary purposes. The board shall have the general supervision of the Territorial Normal School whenever the same shall be established by law.

Third. To use a common seal.

Fourth. To order all printing that may be necessary to carry into effect the provisions of this act.

Fifth. To sit as a board of examination at their semi-annual meetings and grant Territorial certificates. A Territorial certificate shall entitle the holder to teach in any public school for the period of three years, subject to be revoked for cause. The fees charged for Territorial certificates shall be six dollars. The fees collected shall constitute a fund for paying the expenses of the board of education. The board of education may, at their discretion, grant, without examination, certificates to persons presenting authenticated diplomas, or certificates from other States, of the like grade and kind as those granted by the board of education for the Territory: *Provided*, They have been actually engaged in teaching, three years.

SECTION 13. It shall be the duty of the board of education to prepare, semi-annually, a uniform series of questions to be used by the county boards of examination in the examination of teachers.

SECTION 14. All certificates granted by the board of education may be revoked for immoral or unprofessional conduct.

SECTION 15. All needed stationery for the use of, and any printing authorized by the board, as well as all necessary traveling expenses of the members of the board incurred in going to or returning from the place of meeting, shall be paid out of the Territorial treasury, the accounts for the same to be presented by direction of the board, duly certified by the Territorial superintendent to the Territorial auditor, to be first audited and allowed by him and then certified to the Territorial treasurer for payment: *Provided*, The expenses of the whole board shall not exceed the sum of two hundred dollars.

SECTION 16. Whenever any vacancy in the board shall occur, whether by death, removal, resignation or otherwise, the governor shall fill the vacancy by appointment.

TITLE III.

COUNTY SUPERINTENDENT.

SECTION 17. A county superintendent of common schools shall be elected in each county of the Territory at the general election preceding the expiration of the term of office of the present incumbent, and every two years thereafter, who shall take the office on the first Monday in January next succeeding his election, and hold for two years, or until his successor is elected and qualified. He shall take the oath or affirmation of office, and shall give an official bond to the county in a sum to be fixed by the board of county commissioners of said county. The county commissioners of each county shall fill any vacancy that may occur in the office of county superintendent until the next general election.

SECTION 18. The county superintendent shall, on or before the first Monday in September of each year, apportion all school moneys to the school districts in accordance with the provisions of this act. He shall certify to the several district clerks and to the county treasurer the amounts so apportioned to the several districts and the directors shall draw their warrants on the county treasurer in favor of persons entitled to receive the same. Such warrants shall show for what purpose the money is required, and no warrant shall be drawn unless there is money in the treasury to the credit of such district.

SECTION 19. County superintendents shall have the power and it shall be their duty.

First, To visit each school in his county at least once a year.

Second, To distribute, promptly, all reports, laws, forms, circulars and instructions which he may receive for the use of the schools and teachers from the superintendent of public instruction.

Third, To report to the superintendent of public instruction, annually, during the month of September, for the school year ending August thirty-first next receding[preceding,] such statistics as may be required of him.

Fourth, To enforce the course of study adopted by the board of education.

Fifth, To enforce the rules and regulations required in the examination of teachers.

Sixth, To keep on file and preserve in his office the biennial report of the superintendent of public instruction.

Seventh, To keep in a good and well bound book, to be furnished by the county commissioners, a record of his official acts.

Eighth, To carefully preserve all reports of school officers and teachers, and at the close of his term of office, deliver to his successor, all records, books, documents and papers belonging to the office, taking a receipt for the same, which shall be filed in the office of the county auditor.

SECTION 20. If the county superintendent fails to make a full and correct report to the superintendent of public instruction, of all statements required to be made by law, he shall forfeit the sum of one hundred dollars from his salary, and the board of county commissioners are hereby authorized and required to deduct therefrom the sum aforesaid, upon information from the superintendent of public instruction that such reports have not been made.

SECTION 21. The county superintendent shall have power to administer oaths and affirmations to school directors, collectors, teachers and other persons, in all official matters connected with or relating to schools, but shall not make or collect any charge or fee for so doing.

SECTION 22. The county superintendent shall have the power, and it shall be his duty, to appoint directors and district clerk for any district which, from any cause, fails to elect at the regular time; to appoint directors and district clerk to fill vacancies, to appoint directors and district clerk for any new district: *Provided however*, That when a new district is organized, such of the directors and district clerks of the old district as

reside within the limits of the new one, shall be directors and district clerk of the new one, and the vacancies in the old district shall be filled by appointment; that the county superintendent shall have power to call a school meeting at the request of a majority of the legal voters, when in his opinion the interests of education require it: *Provided*, That said request for such school meeting be first laid before the directors of the district, and action thereon be refused by them.

SECTION 23. It shall be the duty of the county superintendent to inquire and ascertain whether the boundaries of school districts in his county are definitely and plainly described in the records of the county commissioners, and if such boundaries are not plainly described on such records, then it shall be his duty to furnish to said board of county commissioners accurate boundaries of all school districts, and he shall keep in his office a full and correct transcript of such boundaries. In case the boundaries of districts are conflicting or incorrectly described, he shall change, harmonize and describe them, and make a report of such actions to the county commissioners, and on being ratified by the county commissioners, the boundaries and descriptions so made shall be legal boundaries and descriptions of the district [districts] of the county. The county superintendent shall furnish the district clerks with descriptions of the boundaries of their respective districts.

SECTION 24. Every county school superintendent shall receive a salary of forty dollars per annum and when the number of scholars shall exceed five hundred (500) then he shall receive the sum of three dollars for each additional one hundred, and five dollars for each school visited during the year, together with the same mileage for going to and returning from said school that sheriffs receive in the county in which they reside, all to be paid quarterly out of the general treasury of said county in the same manner as the salaries of other county officers, upon his certifying to the county commissioners that he has actually discharged the duties required of him.

SECTION 25. Each county superintendent shall call to his assistance two persons holding the highest grade certificates in his county, and such persons with the county superintendent, shall constitute a board of examination for the examination of teachers. It shall be the duty of the county board of examination to be at the county seat on the first Wednesday of May and November for the purpose of examining teachers; the superintendent shall give ten days notice of the same by posting up hand bills or otherwise; the superintendent shall also at such time and place transact such other business as properly appertains to his office. And any person or district applying on different days for the transaction of such business shall pay

the superintendent a reasonable compensation for his trouble, not exceeding the sum of two dollars. A proper allowance shall be made out of the county treasury for the necessary books, stationery and postage of the county superintendent's office.

SECTION (Twenty) 26. There shall be three grades of county certificates, first, second and third. Unless revoked for cause, a first grade certificate shall entitle the holder to teach for three years; second grade for two years and third grade for one year. Those holding first grade county certificates, and who shall have been actually engaged in teaching for three years, shall be eligible to examination for first grade Territorial certificates: *Provided*, That the county superintendent may grant permits to such persons who may desire to teach in his county, who were not residents of the county, or who were unavoidably absent from the meeting of the county board of examination, and all permits so granted shall be good until the next meeting of the board.

TITLE IV.

SCHOOL DISTRICTS.

SECTION 27. For the purpose of organizing a new district, or for the subdivision of, or change in the boundaries of an old one, except as provided in section twenty-three, at least five heads of families must present a petition to the county superintendent, setting forth the boundaries of the new district asked for, or the change of the boundaries desired, with the reason for the same. The county superintendent shall, after giving due notice to all parties interested, transmit the petition to the board of county commissioners, with his approval or disapproval, and such changes in the boundaries as he may deem necessary or advisable. The commissioners shall establish the district as approved by the county superintendent: *Provided*, That by vote of the board they may establish the district in accordance with the original prayer of the petition, or such other modification as they may choose to make, or may reject it. In any case of alleged hardship, any head of a family, parent or guardian may make a statement of the facts to the board of commissioners, and if, in the judgment of the board, good cause be shown for such transfer, he may be transferred to another district.

SECTION 28. No new district formed by the subdivision of an old one shall be entitled to any share of the public money belonging to the old district until a school has been actually commenced in such new district; and unless within eight months from the action of the county commissioners a school is opened, the action making a new district shall be void, and all elections or appointments of directors made in consequence of such action, and all rights and office of the parties so elected or appointed, shall cease and determine; and all taxes which may have been levied in such old district, shall be valid and binding upon the real and personal property of the new district, and shall be collected and paid into the school fund of the district.

SECTION 29. When a new district is formed by the division of an old one, it shall be entitled to a just share of the school moneys to the credit of the old district, after the payment of all outstanding debts at the time when school was actually commenced in such new district, and the county superintendent shall divide and apportion such remaining moneys, and such as may afterwards be apportioned to the old district according to the number of census children resident in each district for which purpose he may order a census to be taken.

SECTION 30. Whenever a district is formed lying in two adjoining counties, the clerk of the district shall report to each county superintendent the number of children in the district residing in his county. In the same manner the directors and teachers shall make a distinct and separate report of all school statistics, and a teacher's certificate granted by the county superintendent of one county shall be valid for both.

SECTION 31. No school district shall be entitled to receive any apportionment of county school moneys unless the teachers employed in the schools of such district shall hold legal certificates of fitness for the occupation of teaching, in full force and effect.

SECTION 32. No school district shall be entitled to receive any apportionment of county school moneys which shall not have maintained public school for at least three months during the preceding year: *Provided*, That any new district formed by the division of an old one, shall be entitled to its just share of school moneys where the time that school was maintained in the old district before division, and in the new one after division shall be equal to at least three months.

SECTION 33. Districts having less than fifteen scholars between the ages of four and twenty-one years, shall be exempted from the requirements of the preceding section, and may, by organizing and reporting to the superintendent according to law, draw their school money without being required to comply

with the provisions of the school law any further than the said organization, necessary report and regular enumeration of children are concerned; and in such district, two legal voters shall constitute a quorum to do business: *Provided*, That no warrant shall be drawn on the county treasurer for any money except for the payment of teachers, and if no school be kept in any such district during the period of two years, for at least three months, the money so apportioned to the district shall revert to the general school fund of the county.

TITLE V.

SCHOOL DIRECTORS.

SECTION 34. The board of directors of each school district shall have custody of all school property belonging to the district and shall have power in the name of the district, or in their own names, as directors of the district, to convey by deed all the interest of their district in or to any school house or lot directed to be sold by vote of the district, and all conveyances of real estate made to the district, or to the directors thereof, shall be made to the board of directors of the district and to their successors in office; said board in the name of the district, shall have power to transact all business necessary for maintaining schools and protecting the rights of the district.

SECTION 35. An annual school meeting for the election of school directors and district clerk shall be held in each district on the first Saturday in November of each year at the district school house if there be one, and if there be none, at a place to be designated by the board of directors. The directors shall post written or printed notices thereof, specifying the day, time, and place of meeting, in at least three public places in the district, one of which shall be the school house or other place of meeting at least six days previous to the time of meeting. All elections shall be by ballot and the directors shall have power to determine the hours in which the ballot box shall be kept open, having given due notice thereof in the posted notices of election. Every inhabitant male or female, over the age of twenty-one years, who shall have resided in the school district for three months immediately preceding any district meeting and who shall have paid or be liable to pay any tax except poll or road tax in said district, shall be a legal voter

at any school meeting and no other person shall be allowed to vote. Any person offering to vote may be challenged by any legally qualified elector of the district and the chairman of the board of directors shall thereupon administer to the person challenged an oath, in substance as follow: You do swear (or affirm) that you are a citizen of the United States or have declared your intention to become such; that you are twenty-one years of age, according to the best of your information and belief that you have resided in this district ninety days next preceding this election and that you are a taxable resident of this school district, exclusive of road or poll tax and that you have not before voted this day. If he shall refuse to take the oath his vote shall be rejected and any person guilty of illegal voting shall be punished as provided in the general election law of this Territory. The directors shall be the judges and inspectors of the election, and if they are not present at the time of opening the polls, then the electors present may appoint the officers of the election. A poll and tally list shall be kept by the clerk of the board of directors and with the exceptions mentioned in this section the election shall be conducted as far as practicable in the form and manner of the general election. Any one of the old directors shall have power to administer to any director elect, the oath of office, and the clerk of the election shall issue the certificate of election to any director elect, who shall forward it with the oath attached or endorsed thereon, to the county superintendent of public schools.

SECTION 36. In all organized districts in which elections have been previously held one, director shall be elected for the term of three years, and if any vacancies are to be filled, a sufficient number to fill them for the unexpired term and the ballot shall specify the respective terms for which each director is to be elected. In new districts acting under directors appointed by the county superintendent three directors shall be elected for one two and three years respectively. Directors elect shall take office immediately after qualifying and shall hold office until their successors are elected and qualified. Any director elect who shall fail to qualify within ten days after being elected, shall forfeit all right to the office, and the county superintendent shall appoint to fill the vacancy.

SECTION 37. Whenever a new district is formed by order of the board of county commissioners, within thirty days thereafter, a special school meeting may be called by notice of any three legal voters of said district, and such meeting shall be conducted in a manner and form prescribed in this act, for the annual school meeting for the election of directors. Such new district shall be considered organized whenever two of the directors shall have qualified, and the record of the district clerk

shall be *prima facie* evidence of the legal organization of the district, and the district shall be designated by number.

SECTION 38. Every board of directors unless otherwise specially provided by law, shall have power and it shall be their duty:

First, To employ and for sufficient cause dismiss, teachers, mechanics, and laborers; and to fix, alter, allow, and order paid their salaries and compensation.

Second, To enforce the rules and general regulations of the Territorial board of education for the government of schools, pupils, and teachers, and to enforce the course of studies adopted by the board of education.

Third, To provide and pay for school furniture and apparatus and such other articles—materials and supplies—as may be necessary for the use of the school or for the use of the school board.

Fourth, To suspend or expel pupils from school, and in cities or towns to exclude from school all pupils under six years of age, when the interest of the school require such exclusion.

Fifth, To rent, repair and furnish school houses.

Sixth, To build or remove school houses, purchase and sell school lots when the directors are directed by a vote of the district so to do.

Seventh, To purchase personal property, and to receive, lease and hold in fee, or in trust for their district any or all real or personal property, for the benefit of the school thereof.

Eighth, To provide books for the indigent children, on the written statement of the teacher that the parents of such children are unable to purchase them.

Ninth, To require all pupils to be furnished with such books as may have been adopted by the Territorial board of education as a condition to membership to the school.

Tenth, To exclude from school and from school libraries, all books, papers, tracts, or catechisms of an infidel, sectarian or partisan character.

Eleventh, To require every teacher to keep a school register.

Twelfth, To require teachers to make an annual report as may be required by the superintendent of public instruction.

Thirteenth, To make an annual report during the month of August of each year for the school year next preceding, to the county superintendent in the manner and form and on the blanks prescribed by the board of education.

Fourteenth, To make a report whenever required, directly

to the Territorial superintendent of public instruction of the text books used in their schools.

SECTION 39. Any board of directors, shall be liable as directors, in the name of the district, for any judgment against the district, for any salary due any teacher, and for any debts legally due, contracted under the provisions of this act and they shall pay such judgment or liability out of the school funds only, to the credit of the district.

SECTION 40. Any board of directors shall have power to make arrangements with the directors of any adjoining district for the attendance of such children in the school of either district as may be best accommodated therein, and to transfer the school money due by apportionment to such children to the district in which they may attend school.

TITLE VI.

SCHOOL CLERKS.

SECTION 41. It shall be the duty of the district clerk to record all proceedings of the annual meetings, or of special school meetings, and to keep accurate and detailed accounts of all receipts and expenditures of school money. At each annual school meeting the district clerk must present his record book for public inspection, and shall make a statement of the financial condition of the district and of the action of the directors; and such record must always be open for public inspection.

SECTION 42. It shall be the duty of the district clerk to take annually between the twentieth and thirtieth of July, of each year, an exact census of all children and youth between the ages of four and twenty-one years of age, residing in the district, and shall specify the number and sex of such children and the names of their parents or guardians. He shall state specifically and separately a census of all children under four years of age, and shall specify the number and sex of such children; but all children who may be absent from home, attending boarding schools or any public or private schools, or seminaries of learning shall not be included by the school district clerk in the census list of the city, town or district where they may be attending such private institutions of learning. He shall make a full report thereof on blanks furnished for that purpose, under oath, to the county superintendent, on or before the first day of August thereafter, and deliver a copy to

the school directors. The directors shall make a reasonable allowance to the clerk of the district for the services rendered by him in accordance with the provisions of this act, and order the same paid out of the district school fund.

SECTION 43. The district clerk of each district shall provide all school supplies authorized by this act, and shall keep the school house in repair, and shall keep an accurate record of all expenses incurred by him on account of the school, which account shall be audited by a majority of the board of directors, and paid out of the district school fund.

SECTION 44. It shall be the duty of every district clerk to report to the county superintendent at the beginning of each term, the name of the teacher and the proposed length of the term.

TITLE VII.

DISTRICT MEETINGS.

SECTION 45. No district school meeting, annual or special, shall be organized before nine o'clock A. M., or close before twelve o'clock M., or be kept open less than one hour, and in all districts where the number of youths and children, between four and twenty-one years of age, equals or exceeds three hundred, the polls shall be kept open from two o'clock P. M. till six o'clock P. M.

TITLE VIII.

TEACHERS.

SECTION 46. Every teacher employed in any public school shall make an annual report to the county superintendent, on or before the first day of September after the close of each school year in the form and manner and on the blanks prescribed by the board of education. A duplicate of said report shall be furnished to the district clerk. Any teacher who shall end any school term before the close of the school year, shall make a report to the county superintendent immediately after the close

of such term; and any teacher who may be teaching any school at the close of the school year shall, in his or her annual report, include all statistics from the school register for the entire school year, notwithstanding any previous report for a part of the year. Teachers shall make such additional reports as may be required, in pursuance of the law, by the board of education. No board of directors shall draw any order or warrant, for the salary of any teacher for the last month of his or her services, until the reports herein required shall have been made and received.

SECTION 47. Every teacher shall keep a school register, in the manner provided therefor, and no board of directors shall draw any warrant for the salary of any teacher for the last month of his or her services in school, at the end of any term or year, until they shall have received a certificate from the district clerk that the said register has been properly kept, the summaries made and statistics entered, or until by personal examination, they shall have satisfied themselves that it has been done. Teachers shall faithfully enforce in school the course of study and the regulations prescribed by law; and if any teacher shall willfully refuse, or neglect to comply with such requisitions, then the board of directors shall be authorized to withhold any warrant for salary due, until such teacher shall comply therewith. No teacher shall be entitled to draw for salary on school moneys unless such teacher shall be employed by a majority of the directors, nor unless the holder of a legal teacher's certificate or permit in full force and effect.

SECTION 48. In every contract whether written or verbal, between any teacher and board of directors, a school month shall be construed to be twenty school days or four weeks of five days each, and no teacher shall be required to teach school on Saturdays, the first day of January, Christmas day, the Fourth of July, or any other legal holiday, and no deduction from the teacher's time or salary shall be made by reason of the fact that a school day happens to be one of the days referred to in this section as a day on which school shall not be taught, [nor shall] any deduction be made from the salary of a teacher during the time he or she is attending the annual county teacher's institute, including time necessarily occupied in traveling, upon production of the certificate of the president of such institute certifying to the number of days of such [attendance.] Any contract made in violation of the provisions this section shall have no force or effect, as against the teacher.

SECTION 49. Every teacher shall have power to hold every pupil to a strict accountability in school, for any disorderly conduct on the way to or from school or on the grounds of the school, or during intermission or recess; to suspend from school

any pupil for good cause, provided that such suspension shall be reported to the directors as soon as practicable, and their decision shall be final, and no teacher shall administer any punishment on or about the head of any scholar.

SECTION 50. It shall be the duty of all teachers to endeavor to impress on the minds of their pupils the principles of morality, truth, justice and patriotism; to teach them to avoid idleness, profanity and falsehood, and to instruct them in the principles of a free government, and to train them up to a true comprehension of the rights, duties and dignity of American citizenship.

TITLE IX.

SCHOOLS.

SECTION 51. Every school, not otherwise provided for by special law, shall be open for the admission of all between the age of five twenty-one years, residing in that school district, and the board of directors shall have power to admit adults and children not residing in the district, whenever good reason exists for such exception.

SECTION 52. All schools shall be taught in the English language, and instruction shall be given in the following branches, viz: reading, writing, orthography, arithmetic, geography, English grammar, physiology and history of the United States, and such other studies as may be authorized by the directors of the district. Attention shall be given during the entire course, to the cultivation of manners, morals, to the laws of health, physical exercises, ventilation and temperature of the school room.

SECTION 53. No books, tracts, papers, catechism or other publications of a partisan, denominational character shall be used or distributed in any school, neither shall any political, sectarian, denominational or infidel doctrine be taught therein; and any teacher who shall violate these provisions shall forfeit his permit or certificate for the period of one year.

SECTION 54. The school day shall be six hours in length exclusive of any intermission at noon, but any board of directors may fix as the school day, a less number of hours than six: *Provided*, That it be not less than four, for any primary school under their charge; and any teacher may dismiss any or all scholars under eight years of age, after an attendance of four

hours a day, exclusive of an intermission at noon. No teacher or scholar shall be allowed to attend school from any house in which smallpox, vari[o]loid or scarlet fever is prevalent. No teacher or scholar shall be permitted to return to school from any house where the above mentioned diseases have prevailed until three weeks shall have elapsed from the beginning of convalescence of the patient. In case several individuals have been affected with such disease within the same house the period of time must be reckoned from the beginning of convalescence of the last case. No teacher or scholar shall be allowed to attend school who is affected with dip[h]theria or measles, or whooping cough.

SECTION 55. All pupils who may attend public schools shall comply with the regulations established, in pursuance of the law, for the government of such schools, shall pursue the required course of study, and shall submit to the authority of the teachers, of such schools. Continued and willful disobedience, and open defiance of authority of the teachers, shall constitute good cause for expulsion from school. Any person who shall in any way cut, deface, or otherwise injure any school house, furniture, fence, or out building thereof, shall be liable to suspension and punishment, and the parents or guardian of such pupil shall be liable for damage on complaint of the teacher or any director.

SECTION 56. The school year shall begin on the first day of September and end on the last day of August.

TITLE X.

SUPPORT OF SCHOOLS.

SECTION 57. The principal of all moneys accruing to the Territory from the sale of any lands, which have been, or which may hereafter be given by the congress of the United States for school purposes, shall constitute an irreducible fund, the interest accruing from which shall be annually divided among all the school districts in the Territory, proportionally to the number of children in each between the ages of four and twenty-one years, for the support of common schools and for no other purpose whatever.

SECTION 58. For the purpose of establishing and maintaining public schools, it shall be the duty of county commissioners of each county to levy an annual tax not less than three

and not more than six mills on the dollar on all taxable property within their respective counties, as shown by the assessment roll made by the county assessor for the same year, and to include the same in their warrant to the collector, and the said collector shall proceed to collect said tax in the same manner as the other taxes are collected, and the said money so collected shall be paid over to the county treasurer, to be drawn in the manner prescribed in this act. It shall not be lawful for any county treasurer to receive county orders in payment of school tax, nor to pay out any school money or [on] county orders. For the support of common schools, there shall be set apart by the county treasurer, all moneys paid into the county treasury arising from fines for a breach of any law regulating license for the sale of intoxicating liquors, or for keeping of bowling alleys, or billiard saloons, or of any penal laws of the Territory. Such moneys shall be forthwith paid into the county treasury by the officer receiving the same, and be added to the yearly school fund raised by tax in each county, and divided in the same manner.

SECTION 59. It shall be the duty of the auditors of the several counties of the Territory to make a report to the county superintendent of common schools within the counties, the first Monday in August of each year, of the school tax levied, and the assessed valuation of their counties for that year, and it shall be the duty of the clerk of the district court at the close of every term thereof, to report to the county superintendent of the county in which said term, shall have been holden, whether or not any fines, and if any, what, with the date at which the same were paid to the county treasurer, and all officers mentioned in this act, who shall fail or neglect to perform any of the duties required by this act, shall be deemed guilty of misdemeanor, and upon conviction before any court having competent jurisdiction, shall be fined in any sum not less than twenty dollars and not more than one hundred dollars for each neglect, and such fine shall be paid into the county treasury for the benefit of common schools in said county.

TITLE XI.

UNION OR GRADED SCHOOLS.

SECTION 60. Whenever the inhabitants of two or more school districts may wish to unite for the purpose of establishing a graded school, in which instruction shall be given in the

higher branches of education, the clerks of the said districts shall upon a written application of five voters of their respective districts, call a meeting of the voters of such districts at some convenient place by posting up written notices, in like manner as provided for calling district meetings, and if a majority of the voters of each [of] such districts shall vote to unite for the purpose herein stated, they shall at that meeting, or at an adjourned meeting, elect three directors and a clerk for such a union district.

SECTION 61. The board of directors provided for in the preceding section shall, in all matters relating to graded schools possess all the power, discharge all the duties, and be governed by the laws herein provided for district directors.

SECTION 62. The union district thus formed shall be entitled to an equitable share of the county school fund, to be drawn from the county treasury in proportion to the number of children attending such graded school for each district.

SECTION 63. The said union district may levy taxes for the purpose of purchasing or furnishing proper buildings for the accommodation of the school, or for the purpose of defraying necessary expenses and paying teachers, but shall be governed in all respects by the law herein provided for levying and collecting district taxes.

SECTION 64. The clerk of the union district shall discharge all the duties of clerk in like manner as a clerk of a common school district, and shall report to the county superintendent the number of scholars attending the graded school, from his district their sex and the branches studied, and the county superintendent shall apportion the amount of school money due the union district.

SECTION 65. Any single district shall possess power to establish graded schools, subject to the provisions of this act, in like manner as two or more districts united.

SECTION 66. The annual meeting of union, or graded, school districts shall be held on the last Saturday of October, at such hour as may be indicated by the board of directors.

TITLE XII.

SCHOOLS IN CITIES OR TOWNS.

SECTION 67. The public schools of any city, town or village which may be regulated by any special law, set forth in

the charter of such city, town or village, shall be entitled to receive their proportion of the public money: *Provided*, That the clerk of the board of education in such city, town or village, shall make due report, within the time and manuer prescribed in this act to the county superintendent.

SECTION 68. Any city, town, village or district reporting more than five hundred (500) children between four and twenty-one years of age shall be, and is required by this act to establish graded schools, under such rules and regulations as may be prescribed by the board of education.

SECTION 69. In any city, town or village containing more than four hundred inhabitants every parent, guardian or other person residing therein having control or charge of any child or children between the ages of eight and sixteen, shall be required to send any such child, or children to public school, for a period of at least six months in each school year, at least six weeks of which shall be consecutive, unless the bodily or mental condition of such child or children has been such as to prevent his or their attendance at school or application to study for the period required, or unless he or they are engaged in labor necessary for their own support, or that of others depending on them, or unless such child or children are taught in a private school, in such branches as are usually taught in primary schools, or have already acquired the ordinary branches of learning taught in the public schools.

TITLE XIII.

SCHOOL OFFICERS.

SECTION 70. When any school officer is superseded by election, or otherwise, he shall immediately deliver to his successor in office, all books, papers, and moneys pertaining to his office, and every such officer who shall refuse to do so, or who shall willfully mutilate or destroy any such books or papers, or any part thereof, or who shall misapply any moneys intrusted to him by virtue of his office, shall be deemed guilty of a misdemeanor and shall be punished by a fine, in the discretion of the court, not to exceed one hundred dollars.

SECTION 71. Every person elected or appointed to any office mentioned in this act shall, before entering upon the discharge of the duties thereof, take an oath to support the constitution of the United States, the organic act of the Territory, and to promote the interests of education and faithfully dis-

charge the duties of his office according to the best of his abilities. In case such officer has a written appointment, or commission, his oath shall be endorsed thereon and sworn to before any officer authorized to administer oaths. School officers are hereby authorized to administer all oaths appertaining to their respective offices without charge or fee.*

SECTION 72. No school director or other school officer shall be directly or indirectly, interested in any contract that may be made by a board of which he is a member, and any contract made in violation of this provision shall be null and void.

SECTION 73. All fines and penalties not otherwise provided for in this act shall be collected by an action in any court of competent jurisdiction, and shall be paid into the county school fund immediately after collection.

SECTION 74. Any parent, guardian, or other person, who shall upbraid, insult, or abuse any teacher in the presence of the school, shall be deemed guilty of a misdemeanor and liable to a fine of not less than ten dollars nor more than one hundred dollars.

SECTION 75. Any person who shall willfully disturb any public school, or any public school meeting shall be deemed guilty of a misdemeanor and liable to a fine of not less than ten nor more than one hundred dollars.

SECTION 76. In case any district clerk shall fail to take the census provided for in this act, at the proper time, and if through such neglect, the district shall fail to receive its apportionment of school moneys, said district clerk shall be individually liable to the district for the full amount so lost, and it may be recovered in a suit brought by any citizen of such district, in the name of and for the benefit of such district.

SECTION 77. All cases of disputes in relation to school matters, not properly belonging to courts of justice may be referred first to the county school superintendent, and appealed to the Territorial superintendent, whose decision shall be final.

TITLE XIV.

TEACHERS' INSTITUTES.

SECTION 78. Each county superintendent of the common schools in this Territory [of any county] containing ten or more

organized districts shall hold annually a teacher's institute at such time as may be agreed upon between him and the Territorial superintendent, and such institute shall continue in session not less than one nor more than five days. He shall give at least ten days' notice of the time and place of holding such institute by publication in some newspaper published in the county. If there be no paper published in the county, then by posting notices in three public places.

SECTION 79. It shall be the duty of all teachers in the county to attend such institute, and participate in the exercises thereof; and all teachers who may have charge of schools at the time of holding the institute shall adjourn their schools for the time during which the institute shall be held.

SECTION 80. Each county superintendent shall have authority to appoint a deputy for the purpose of examining teachers in remote districts.

TITLE XV.

SPECIAL TAXES.

SECTION 81. The board of directors of any district may, when in their judgment it is advisable, submit to the qualified school electors of the district the question whether a tax shall be raised to furnish additional school facilities for said district, or to maintain any school or schools in such district, or for building one or more school houses, or for removing or building additions to one already built, or for the purchase of globes, maps, charts, books of reference and other appliances or apparatus for teaching, or for any or all of these purposes: *Provided*, Such election shall be called by posting notices in three public places in the district for at least twenty days, said meeting to be held on or before the first Monday of July in each year; said notices shall contain the time and place of holding the election, the amount of money proposed to be raised, and the purpose or purposes for which it is intended to be used. The directors shall act as judges to conduct the election, and it shall be in all other respects, as nearly as practicable, in conformity with the general election law. At such elections the ballots shall contain the words "tax, yes" or "tax, no." If the majority of the votes cast are "tax, yes," the officers of the election shall certify the fact to the district clerk, who shall, at once proceed to copy from the last assessment roll of the county

assessor the list of property liable to taxation, situated in or owned by residents of the district, and shall deliver the same to the board of directors, who may allow him a reasonable compensation therefor out of the proceeds of said tax; said compensation not to be more than four dollars per day. The directors shall upon receiving the roll, deduct ten per centum therefrom for anticipated delinquencies, and then dividing the sum voted, together with the estimated cost of assessing and collecting added thereto, by the remainder of the roll, ascertain the rate per cent. required, and the rate so ascertained (using the full per cent. on each one hundred dollars instead of the fraction) shall be, and is hereby, levied and assessed to, on or against the persons or property named or described in said roll, and it shall be a lien on all such property until the tax is paid, and the said tax, if not paid within the time limited by the next section for its payment, shall be recovered by suit in the same manner and with the same costs as delinquent Territorial and county taxes. The directors upon receiving any assessment roll from the district clerk, shall give five days' notice thereof, by posting notices thereof in three public places in the district, and shall sit for at least one day as a board of equalization, at such time and place as shall have been name[d] in said printed notices, and they shall have the same power as county boards of equalization to make any change in said assessment roll: *Provided*, That there shall be but one tax levied in each year, under this section, and that (that) the tax so levied shall not exceed ten mills on the dollar: *Provided further*, That not more than two meetings shall be held in any one year under the provisions of this section.

SECTION 82. As soon as the rate of taxation has been determined, as provided in the last preceding section, the directors shall certify the same to the county auditor, who shall extend the same upon the general assessment roll of the county and certify the same to the county treasurer, who shall proceed to collect the tax in the same manner and at the same time, and with the same power and authority to enforce payment of the same as in the case of county and Territorial taxes. The county treasurer shall place any tax so collected to the credit of the district to which it belongs, and shall receive, as compensation for collecting the same, such sum, not more than two per cent. of the tax collected, as may be allowed by the county commissioners, such compensation to be paid from the amount of said district tax so collected.

SECTION 83. All school moneys apportioned by county superintendents of common schools shall be apportioned to the several districts in proportion to the number of school children between four and twenty-one years of age, as shown by the returns of the district clerk for the preceding year: *Provided*,

That Indian children, who are not living under the guardianship of white persons, or American citizens, shall not be included in the apportionment list, excepting those whose parents have severed their tribal relations or own real estate in the district subject to taxation.

SECTION 84. County school money may be used by the county superintendent and directors for various purposes authorized and provided in this act, and for no other purpose.

TITLE XVI.

COUNTY TREASURER.

SECTION 85. It shall be the duty of the county treasurer of each county,

First. To receive and hold all school moneys, as a special deposit, and to keep a separate account of their disbursement to the school districts which shall be entitled to receive them, according to the apportionment of the county superintendent of common schools.

Second. To notify the county superintendent of common schools of the amount of county school fund in the county treasury whenever required, and to inform said superintendent of the amount of school money belonging to any other fund subject to apportionment.

Third. To pay the amount of the county school tax levied, and such other moneys paid into the school fund on the warrants of the directors whenever such warrants are countersigned by the district clerk, and properly endorsed by the holders.

Fourth. To make, annually, on the first of September of each year, a financial report for the last preceding school and fiscal year ending with August thirty-first, to the county superintendent of common schools in such form as may be required by law.

TITLE XVII.

MISCELLANEOUS.

SECTION 86. Whenever the word he or his occurs in this

act, referring to either superintendents, directors, or teachers, it shall be understood to mean also she or her.

SECTION 87. Any series of text books adopted by the board of education shall remain in use not less than five years.

SECTION 88. Any teacher who shall maltreat or abuse any pupil by administering any undue or severe punishment which shall have an injurious effect upon the health of said pupil, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not exceeding one hundred dollars.

SECTION 89. All applicants for certificates shall be examined in reading, writing, orthography, arithmetic, geography, English grammar, physiology, history of the United States, constitution of the United States, school law of the Territory and theory and practice of teaching.

SECTION 90. This act shall be known as the Washington school law, and no other title or reference shall be necessary.

SECTION 91. All acts and parts of acts upon any subject matter contained in this act, shall be, and the same are hereby repealed.

SECTION 92. This act shall be in force from and after the 31st day of December, one thousand eight hundred and seventy-seven.

Approved, November 9th, 1877.

AN ACT

AUTHORIZING THE GOVERNOR OF THE TERRITORY TO OFFER A
STANDING REWARD FOR THE ARREST OF CERTAIN CLASSES OF
CRIMINALS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the Governor shall offer a standing reward of two hundred dollars (\$200,) for the arrest of each person who shall place any obstruction on any railroad track or who shall misplace any switch rail, or ties on any such road, whereby the life of any person passing over said road may

Tab 4

SESSION LAWS
OF THE
STATE OF WASHINGTON,

ENACTED BY THE
FIRST STATE LEGISLATURE,
SESSION OF 1889-90.

[COMPILED IN CHAPTERS, WITH MARGINAL NOTES AND INDEX, BY
ALLEN WEIR, SECRETARY OF STATE.]

PUBLISHED BY AUTHORITY.

OLYMPIA, WASH.:
O. C. WHITE, STATE PRINTER.
1890.

CHAPTER XII.—EDUCATIONAL.

SCHOOLS AND SCHOOL DISTRICTS.

AN ACT to establish a general uniform system of Common Schools in the State of Washington, and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

TITLE I.—OUTLINE OF SYSTEM.

SECTION 1. A system of common schools shall be maintained throughout the State of Washington.

SEC. 2. The administration of the common school system shall be entrusted to the state superintendent of public instruction, a state board of education, county superintendents of common schools, boards of directors, and a district clerk for each district.

TITLE II.—SUPERINTENDENT OF PUBLIC INSTRUCTION.

State superintendent of public instruction.

SEC. 3. The superintendent of public instruction shall be elected by the qualified electors of the state on the first Tuesday after the first Monday in November of the years in which state officers are elected, and shall hold his office for the term of four years, and until his successor is elected and qualified, and his powers and duties shall be as hereinafter enumerated: *First*, he shall have supervision over all matters pertaining to the common schools of the state. He shall receive an annual salary of twenty-five hundred dollars, payable quarterly upon warrant of the state auditor drawn upon the state treasurer in the same manner as other state officers are paid. *Second*, he shall report to the governor biennially on or before the first day of November preceding the regular session of the legislature. The governor shall transmit said report to the legislature, and three thousand copies thereof shall be printed and delivered to the superintendent of public in-

Biennial report of superintendent.

struction, who shall furnish two copies to be deposited in the state library, one copy to each county superintendent of schools, to be held by him as public property and delivered to his successor in office, and one copy to each district clerk within the state, for the district library. Said report shall contain a statement of the general condition of the common schools of the state, with full statistical tables, by counties, showing the number of schools and the attendance; the state and county school fund apportioned, amount received by special tax or from other sources, amount expended for salaries of teachers, the salaries paid by the several counties to the superintendent of schools, the amount they are paid for visiting schools, and the mileage they draw for same; building and providing school houses, the amount of bonded or other school indebtedness, with rate of interest paid; a list of the school officers of the state, together with such other facts as he may deem of general interest. He shall also include in his report a statement of plans for the management and improvement of the schools. *Third*, he shall prepare and superintend the printing and distribution to county superintendents of such blanks, forms, registers and blank books as may be necessary to the proper discharge of the duties of county superintendents, teachers, and all other school officers charged with the administration of the laws relating to common schools; also the rules and regulations for the use and government of the common schools, and the questions prepared for the examination of teachers. *Fourth*, to travel in the different counties of the state where common schools are taught, as far as possible, without neglecting his other official duties as superintendent of public instruction, for the purpose of visiting schools, of consulting the county superintendents, and addressing public assemblies on subjects pertaining to common schools; also, to open such correspondence as may enable him to obtain all necessary information relating to the system of common schools in other states. He shall submit, quarterly, a statement of expenditures for traveling expenses, which shall be audited by the state auditor, who shall issue a warrant on the state treas-

Form and scope
of report.

Must prepare
and distribute
blanks to
county superin-
tendents.

Quarterly state-
ments.

Limit of ex-
penses.

President of
board of educa-
tion.

Must certify ap-
portionment.

urer for the payment of such amounts as shall be found to have been properly incurred; *Provided*, That said expenditures shall not exceed eight hundred dollars in any one year: *And provided further*, That the postage, stationery and other office expenses shall be paid for in the same manner as in case of other state officers. *Fifth*, he shall cause to be printed, with an appendix of appropriate forms and instructions for carrying into execution, the laws relating to common schools, and distribute to each county superintendent a sufficient number of copies to supply each school and district officer, and shall cause the same to be re-printed and distributed as often as any change in the laws is made of sufficient importance, in his opinion, to justify the same. *Sixth*, he shall be *ex-officio* president of the board of education. *Seventh*, he shall biennially, on or before the first day of May following the election of county superintendents, call a convention of county superintendents of this state, at such time and place as he may deem most convenient, for the discussion of questions pertaining to the supervision and administration of the school laws, and such other subjects affecting the welfare and interests of the common schools as may be properly brought before it. *Eighth*, he shall, between the first and tenth days of March and September of each year, apportion the state common school funds, subject to apportionment, among the several counties of the state, in proportion to the number of children in each county between the ages of five and twenty-one years, as the same shall appear by the reports of the several county superintendents for the school year just closed: *Provided*, That in case no report of the enumeration of any county for the school year last closed has been received, the apportionment shall be made on the basis of the number of children in said county as shown by the last census received from said county. He shall certify said apportionment to the state auditor, and upon said certification the state auditor shall draw his warrant on the state treasurer in favor of the county treasurer of each county for the amount apportioned to said county, and transmit the same to the several county treasurers. The superintendent of

public instruction shall also certify to the county superintendents of schools of each county, the amount apportioned to that county. It shall be the duty of the state auditor to notify the superintendent of public instruction on or before the first day of March and September of each year the amount of the state common school fund subject to apportionment. *Ninth*, he shall annually require of the president, manager or principal of every seminary, academy and private school, a report of such facts arranged in such form as he may prescribe, and he shall furnish blanks for such reports, and it is made the duty of every such president, manager or principal to fill up and return such blanks within such time as the state superintendent may direct. Other duties.

SEC. 4. The superintendent of public instruction shall have his office at the capital of the state, where he shall keep all books and papers appertaining to the business of his office, and shall keep and preserve in his office a complete record of statistics and all matters pertaining to the educational interests of the state, as well as a record of the meetings of the state board of education. He shall file all papers, reports and public documents transmitted to him by the school officers of the several counties of the state each year, separately. Location of office. Copies of all papers filed in his office, and his official acts, may be certified by him and attested by his official seal, and when so certified shall be evidence equally and in like manner as the original papers. He shall decide all points which may be submitted to him in writing by any school officer, teacher or person in this state, on appeal from the decision of the county superintendents of schools, and his decision shall be final unless set aside by a court of competent jurisdiction. File papers separately. He shall, at the expiration of his term of office, deliver over to his successor all records, books, maps and documents, and papers of whatever kind belonging to his office, or which may have been received by him for the use of his office. Judicial duties.

SEC. 5. The superintendent of public instruction shall be allowed, and is hereby authorized, to appoint a clerk Clerk. for his office, whose compensation shall not exceed five

hundred dollars per annum, to be paid in the manner prescribed for the payment of state officers.

TITLE III.—BOARD OF EDUCATION.

Four members. SEC. 6. The governor shall appoint, by and with the advice and consent of the state senate, four suitable persons, at least two of whom shall be selected from those actually engaged in teaching in the common schools of this state, who, together with the superintendent of public instruction, shall constitute the state board of education. The persons appointed shall hold their office for two years from the first Monday in March next following their appointment, and shall serve until their successors are appointed and qualified: *Provided*, That the term of office of the first board appointed in accordance with this act shall expire on the first Monday in March, 1891.

Annual meetings of board.

SEC. 7. The state board of education shall hold an annual meeting at the capital of the state on the first Tuesday in June of each year, and may hold such special meetings as deemed necessary for the transaction of public business, such special meetings to be called by the superintendent of public instruction. The persons appointed as members of the board of education shall be paid for their services at the rate of five dollars per diem for the actual number of days' attendances at said meetings, and shall be further entitled to actual traveling expenses in attending said meeting, compensation and traveling expenses to be paid by the state treasurer, on warrant of the state auditor, out of funds not otherwise appropriated, upon the certificate of the superintendent of public instruction: *Provided*, That the expenses of the whole board shall not exceed the sum of one thousand dollars in any one year.

Expense limit.

Powers of board.

SEC. 8. The said board shall have power—*First*, to adopt or re-adopt, at their first regular meeting in June, eighteen hundred and ninety, a uniform series of text-books for the use of the common schools, including graded common schools, throughout the state: *Provided*, They can secure an exchange of books at any time in use for those of the same grade, or an exchange of those of a lower

grade for those of the next higher grade, without a greater average cost to the people than two-fifths of the contract retail price of the books in use at the time of adoption; and enter into contract with the publishers for the supply of the same, to take effect on the first day of the following September; and the books so adopted shall not be changed within five years thereafter, unless the publishers of such adopted books shall fail to comply with the terms of the contract. Before making any adoption, the superintendent of public instruction shall advertise for at least six weeks in such papers or periodicals of general circulation, as he may determine, that the board of education will receive sealed proposals for the supply of text-books to the people of the state. Said advertisements shall state the day and hour upon which said proposals shall cease to be received. It shall, also, name all the kinds of books for the supply of which proposals are invited, and be signed by the superintendent of public instruction, and that proposals so advertised for shall state the price at which the books proposed shall be exchanged for the books in use at the time of making such proposals, and it shall state the wholesale price which shall be maintained in the state, and also the uniform retail price which shall be maintained in at least one place in every county in this state during the time the books shall continue in use. Said proposals shall be marked "Sealed proposals to furnish text-books for the common schools of the state of Washington," and shall be addressed to the superintendent of public instruction, and shall not be opened before the hour advertised, nor in the presence of less than three members of the board. Immediately upon the opening of the bids they shall be read in open board, and adoption of books and award of the contract shall be made within ten days following. No books shall be adopted without a majority vote of the whole board: *Provided*, That the board shall have power to reject any and all proposals and to advertise again as before for new proposals, which may be considered at a special meeting to be called by the superintendent of public instruction, who shall re-advertise for proposals as above pro-

Must advertise
for bids for sup-
ply of text-
books.

Form of bids.

Powers of
board.

vided. The publishers awarded the contract by the board shall guarantee all the terms of the proposal on which it is made, by a bond, with two or more sufficient sureties for faithful performance, which sureties shall be citizens of the state, and shall cover such period as the books may remain in use, said bond to be approved by the board and the attorney general. *Second*, to prepare a course of study for the common schools, except graded schools, and to prescribe such rules for the general government of the common schools as shall secure regularity of attendance, prevent truancy, secure efficiency, and promote the true interests of the common schools. *Third*, to use a common seal and elect one of their own members secretary. He shall keep a correct record of all proceedings of the board, and shall file a certified copy of the same in the office of the superintendent of public instruction. *Fourth*, to sit as a board of examination at their annual or special meetings, and grant state certificates and life diplomas. State certificates shall be granted only to such applicants as shall file with the board satisfactory evidence that they have taught successfully twenty-seven months, at least nine months of which have been in the public schools of this state. The applicant must also either pass a satisfactory examination in all the branches required for first grade county certificates, also pedagogy, plane geometry, geology, natural history, civil government, psychology, book-keeping, composition, English literature and general history, or file with the board a certified copy of a diploma from some state normal school, or of a state or territorial certificate from any state or territory, the requirements to obtain which shall not have been less than those required by this act. State certificates shall be valid for five years, and may be renewed without examination, and shall entitle the holder to teach in any common school in the state. They may be revoked at any time for cause deemed sufficient by the board. Life diplomas shall be granted to such applicants only as shall file with the board satisfactory evidence that they have taught successfully for ten years, not less than one of which shall have been in the common schools of this state. In other respects the requirements

Course of study.

Seal.

Certificates and life diplomas.

State certificates valid for five years.

shall be the same as those required for state certificates; but life diplomas shall be valid during the life of the holder, unless revoked for cause deemed sufficient by the board, and shall entitle the holder to teach in any common school in the state. The fee for state certificates shall be three dollars, and for life diplomas five dollars. Said fees must be deposited with the application, and cannot be refunded to the applicant unless the application be withdrawn before it has been considered by the board. The fees collected shall be paid into the state treasury. *Fifth*, to prepare a uniform series of questions to be used by the county boards of examiners in the examination of teachers. Any member of said board who shall, directly or indirectly, disclose any questions thus prepared, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than one hundred nor more than five hundred dollars.

Fees.

Questions for county examiners.

SEC. 9. Whenever any vacancy in the board shall occur, whether by death, removal, resignation or otherwise, the governor shall fill the vacancy by appointment.

Vacancies.

TITLE IV.—COUNTY SUPERINTENDENTS.

SEC. 10. A county superintendent of common schools shall be elected in each county of the state at each general election, whose term of office shall begin on the second Monday in January next succeeding his election, and continue for two years, and until his successor is elected and qualified. He shall take the oath or affirmation of office, and shall give an official bond in a sum to be fixed by the board of county commissioners. He may, at his own cost, appoint a deputy, who shall qualify in the same manner as the county superintendent, and perform all the duties of the office, subject, however, to revision by the county superintendent. The county commissioners of each county shall fill any vacancy that may occur in the office of county superintendent until the next general election.

Term of office.

Deputy.

Vacancy.

SEC. 11. Each county superintendent shall have the power, and it shall be his duty — *First*, to exercise a careful supervision over the schools of his county, and to see that all the provisions of this act are observed and followed

Duties of county superintendents.

by teachers and school officers. *Second*, to visit each school in his county not less than one nor more than three times in each year: *Provided*, That in incorporated towns and cities where city superintendents are employed, the county superintendent shall be entitled to pay for one visit only in each year: *Provided*, That he shall receive mileage in going to and returning from said school for not more than two trips annually. *Third*, to distribute promptly all reports, laws, forms, circulars and instructions which he may receive for the use of the schools and the teachers. *Fourth*, to enforce the course of study adopted by the board of education, and to enforce the rules and regulations required in the examination of teachers. *Fifth*, to keep on file and preserve in his office the biennial report of the superintendent of public instruction. *Sixth*, to keep in a good and well bound book, to be furnished by the county commissioners, a record of his official acts. *Seventh*, to carefully preserve all reports of school officers and teachers, and at the close of his term of office deliver to his successor all records, books, documents and papers belonging to the office, taking a receipt for the same, which shall be filed in the office of the county auditor. *Eighth*, to administer oaths and affirmations to school directors, teachers and other persons, in all official matters connected with or relating to schools, but shall not make or collect any charge or fee for so doing. *Ninth*, to keep in a suitable book an official record of all persons examined for teachers' certificates, showing the name, age, nationality, date of the examination and grade of certificate issued. He shall also retain, for six months, a list of the questions and the written answers to the same, of all applicants, and hold the same subject to the order of the superintendent of public instruction, and in case a certificate is refused by the county board of examiners, or revoked by the county superintendent, the right of appeal to the superintendent of public instruction shall not be denied the teacher or applicant: *Provided*, That said appeal be taken within thirty days from the date of the notice of such revocation or refusal. *Tenth*, to make an annual report to the superintendent of public instruction, on the first day of August

Records of
office.

Preserve cer-
tain papers.

Annual report.

of each year, for the school year ending June 30th, next preceding. The report shall contain an abstract of the reports made to him by the district clerks, and such other matters as the superintendent of public instruction shall direct. The county superintendent shall retain a copy of said report and file the same in his office. *Eleventh*, to keep in his office a full and correct transcript of the boundaries of each school district in the county. Boundaries of districts. In case the boundaries of districts are conflicting or incorrectly described, he shall change, harmonize and describe them, and make a report of said action to the county commissioners, who shall cause said report to be entered on their records. The county superintendent shall, on request, furnish the district clerks with descriptions of the boundaries of their respective districts. *Twelfth*, to appoint directors and district clerks to fill vacancies; to appoint directors and district clerks for any new districts: *Provided*, That when any new district is organized, such of the directors and district clerk of the old district as reside within the limits of the new one shall be directors and district clerk of the new one, and the vacancies in the old district shall be filled by appointment. *Thirteenth*, to apportion, Apportion funds. on or before the first Monday in January, April, July and October of each year, the county school fund and such state common school funds as have been apportioned to his county, in the following manner: He shall apportion one-fourth of the total amount to be apportioned to each district, in proportion to the number of teachers employed therein, and shall determine the number of teachers by allowing one teacher for every seventy school census children and fraction thereof over thirty: *Provided*, That each school district shall be entitled to at least one teacher, except that to joint or union districts he shall give such proportionate amount as will be just and equitable. The remaining three-fourths to be apportioned to each district in proportion to the number of census children as shown by the reports of the district clerks for the school year last closed. He shall certify the result of the apportionment to the county treasurer, and also notify each district clerk of the amount apportioned to that district. Certify apportionment.

Duties of
county examiners.

Fourteenth, to appoint, for one year, two persons holding the highest grade certificate in his county, and such persons, with the county superintendent, shall constitute a board of examiners for the examination of teachers. It shall be the duty of the county board of examiners in all counties having one thousand or more children of school age to be at the county seat on the second Thursday of the months of February, May, August and November of each year, for the purpose of examining teachers; but in counties having less than one thousand children of school age, the county board of examiners shall meet the second Thursday of the months of May and November for the purpose of examining teachers. The superintendent shall give ten days' notice of the same by publication in some newspaper of general circulation, published in his county, or if there be no newspaper, then by posting up handbills, or otherwise. Such examination shall be conducted according to the rules prescribed by the state board of education, and no other questions shall be used except those furnished by the said board.

Rules for examinations.

Grades of certificates.

SEC. 12. There shall be three grades of certificates—first, second and third. Unless revoked for cause, first grade certificate shall entitle the holder to teach for three years; second grade for two years, and third grade for one year; but the issuing of more than one third grade certificate to any person shall be left to the discretion of the county board of examiners. No first grade certificate shall be granted until the applicant shall have filed with the county superintendent satisfactory written evidence of having taught successfully one school year of nine months. Boards of examiners may, in their discretion, issue certificates without examination to the graduates of the normal department of the State University of Washington, or to the graduates of any state normal school, or to the holder of a state certificate or life diploma from any state or territory. Those holding first grade county certificates, and who shall have been actually engaged in teaching for three years, shall be eligible to examination for state certificates. Any teacher holding a certificate in force and effect, granted by any county board of examiners in this state, or by a

lawful board of examiners in any other state, the requirements to obtain which shall not be less than those required in this state, shall be entitled to exercise all the duties of teacher in any county in this state, upon presenting such certificate to the county superintendent of the county in which said certificate is desired to be used, whose duty it shall be to endorse it, and such certificate shall be in full force and effect until the next meeting of the county board of examiners, and no longer: *Provided*, That the county board may, at their discretion, endorse certificates from other counties in this state for the unexpired term thereof. All applicants for certificates shall be at least seventeen years of age, shall have attended a teachers' institute, and shall be examined in reading, penmanship, orthography, written and mental arithmetic, geography, English grammar, physiology and hygiene, history and constitution of the United States, school law and constitution of the State of Washington, and the theory and art of teaching; but no person shall receive a first grade certificate who does not pass a satisfactory examination in the additional branches of natural philosophy, English literature and algebra.

Effect of certificate.

Age of applicants.

SEC. 13. County examiners appointed by the county superintendent shall receive not less than three nor more than five dollars per day for the time actually employed in the examination of teachers and, in addition thereto shall receive mileage from their homes to the place of meeting of said board and return by the most usual route, at the rate of ten cents per mile.

Compensation of examiners.

SEC. 14. The county commissioners shall provide the county superintendent with a suitable office at the county seat, and all necessary blanks, books, stationery, postage and other expenses of his office shall be paid by the county treasurer out of the county fund upon a statement made quarterly and certified to by him, and allowed by the board of county commissioners. He shall keep his office open for the transaction of official business such days each week as the duties of the office may require, and shall keep posted on the door of his office a notice of said office days and hours of such days.

Office of superintendent at county seat.

Penalty for
failure to make
full report.

SEC. 15. If the county superintendent fails to make a full and correct report to the superintendent of public instruction of all statements required by him, he shall forfeit the sum of fifty dollars from his salary, and the board of county commissioners are hereby authorized and required to deduct therefrom the sum aforesaid, upon information from the superintendent of public instruction that such reports have not been made.

Appeal.

Transcript of
proceedings.

SEC. 16. Any person or board of directors aggrieved by any decision or order of the county superintendent may, within thirty days after the rendition of such a decision or making of such order, appeal therefrom to the superintendent of public instruction. The basis of the proceeding shall be an affidavit by the party aggrieved, filed with the superintendent of public instruction within the time for taking the appeal. The affidavit shall set forth the errors complained of in a plain and concise manner. The superintendent of public instruction shall, within five days after the filing of such affidavit in his office, notify the county superintendent in writing of the taking of such appeal, and the county superintendent shall, within ten days after being thus notified, file in the office of the superintendent of public instruction a complete transcript of the record and proceedings relating to the decision complained of, which shall be certified to be correct by the county superintendent. The superintendent of public instruction shall examine the transcript of such proceedings and render a decision thereon, but no new testimony shall be admitted, and his decision shall be final unless set aside by a court of competent jurisdiction. When an applicant for a certificate at a regular examination shall feel aggrieved at the decision of the county board of examiners, and shall appeal to the superintendent of public instruction, the questions used and the answers given shall be examined by him, and if the decision of the county board of examiners be reversed, the superintendent of public instruction shall instruct the county board of examiners to issue to the applicant a certificate of such grade as the answer shall warrant: *Provided*, That a good moral character can

be shown by the applicant to the satisfaction of the superintendent of public instruction.

SEC. 17. The county superintendent shall, in addition to the salary fixed by law, be allowed three dollars for each school visited, and mileage at the rate of ten cents per mile for each mile actually and necessarily traveled in making such visits and attending convention of county superintendents, called by the superintendent of public instruction, but shall not be allowed to charge or collect any fee for the performance of any other duty herein named: *Provided*, That no constructive mileage shall be charged.

Compensation and mileage of county superintendent.

TITLE V.—SCHOOL DISTRICTS.

SEC. 18. The term "school district," as used in this act, is declared to mean the territory under the jurisdiction of a single school board, designated as "board of directors," and shall be organized in form and manner as hereinafter provided, and shall be known as district No. ———, ——— county: *Provided*, That all school districts now existing, as shown by the records of the county superintendents, are hereby recognized as legally organized districts.

Definition.

SEC. 19. For the purpose of organizing a new district, a petition in writing shall be made to the county superintendent, signed by at least five heads of families residing within the boundaries of the proposed new district, which petition shall describe the boundaries of the proposed new district and give the names of all children of school age residing within the boundaries of such proposed new district at the date of presenting said petition. The county superintendent shall give notice to parties interested by posting notices at least twenty (20) days prior to the time appointed by him for considering said petition, in at least three of the most public places in the proposed new district, and one on the school-house door of each district affected by the proposed change, or if there be no school-house, then in one of the most public places of said old district, and shall, on the day fixed in the notice, proceed to hear said petition, and if he deem it advisable to grant the petition, he shall make an order establishing said dis-

Organizing new districts.

County superintendent must give notice.

tract and describing the boundaries thereof, from which order an appeal may be taken by three resident taxpayers of said new district to the board of county commissioners, in the same manner that appeals may be taken from justices courts to the superior courts, and their decision shall be final.

Transfer of territory.

SEC. 20. For the purpose of transferring territory from one district to another, or enlarging the boundaries of any school district, a petition in writing shall be presented to the county superintendent, signed by a majority of heads of families residing on the territory which it is proposed to transfer or include, which petition shall describe the change which it is proposed to have made. It shall also state the reason for desiring said change, and the number of children of school age residing on the territory to be transferred. The county superintendent shall file said petition in his office, and shall give notice to parties interested by posting notices at least twenty days prior to the time appointed by him for considering said petition, one of which shall be in a public place in the territory which it is proposed to be annexed or transferred, and one on the door of the school-house in each district affected by the change, or if there be no school-house in such district, then in some public place in such district or districts, and at the time stated in said notices he shall proceed to hear said petition, and if he deem it advisable, he shall grant the same and make an order fixing the boundaries, and unless an appeal be taken to the board of county commissioners, or upon the decision of said board, he shall certify his action to the county commissioners at their next regular session, stating the change or changes in boundaries so made, and they shall cause such certificate to be entered in their records, with the description of said boundaries.

Certify action to commissioners.

Rights of new district.

SEC. 21. No new district formed by the subdivision of an old one shall be entitled to any share of public money belonging to the old district until the school has actually been taught one month in the new district, and unless within eight months from the order of the county superintendent granting such new district a school is opened,

the action making a new district shall be void, and all elections or appointments of directors or clerks made in consequence of such action, and all rights and office of parties so elected or appointed shall cease and determine; and all taxes which may have been levied in such old district shall be valid and binding upon the real and personal property of new districts, and shall be collected and paid into the school fund of the old district.

SEC. 22. When a new district is formed by the division of an old one, it shall be entitled to a just share of the school moneys to the credit of the old district after the payment of all outstanding debts at the time when school was actually commenced in such new district, and the county superintendent shall divide such remaining moneys, and such as may afterwards be apportioned to the old district, according to the number of school children resident in each district, for which purpose he shall order a census to be taken: *Provided*, That the new district shall be entitled to such portion of any special tax levied and collected for the year in which the new district is created, as the amount of such tax paid by that portion of the old district which is embraced in the new bears to such old district.

Superintendent shall apportion surplus money.

SEC. 23. No school district shall be entitled to receive any apportionment of any school moneys, unless the teachers who have been employed in the schools of such districts held legal certificates of fitness for the occupation of teaching, in full force and effect. Any district using text-books other than those prescribed by the board of education, or any district failing to comply with the course of study prescribed by the board of education, shall forfeit twenty-five per cent. of their school fund for that year, and it is hereby made the duty of the county superintendent to deduct said amount from the apportionment to be made to any district failing in either or both of the above named requirements, and the amount thus deducted shall revert to the general school funds of the county.

Must use proper text-books.

SEC. 24. No school district shall be entitled to receive any apportionment of county school moneys which shall not have maintained school for at least three months dur-

ing the preceding year: *Provided*, That any new district formed by the division of an old one shall be entitled to its just share of school moneys when the time that school was maintained in the old district before division, and in the new one after division, shall be equal to at least three months.

Must maintain school three months each year.

TITLE VI.—BOARDS OF DIRECTORS.

How elected. SEC. 25. Directors of school districts shall be elected at the regular annual school election. At the first annual election in all new districts three directors shall be elected, for one, two and three years, respectively. The ballots shall specify the term for which each is to be elected. In all districts in which elections have been previously held, one director shall be elected for the term of three years, and if any vacancies are to be filled, a sufficient number to fill them for the unexpired term or terms, and the ballots shall specify the respective term for which each director is to be elected. Directors-elect shall take office immediately after qualifying, and shall hold their office until their successors are elected and qualified. Any director who fails to qualify within ten days after his election, shall forfeit all rights to his office, and the county superintendent shall fill the office by appointment, to hold until the next annual election. Upon the death, removal or resignation of any director, the county superintendent shall fill such vacancy by appointments, to hold office until the next annual election.

Vacancies.

Powers and duties of directors. SEC. 26. Every board of directors, unless otherwise specially provided by law, shall have power, and it shall be their duty—*First*, to employ, and for sufficient cause discharge, teachers, mechanics or laborers, and to fix, alter, allow and order paid their salaries and compensation; *second*, to enforce the rules and regulations prescribed by the superintendent of public instruction and the state board of education for the government of the schools, pupils and teachers, and to enforce the course of study prescribed by the state board of education; *third*, to provide and pay for school furniture and apparatus, and such other articles, materials and supplies as may be necessary for the use of the schools; *fourth*, to rent, repair, furnish

and insure school-houses; *fifth*, to build or remove school-houses, purchase or sell lots or other real estate, when directed by a vote of the district so to do; *sixth*, to purchase personal property in the name of the district, and to receive, lease and hold for their district any real or personal property; *seventh*, to suspend or expel pupils from school, who refuse to obey the rules thereof, and may exclude from school all children under six years of age; *eighth*, to provide books for the children of indigent parents on the written statement of the parents of such children that they are unable to purchase the same; *ninth*, to require all pupils to be furnished with such books as may have been adopted by the state board of education, as a condition to membership in the schools; *tenth*, to exclude from school and school libraries all books, tracts, papers and other publications of any immoral or pernicious tendency or of a sectarian or partisan character; *eleventh*, to authorize the school room to be used for summer and night schools, literary, scientific, religious, political, mechanical or agricultural societies with the consent of and under such regulations as the board of directors may adopt; *twelfth*, to require teachers to conform to the provisions of the school law.

SEC. 27. Any board of directors shall be liable as directors in the name of the district for any judgment against the district for any salary due any teacher and for any debts legally due, contracted under the provisions of this act, and they shall pay such judgment or liability out of the school funds to the credit of the district.

Liability for debts.

SEC. 28. Any board of directors shall have power to make arrangements with the directors of an adjoining district for the attendance of such children in the school of either district as may be best accommodated therein, and to transfer the school money due by apportionment to such children to the district in which they may attend school: *Provided*, That in case such arrangements are not made, or children from school districts not adjoining desire to attend school in their district, they may charge reasonable tuition for such attendance, and the moneys so collected shall be used in payment of salaries of teachers.

Children from adjoining district.

SEC. 29. Any board of directors shall have the power to make such by-laws for their own government, and for the government of the common schools under their charge, as they deem expedient, not inconsistent with the provisions of this act, or the instructions of the superintendent of public instruction, or the state board of education.

Regular meet-
ings.

A regular meeting of each board of directors shall be held on the last Saturday of March, June, September and December. They may, however, hold such other special or adjourned meetings as they may from time to time determine, or as may be specified in their by-laws.

SEC. 30. The board of directors of each school district shall have custody of all school property belonging to the district, and shall have power, in the name of the district or in their own names as directors of the district, to convey by deed all the interest of their district in or to any school-house or lot directed to be sold by vote of the district, and all conveyances of real estate made to the district, or to the directors thereof, shall be made to the board of directors of the district and to their successors in office; said board in the name of the district shall have power to transact all business necessary for maintaining schools and protecting the rights of the district.

School prop-
erty.

SEC. 31. It shall be unlawful for any director to have any pecuniary interest, either directly or indirectly, in any erection of school-houses, or for warming, ventilating, furnishing or repairing the same, or be in any manner connected with the furnishing of supplies for the maintenance of the schools, or to receive or accept any compensation or reward for services rendered as director.

SEC. 32. Any person aggrieved by any decision or order of the board of directors may, within thirty days after the rendition of such decision or making of such order, appeal therefrom to the county superintendent of the proper county; the basis of such proceeding shall be an affidavit filed by the party aggrieved with the county superintendent within the time for taking the appeal. The affidavit shall set forth the errors complained of in a plain and concise manner. The county superintendent shall, within five days after the filing of such affidavit in his office, notify

Appeal.

Form of pro-
cedure.

the clerk of the proper district, in writing, of the taking of such appeal, and the latter shall, within ten days after being thus notified, file in the office of the county superintendent a complete transcript of the record and proceeding relating to the decision complained of, which shall be certified to be correct by the clerk of the district. After the filing of the transcript aforesaid in the office, he shall notify, in writing, all persons interested, of the time and place where the matter of the appeal will be heard by him. At the time thus fixed for hearing he shall hear testimony for either party, and for that purpose may administer oaths if necessary, and he shall make such decision as may be just and equitable, which shall be final unless appealed from, as provided for in this act.

TITLE VII.—DISTRICT CLERKS.

SEC. 33. A district clerk shall be elected in each district at each annual school election, to hold office for one year, and until his successor is elected and qualified. In case of the death, removal or resignation of the district clerk, the county superintendent shall fill the vacancy by appointment.

SEC. 34. The duties of the district clerk shall be as follows: *First*, to attend all meetings of the board of directors; but if he shall not be present, the board of directors shall select one of their number to act as clerk, who shall certify the proceedings of the meeting to the clerk of the district, to be recorded by him. He shall keep his records in a book, to be furnished by the board of directors, and he shall preserve copies of all reports made to the county superintendent, and safely preserve and keep all books and documents belonging to his office, and shall turn the same over to his successor. *Second*, to keep accurate and detailed accounts of all receipts and expenditures of school money. At each annual school meeting the district clerk must present his record book for public inspection, and shall make a statement of the financial condition of the district and of the action of the directors, and such record must always be open for public inspection. *Third*, to take, annually, between the first and the twentieth of June

Duties of clerk

School census. . . of each year, an exact census of all children and youth between the ages of five and twenty-one years who were *bona fide* residents of the district upon the first day of June of that year: *Provided*, That Indian children not living under the guardianship of white persons, or who have not severed their tribal relations, or Mongolian children not native born, shall not be included in said census, and shall specify the number and sex of such children, and the names of their guardians or parents. He shall also note all defective youth between the ages of five and twenty-one years. He shall, under oath, make a full report thereof, on blanks furnished for that purpose, to the county superintendent on or before the first day of July thereafter. He shall also, at the same time, make out and file in the office of the county superintendent a report of the affairs of his district. Said report shall be made upon blanks furnished by the superintendent of public instruction, and contain such items of information as said superintendent or the state board of education shall require, including the following:

Defective youth.

Report.

Form of report. The number of persons, male and female, in his district between the ages of five and twenty-one years; the number of schools and the branches taught in each; the number of pupils enrolled in each school during the year; the number of teachers employed in each school, and the compensation of each per month; the number of days school was taught during the year then passed, and by whom; the number of pupils enrolled during the year, and the average daily attendance; the average cost of school per month for each pupil, based upon the total enrollment, and also the average cost, based upon the average daily attendance. In estimating these averages the clerk shall take account of the teachers' salaries and all current expenses, the text-books used in each school by name, the number of volumes in the library in each school, the aggregate amount paid teachers during the year, the number of school-houses and the estimated value of each, the amount raised by tax in the district during the year for the support of schools, and for buildings, sites and furniture, the amount raised by subscription or by other means than tax, the amount of bonded indebtedness of the district and

the rate of interest paid; also such other items as he may deem of importance and as may be required by the blanks furnished for said report, and record a copy of all reports in his record book. *Fourth*, to keep an accurate account of all the expenses incurred by him in his district in keeping the school-house in repair, in providing for necessary janitor work, and in providing school supplies, and for other expenses incurred by him on account of the school, which accounts must be audited by the board of directors and paid out of the district school fund. *Fifth*, to give the required notice of all annual or special elections; also, to give notice of the regular and special meetings of the board of directors as herein authorized. *Sixth*, to report to the county superintendent at the beginning of each term of school, the name of the teacher and the proposed length of the term, and to supply the teacher with the school register furnished by the superintendent of public instruction.

SEC. 35. The district clerk shall be paid three dollars per day for time actually and necessarily spent in taking the census, to be determined and paid by the directors out of the funds of the district. He shall receive such other compensation for other services as may be allowed by the board of directors.

SEC. 36. In case the district clerk fails to make the reports herein provided at the proper time, he shall forfeit and pay to the district the sum of twenty-five dollars for each and every such failure. He shall also be liable if, through such neglect, the district fails to receive its just apportionment of school moneys, for the full amount so lost, to be recovered in a suit brought by any citizen of such district, in the name of and for the benefit of such district.

TITLE VIII.—TEACHERS.

SEC. 37. No person shall be accounted as a qualified teacher, within the meaning of the school law, who has not first appeared before the board of examiners of the county in which he proposes to teach, and received a certificate setting forth his qualifications; or has not a state certificate, or life diploma from the state board of educa-

tion, or a certificate from some other county or state endorsed by the county superintendent.

Teachers must report to county superintendent.

SEC. 38. Every teacher employed in any common school shall make a report to the county superintendent at the time of the contract to teach such school, the number of the district in which he is to teach, the grade of his certificate, date it expires, and the proposed length of term, and at the close of any school to report to the county superintendent on the blanks prescribed by the superintendent of public instruction. Any teacher who shall be teaching at the close of the school year, shall make a report to the county superintendent immediately upon the close of such school year. Copies of all reports made by teachers shall be furnished to the clerk of the district, to be by him filed in his office. No board of directors shall draw any order or warrant for the salary of any teacher for the last month of his service until the reports herein required shall have been made and received: *Provided*, That in all schools acting under the direction of a city superintendent, the report of such superintendent shall be accepted by the county superintendent and the directors in lieu of the teacher's report; and that when there is no city superintendent, the report of the principal shall be accepted in lieu of the teacher's report.

School register.

SEC. 39. Every teacher shall keep a school register in the manner provided for, and no board of directors shall draw any warrant for the salary of any teacher for the last month of his service in the school, at the end of any term or year, until they shall have received a certificate from the district clerk that the said register has been properly kept, the summaries made and the statistics entered, or until, by personal examination, they shall have satisfied themselves that it has been done. Teachers shall faithfully enforce in school the course of study and regulations prescribed, and if any teacher shall wilfully refuse or neglect to comply with such regulations, then the board of directors shall be authorized to withhold any warrant for salaries due until such teacher shall comply therewith. No teacher shall be employed except by written order of a majority of directors, at a regular or special meeting

thereof, nor unless the holder of a legal teacher's certificate in full force and effect.

SEC. 40. In every contract between any teacher and board of directors, a school month shall be construed to School month. be twenty school days, or four weeks of five days each, and no teacher shall be required to teach school on Saturdays or any legal holiday, and no deduction from the teacher's time or salary shall be made by reason of the fact that a school day happens to be one of the days referred to in this section as a day on which school shall not be taught.

SEC. 41. Every teacher shall have the power to hold Power of teacher. every pupil to a strict accountability in school for any disorderly conduct on the way to or from school, or on the grounds of the school, or during intermission or recess; to suspend from school any pupil for good cause: *Provided*, That such suspension shall be reported to the directors as soon as practicable for their decision.

SEC. 42. It shall be the duty of all teachers to endeavor Duties of teacher. to impress on the minds of their pupils the principles of morality, truth, justice, temperance and patriotism; to teach them to avoid idleness, profanity and falsehood; to instruct them in the principle of free government, and to train them up to the true comprehension of the rights, duty and dignity of American citizenship.

SEC. 43. Any teacher who shall maltreat or abuse any pupil by administering any undue or severe punishment, or inflict punishment on the head or face, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not exceeding one hundred dollars. Penalty for maltreating pupils.

TITLE IX.—SCHOOLS.

SEC. 44. A common school is hereby defined to be a Common school. school that is maintained at the public expense in each school district and under the supervision of boards of directors. Every common school, not otherwise provided for by law, shall be open to the admission of all children between the ages of six and twenty-one years residing in that school district, and the board of directors shall have

the power to admit adults and children not residing in the district, as hereinbefore provided, and to fix the terms of such admission as hereinbefore provided.

Course of study. SEC. 45. All common schools shall be taught in the English language, and instruction shall be given in the following branches, viz.: Reading, penmanship, orthography, written arithmetic, mental arithmetic, geography, English grammar, physiology and hygiene, with special reference to the effects of alcoholic stimulants and narcotics on the human system, history of the United States, and such other studies as may be prescribed by the board of education. Attention must be given during the entire course to the cultivation of manners, to the laws of health, physical exercise, ventilation and temperature of the school room.

Hours of study. SEC. 46. The school day shall be six hours in length, exclusive of any intermission at noon, but any board of directors may fix as the school day a less number of hours than six: *Provided*, That it be not less than four hours for primary schools under their charge, and any teacher may dismiss any or all scholars under eight years of age, after an attendance of four hours, exclusive of an intermission at noon.

Contagious disease. SEC. 47. No teacher or scholar shall be permitted to attend school from any house in which small-pox, varioloid, scarlet fever, diphtheria, or any other contagious or loathsome disease is prevalent. No teacher or scholar shall be permitted to return to school from any house where the above mentioned diseases, or any form of them, has prevailed, until three weeks shall have elapsed from the beginning of convalescence of the patient. In case several individuals have been affected with such disease within the same house, the period of the time must be reckoned from beginning of convalescence of the last case.

Requirements of pupils. SEC. 48. All pupils who may attend common schools, shall comply with the regulations established in pursuance of the law for the government of the schools, shall pursue the required course of studies and shall submit to the authority of the teachers of such school. Continued and willful disobedience and open defiance of authority of the teacher shall constitute good cause for expulsion from

school. Any pupil who shall, in any way, cut, deface or otherwise injure any school-house, furniture, fence or out-building thereof, or any book belonging to other pupils, or any books belonging to the district library, shall be liable to suspension and punishment, and the parent or guardian of such pupil shall be liable for damage on complaint of the teacher or any director, and upon proof of the same.

SEC. 49. The school year shall begin on the first day of ^{School year.} July and end on the last day of June.

TITLE X.—SUPPORT OF SCHOOLS.

SEC. 50. The principal of the state school fund shall ^{School fund irreducible.} remain irreducible and permanent. The said fund shall be derived from the following sources, to-wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or common schools; the proceeds of land and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of timber, stone, minerals or other property from school and state lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on said lands; five per centum of the proceeds of the sale of public lands lying within the state, which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section fifteen (15) of the act of congress enabling the admission of the state into the Union; the principal of all funds arising from the sale of lands and other property which have been and hereafter may be granted to the state for the support of common schools, and such other funds as may be provided by legislative enactment.

SEC. 51. The interest accruing on said fund, together with rentals and other revenues derived therefrom from lands and other property devoted to the common school fund shall be exclusively applied to the current use of the common school. All schools maintained or supported

Sectarian control or influence.

wholly or in part by the public funds shall be forever free from sectarian control or influence. All losses to the permanent common school fund which shall be occasioned by defalcation, mismanagement or fraud of the agent or officers controlling or managing the same, shall be audited by the proper authorities of the state. The amount so audited shall be a permanent funded debt against the state in favor of the particular fund sustaining such loss, upon which not less than six per cent. annual interest shall be paid.

County tax.

SEC. 52. In addition to the provisions for the support of the common schools hereinbefore provided, it shall be the duty of the county commissioners of each county in the state to levy an annual tax, which levy shall be made at the time and in the manner provided by law for the levying of taxes for county purposes, and said levy shall not be less than four mills on a dollar and not more than ten mills on a dollar of the assessed value of all taxable property, real and personal, within the county, which tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected. For the support of the common schools there shall also be set apart by the county treasurer all moneys paid into the county treasury arising from fines for breach of any law regulating license for the sale of intoxicating liquors, or for keeping of bowling alleys or billiard saloons, or of any penal law of the state.

TITLE XI.—SPECIAL TAXES.

Directors may submit question to vote.

SEC. 53. The board of directors of any district may, at any time when in their judgment it is advisable, submit to the qualified school electors of the district the question whether a tax not to exceed ten mills on each dollar on the taxable property in the district shall be levied to furnish additional school facilities for said district, or for building one or more school-houses, or for removing or building additions to one already built, or for the purchase of supplies, globe[s], maps, charts, books of reference and other appliances or apparatus for teaching, or for any or all of these purposes. Such election shall be called and

conducted, as nearly as practicable, according to the provisions herein made for holding annual school elections. At such elections the ballot shall contain the words, "Tax, yes;" or "Tax, no." If a majority of votes cast are "Tax, yes," the officers of the election shall certify the fact to the district clerk, who shall proceed at once to copy from the assessment roll of the county the list of persons and property liable to taxation situated in or owned by residents of the district, and shall certify to the correctness of the list and attach to said list the certification of the election board, showing the result of the election and the rate of tax levied, and deliver the same to the county auditor on or before the first day of October of the year in which said special tax is levied. The county auditor shall extend the same upon the general assessment roll of the county, showing the amount and kind of property so assessed, and certify the same to the county treasurer. The county treasurer shall proceed to collect the tax in the same manner, and at the same time, and with the same power and authority to enforce payment of the same, as in the case of county and state taxes. The county treasurer shall place any tax so collected to the credit of the district to which it belongs.

Collecting
special tax.

TITLE XII.—ELECTIONS.

SEC. 54. The election of directors and district clerks shall be held on the first Saturday of November of each year, at the district school-house, if there be one, or if there be none, or if there be more than one, then at a place to be designated by the board of directors.

Directors and
clerk.

SEC. 55. The district clerk must at least give ten days' notice of such election, by posting, or by causing to be posted, written or printed notices thereof in at least three public places in the district, one of which must be the place of holding the election. Said notice must designate the place of holding the election, day of holding the election, hours between which polls are to be kept open, names of offices for which persons are to be elected, and terms of office, with a statement of any other questions which the board of directors may desire to submit to the electors of said district. Notices must be signed by the district clerk

Notice of elec-
tion.

“by order of the board of directors.” Unless otherwise designated in the notice of election, the polls shall be open at one o'clock in the afternoon and close at four o'clock in the afternoon, but the board of directors may, previous to giving notice of election, determine on a longer time during which the polls shall be kept open: *Provided*, That in no case shall the polls be opened before nine o'clock in the forenoon nor kept open later than eight o'clock in the afternoon. In no case shall the polls be opened before the hour named in the notice, nor kept open after the hour fixed for closing the polls, but if there is not a sufficient number of electors present at the hour named for opening the polls to constitute a board of election, it shall be lawful to open the polls as soon thereafter as a sufficient number of electors is present: *Provided*, That in cities and incorporated towns the polls shall open not later than one o'clock P. M. and close not earlier than eight o'clock P. M.

Rules of election.

SEC. 56. At the hour fixed for opening the polls the electors present shall select two electors to act as judges of the election, and one elector to act as clerk of the election, and the three selected shall constitute the election board, and no election shall be held unless a sufficient number of electors is present to constitute the board. The judges and clerk aforesaid shall, before entering upon the duties of their office, severally take and subscribe an oath or affirmation faithfully to discharge the duties as such officers of the election, said oath or affirmation to be administered by any school officer or other person authorized to administer oaths. The judges shall, before they commence receiving ballots, cause to be proclaimed aloud at the place of voting that the polls are now open.

Officers must be sworn.

Manner of voting.

SEC. 57. The voting shall be by ballot. The ballot shall be a paper ticket, containing the names of the persons for whom the electors intend to vote, and designating the office to which such persons so named is intended by him to be chosen. Whenever any person offers to vote, one of the judges shall pronounce his name in an audible voice, and if there be no objections to the qualification to such person as an elector, he shall receive the ballot in the presence of the election board and deposit

the same, without being opened or examined, in the ballot-box, and the clerk shall immediately enter the name upon the list headed "Names of voters."

SEC. 58. Every person, male or female, over the age of twenty-one years, who shall have resided in the school district for thirty days immediately preceding any school election, and in the state one year, and is otherwise, except as to sex, qualified to vote at any general election, shall be a legal voter of any school election, and no other person shall be allowed to vote. Persons offering to vote may be challenged by any legally qualified school elector of the district, and one of the judges of election shall thereupon administer to the person challenged an oath, in substance as follows: "You do swear (or affirm) that you are a citizen of the United States, or have declared your intention to become such; that you are twenty-one years of age, according to your information and belief, that you have resided in this district thirty days next preceding this election, and in the state one year, and that you have not voted before on this day." If he shall refuse to take the oath, his vote shall be rejected. Any person guilty of illegal voting shall be punished as provided in the general election laws of the state.

SEC. 59. When the polls are closed, proclamation thereof shall be made at the place of voting and no vote shall afterward be received. As soon as the polls are closed, the judges shall open the ballot-box and commence counting the votes, and in no case shall the box be removed from the room in which the election is held until all the votes are counted. The counting shall be in public. The ballots shall be taken out one by one, by one of the judges, who shall open them and read aloud the name of each person contained therein, and the office for which such person was voted for. The clerk shall write down each office to be filled and the name of each person voted for such office, and shall keep the number of votes by tallies as they are read aloud by one of the judges. The counting of the votes shall continue without adjournment until all the votes are counted. No ticket shall be rejected on account of form or mistake in the initials of

names, if the judges can determine to their satisfaction the person voted for and the office intended.

SEC. 60. Persons having the highest number of votes given for each office shall be declared duly elected, and the clerk of election shall immediately make out and deliver to each person so elected a certificate of election. The clerk of election shall also make out a certificate showing the persons elected to each office at such election, with oath of office of persons elected attached, and mail such certificate to the county superintendent of schools of the county in which the election is held. If two persons have an equal and highest number of votes for one and the same office, they shall, within ten days after the election, appear before the clerk of election of said district and publicly decide by lot which of the persons so having an equal number of votes shall be declared elected, and the clerk of election shall make out and deliver to the person thus elected a certificate of his election and notify the county superintendent of the county as before provided. If the persons above named do not, within ten days after the election, thus decide, the office shall be declared vacant, and the county superintendent shall, when notified of the vacancy, fill the same by appointment.

TITLE XIII.—UNION SCHOOLS.

SEC. 61. Whenever the residents of two or more school districts may wish to unite for the purpose of establishing a graded school, the clerks of said districts shall, upon a written application of five heads of families of their respective districts, call a meeting of the voters of such district at some convenient place by posting up written or printed notices in like manner as provided for calling district election, and if a majority of the voters of each district shall vote to unite for the purpose herein stated, they shall, at their meeting, or any adjourned meeting, elect three directors and a clerk for such union district.

SEC. 62. The board of directors and clerk provided for in the preceding section shall, in all matters relating to graded schools, possess all the power, discharge all the duties, and be governed by the laws herein provided for

district directors, and they shall be elected in the same manner as provided in the preceding section.

SEC. 63. The union district thus formed shall be entitled to an equitable share of the school fund, to be apportioned in accordance to section 11, clause thirteen (13) of this act.

TITLE XIV.—GRADED SCHOOLS IN INCORPORATED CITIES AND TOWNS.

SEC. 64. Each incorporated city or town in this state shall be comprised in one district and under one board of school directors, and in all such cities or towns where the enumeration of school children entitled to draw school money is three hundred or more, the directors shall be required to adopt the graded system of teaching in their schools: *Provided*, That nothing in this section shall be so construed as to prevent the extension of such city or town districts a reasonable distance outside the limits of such incorporated city or town: *And provided further*, That the schools of such cities and towns may be graded in such manner as the directors thereof may deem best suited to the wants of such districts.

SEC. 65. The directors of incorporated city or town districts may, in their discretion, elect one city or town school superintendent in each district, who may be a teacher of the district, and who shall have the control or management of all the schools in his district, subject to the concurrence of the board of directors.

SEC. 66. When two or more districts in any town or city are united by the provisions of this act, all the directors of the districts so united shall act as directors of the said new district, and shall have all the powers and authority conferred by the laws of this state upon school directors, and they may designate the person to act as clerk of said district until the next annual school meeting in said district, at which time there shall be three directors and one clerk elected for said district, in the manner provided by law, who shall hold their respective offices as provided for officers of new districts.

SEC. 67. Districts thus formed shall be entitled to their full share of common school moneys.

Penalty for
neglect or fall-
ure.

SEC. 68. Directors failing to organize their districts as herein provided within one hundred and twenty days after the incorporation of such cities or towns, as herein provided, shall be deemed guilty of a misdemeanor, and fined in a sum not exceeding five hundred dollars: *Provided*, That they are supplied with sufficient money to organize the same.

TITLE XV.—SCHOOL OFFICERS.

Officers liable.

SEC. 69. When any school officer is superseded, by election or otherwise, he shall immediately deliver to his successor in office all books, papers and moneys pertaining to his office, and every officer who shall refuse to do so, or who shall wilfully mutilate or destroy any such books or papers, or any part thereof, or who shall misapply moneys entrusted to him by virtue of his office shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by any fine not to exceed one hundred dollars.

Oath of office.

SEC. 70. Every person elected or appointed to any office mentioned in this act shall, before entering upon the discharge of the duties thereof, take an oath or affirmation to support the constitution of the United States and of the State of Washington, and to promote the interest of education, and faithfully discharge the duties of his office according to the best of his ability. In case any officer has a written appointment or commission, his oath or affirmation shall be endorsed thereon and sworn to before any officer authorized to administer oaths. School officers are hereby authorized to administer all oaths or affirmations appertaining to their respective offices without charge or fee.

TITLE XVI.—COUNTY TREASURER.

Special deposit.

SEC. 71. It shall be the duty of the county treasurer of any county — *First*, to receive and hold all school moneys as a special deposit and keep separate accounts of their disbursements to the school districts which shall be entitled to receive the same, according to the apportionment of the county superintendent of common schools; *second*, to notify the county superintendent of common schools of the amount of county school fund in the county treasury at the time fixed for making the apportionment, and to

inform such superintendent of the amount of school money belonging to any other fund subject to apportionment; *third*, to pay the amount of common school tax levied and such other moneys paid into the school fund on the warrant of the directors whenever such warrants are countersigned by the district clerk and properly endorsed by the holder; *fourth*, to make, annually, on the 30th day of June of each year, to the county superintendent of common schools a financial report showing the amount of money on hand at the beginning of the school year, the amount expended during the year and the sum to the credit of the school districts at the close of the school year, on such blanks as may be furnished by the superintendent of public instruction. Annual report.

TITLE XVII.—TEACHERS' INSTITUTE.

SEC. 72. Whenever the number of school districts in any county is twenty-five or more, the county superintendent must hold a teachers' institute each year, and every teacher employed in a common school in the county must attend such institute during its whole time.

SEC. 73. In any county where there are less than twenty-five school districts, the county superintendent may, in his discretion, hold an institute. Superintendent may hold institute.

SEC. 74. Each session of the institute must continue not less than three days.

SEC. 75. When the institute is held during the time the teachers are employed in teaching, their pay shall not be diminished by reason of their attendance when certified to by the county superintendent.

SEC. 76. The county superintendent must keep an accurate account of the actual expenses of the institute, with vouchers for the same, and present the bill to the county commissioners, who shall allow the same: *Provided*, That such amount shall not exceed the sum of two hundred dollars for any year. Expenses of institute.

SEC. 77. Any teacher failing to attend the institute in the county in which he holds a certificate to teach, unless on account of sickness, or for other good and sufficient reasons, shall be deemed to have forfeited his certificate. Teachers must attend.

MISCELLANEOUS.

SEC. 78. Whenever the word he or his occurs in this act, referring to either the members of the board of education, county superintendents, city superintendents, teachers, or other school officers, it shall be understood to mean also she or her.

Text-books.

SEC. 79. Any series of text-books adopted by the board of education shall remain in use not less than five years.

SEC. 80. All school districts in the state shall maintain school during at least three months each year. All graded school districts in incorporated cities and towns shall maintain school at least six months each school year, and no district which has been organized more than one year shall receive any portion of the school fund which has not, during the preceding school year, complied with the provisions of this section.

Compulsory education.

SEC. 81. All parents, guardians and other persons in this state having, or who may hereafter have, immediate custody of any child or children between the ages of eight and fifteen years, shall send the same to school at least three months in each year said child or children may remain under their supervision.

Penalty.

SEC. 82. Any person mentioned in the preceding sections who shall fail or refuse to comply with the provisions of said sections shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten (\$10) dollars or more than twenty-five (\$25) dollars, and the fine so collected shall be paid into the school fund of the district.

Report as to orphans.

SEC. 83. District clerks shall report to the superior judge before the first day of December of each year the name and residence of every orphan child that failed to attend school, and the superior judge shall have power to remove such child and place it in the care of some other person who will be likely to send such child to school.

Validity of certificates heretofore granted.

SEC. 84. Nothing in this act shall be construed to invalidate life diplomas or territorial certificates granted under the laws of the Territory of Washington, but the same shall continue in effect the same as life diplomas and state

certificates granted under the provisions of this act, and all county certificates heretofore granted by any county board of examiners shall continue in full force and effect until the expiration thereof, and any contract made in good faith by any teacher, school officer or other person under the provisions of the territorial school law is hereby recognized as a valid contract the same as if made under the provisions of this act.

SEC. 85. Specialists in music, languages, drawing and painting shall not be required to pass a regular teachers' examination: *Provided*, That satisfactory evidence of fitness to teach these branches is furnished to the board of directors.

Teachers of music, languages, drawing and painting.

SEC. 86. Any parent, guardian or other person who shall insult or abuse a teacher in the presence of the school, or anywhere on the school grounds or premises, shall be deemed guilty of a misdemeanor, and liable to a fine of not less than ten dollars nor more than one hundred dollars.

Penalty for abusing a teacher.

SEC. 87. Any person who shall wilfully disturb any school or school meeting shall be deemed guilty of a misdemeanor, and upon conviction be fined in any sum not less than fifty dollars.

Disturbance.

SEC. 88. It shall be the duty of the county auditor to notify the superintendent of public instruction of the election of the county superintendent, or of his appointment to fill a vacancy, at the time said election or appointment is ascertained.

Duty of auditor.

SEC. 89. All fines, penalties and forfeitures provided by this act may be recovered by action of debt, in the name of the people of the State of Washington, for the use of the proper school district or county, and shall, when they accrue, belong to the respective districts or counties in which the same may have been incurred; and the county treasurers for their counties are hereby authorized to receive and cause to be placed to the proper credit such forfeitures. Except as otherwise provided by law, all sums of money derived from fines imposed for violations of orders of injunction, mandamus, and other like writs, or for contempt of court, shall be paid into the school fund of the county wherein the contempt or such violation

Fines and penalties.

was committed, and the clear proceeds of all fines collected within the several counties of the state for breach of the penal laws, and all funds arising from the sale of lost goods and estrays, shall be paid over in cash by the person collecting the same, within twenty days after the collection, to the county treasurer of the county in which the same have accrued, and shall be by him credited to the general county school fund. He shall indicate in such entry the source from which such money was derived.

Penalty for neglect or failure to pay over moneys from fines.

Any officer or person collecting or receiving any such fines, forfeitures or other moneys, and refusing or failing to pay over the same, as required by law, shall forfeit double the amount so withheld, and interest thereon at the rate of five per cent. per month during the time of so withholding the same; and it shall be a special duty of the county superintendent of schools to supervise and see that the provisions of this section are fully complied with, and report thereon to the county commissioners semi-annually, or oftener.

Complaints for violation of law.

SEC. 90. Upon complaint, in writing, being made to any county superintendent by any district clerk, or by any head of family, that the board of directors of the district of which said clerk shall hold his office, or said head of family shall reside, have failed to make provision for the teaching of hygiene, with special reference to the effects of alcoholic drink, stimulants and narcotics upon the human system, as provided in this act, in the common schools of

Duty of county superintendent.

such district, it shall be the duty of such county superintendent to at once investigate the matter of such complaints, and if found to be true he shall immediately notify the county treasurer of the county in which such school district is located, and after the receipt of such notice it shall be the duty of such county treasurer to refuse to pay any warrants drawn upon him by the board of directors of such district subsequent to the date of such notice, and until he shall be notified to do so by such county superintendent. Whenever it shall be made to appear to the said county superintendent, and he shall be satisfied, that the board of directors of such district are complying with the provisions of said section of this act,

Duty of treasurer.

and are causing physiology and hygiene to be taught in the public schools of such district as hereinbefore provided, he shall notify said county treasurer, and said treasurer shall thereupon honor the warrants of said board of directors.

SEC. 91. Any county superintendent of common schools who shall fail or refuse to comply with the provisions of the preceding section shall be liable to a penalty of one hundred dollars, to be recovered in a civil action in the name of the state in any court of competent jurisdiction, and the sum recovered shall go into the common school fund of the county in which suit is brought, and it shall be the duty of the prosecuting attorneys of the several counties of the state to see that the provisions of this section are enforced. Penalty for failure or neglect.

SEC. 92. All acts and parts of acts upon any subject matter contained in this act shall be and the same are hereby repealed: *Providing*, That nothing herein contained shall repeal or in any wise affect any law passed, or which may be passed, during the present session of the legislature, relating to schools in cities having a population of ten thousand and upwards. Qualified repealing clause.

SEC. 93. Whereas, many new conditions exist with regard to the common schools of the state, and the appointment and confirmation of the members of the board of education, and the first meeting of said board, requires the immediate taking effect of this act; therefore, an emergency is declared to exist, and this act shall take effect and be in force from and after its passage and approval by the governor. Emergency clause.

Approved March 27, 1890.

Tab 5

SESSION LAWS

OF THE

STATE OF WASHINGTON

SESSION OF 1895.

COMPILED IN CHAPTERS, WITH MARGINAL NOTES,
BY J. H. PRICE, SECRETARY OF STATE.

PUBLISHED BY AUTHORITY.

OLYMPIA, WASH.:
O. C. WHITE, . . . STATE PRINTER.
1895.

the heirs of J. J. H. Van Bokkelen, who was the successor in interest of Nancy Van Bokkelen.

SEC. 3. The state auditor is hereby authorized to draw a warrant on the state treasurer for the said amount, and the state treasurer is hereby directed to pay said warrant out of any funds in the state treasury not otherwise appropriated.

Passed the house March 4, 1895.

Passed the senate March 9, 1895.

Approved March 14, 1895.

CHAPTER LXVIII.

[H. B. No. 67.]

PROVIDING FOR APPORTIONMENT OF SCHOOL FUND.

AN ACT to amend section fifty-two of chapter twelve of the Laws of 1889-90, entitled "An act to establish a general uniform system of common schools in the State of Washington, and declaring an emergency," approved March 27, 1890, as amended by section sixteen of chapter one hundred and twenty-seven of the Laws of 1891, approved March 7, 1891.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That section fifty-two of chapter twelve of the Laws of 1889-90, entitled "An act to establish a general uniform system of common schools in the State of Washington, and declaring an emergency," approved March 27, 1890, as amended by section sixteen of chapter one hundred and twenty-seven of the Laws of 1891, approved March 7, 1891, be amended to read as follows: Sec. 52.

Duty of state board.

In addition to the provisions for the support of common schools hereinbefore provided, it shall be the duty of the state board of equalization, annually, at the time of levy-ing tax for state purposes, to levy a tax that shall be sufficient to produce a sum which, when added to the estimated amount of money to be derived from the interest on the state permanent school fund for the current fiscal year,

shall equal six dollars for each child of school age residing in the state, as shown by the last report of the several county superintendents to the superintendent of public instruction: *Provided*, That said tax shall not exceed four mills on the dollar. Said tax levy shall be certified to the several county auditors in the same manner as other state taxes are required to be certified, and shall be collected and transmitted to the state treasurer at the same time and in the same manner as other state taxes are required to be collected and transmitted; and it shall be the duty of the state auditor, within thirty days after the date at which county treasurers are required to transmit state funds to the state treasurer, to certify to the superintendent of public instruction the amount of all state annual school funds in the hands of the state treasurer subject to apportionment, and it shall be the duty of the superintendent of public instruction, within ten days after receiving the certificate of the state auditor, to apportion said funds to the several counties, according to the number of children of school age residing in each, as shown by the last annual reports of the several county superintendents on file in his office at the time of making any apportionment. He shall certify to the county superintendents and to the state auditor the amount of funds due each county, and the state auditor shall draw warrants on the state treasurer in favor of the several county treasurers for the amounts due their respective counties, as shown by the certificate of the superintendent of public instruction. The county superintendents of the several counties shall, within ten days after receiving the certificate of apportionment of the superintendent of public instruction, apportion the state annual school fund to the several school districts entitled to receive the same, in accordance with the number of children of school age, as shown by the last annual reports of the several school districts on file in his office at the time of making any apportionment, and shall certify to the several school district clerks the amounts due their respective districts. For the further support of the common schools in this state, there shall be set apart by the county treasurer of each county all moneys paid into the county treasury

Tax, how
levied.

State auditor
to certify.

Superintendent
to apportion
funds.

School funds,
fines a part of.

arising from fines for breach of any penal law of the state, and it is hereby made the duty of all county clerks, justices of the peace and other officers receiving any moneys properly belonging to the school fund of any county, to turn the same over to the county treasurer within thirty days after the date of their collection, taking his receipt therefor, and all such officers shall make a report to the county superintendent quarterly on or before the tenth day of January, April, July and October each year of all moneys so collected.

Passed the house February 9, 1895.

Passed the senate March 8, 1895.

Approved March 14, 1895.

CHAPTER LXIX.

[S. B. No. 319.]

APPROPRIATION FOR SOLDIERS' HOME.

AN ACT for an appropriation for the state soldiers' home at Orting.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That there is hereby appropriated out of any funds in the state treasury not otherwise appropriated the sum of forty-eight thousand five hundred dollars (\$48,500) for the soldiers' home at Orting, for the following uses and purposes:

For maintenance for the two years ending 1897.....	\$36,500 00
For electric light plant.....	3,500 00
For enlargement of hospital.....	3,500 00
For furnishing hospital.....	1,000 00
Extending sewer to Puyallup river.....	1,000 00
Contingent expenses, which include clearing land, building additional outbuildings, fencing and enlarging water supply, etc.....	3,000 00
Total.....	\$48,500 00

SEC. 2. The state auditor is hereby authorized to draw on the state treasurer warrants against said fund upon pre-

Tab 6

THE SUPREME COURT OF WASHINGTON

MATHEW & STEPHANIE McCLEARY, et al.,
 Respondent/Cross-Appellant,
 v.
 STATE OF WASHINGTON,
 Appellant/Cross-Respondent.

ORDER

Supreme Court No
 84362-7
 King County No.
 07-2-02323-2 SEA

FILED
 SUPREME COURT
 CLERK
 BY RONALD S. APPENDER
 12 JUL 18 PM 3:49
 WASHINGTON

This matter came before the court on its July 11, 2012, En Banc Conference. In its decision in this case, the court held that the State is not currently meeting its duty under article IX, section 1 of the Washington State Constitution to make ample provision for the education of all children in the State. *McCleary v. State*, 173 Wn.2d 477, 539, 269 P.3d 227 (2012). The court recognized the legislature’s enactment of “a promising reform program in [Laws of 2009, ch. 548] ESHB 2261,” *id.* at 543, designed to remedy the deficiencies in the prior funding system by 2018. The court retained jurisdiction “to monitor implementation of the reforms under ESHB 2261, and more generally, the State’s compliance with its paramount duty.” The court directed the parties to provide further briefing addressing the preferred method for retaining jurisdiction. Having considered the parties’ arguments, and being fully advised in this matter, the court enters the following order:

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1. The State, through the Legislative Joint Select Committee on Article IX Litigation or through legal counsel, shall file periodic reports in this case summarizing its actions taken towards implementing the reforms initiated by Laws of 2009, ch. 548 (ESHB 2261) and achieving compliance with Washington Constitution article IX, section 1, as directed by this court in *McCleary v. State*, 173 Wn.2d 477, 269 P:3d 227 (2012).

2. The first report shall be filed no later than 60 days following entry of this order. Thereafter, reports shall be submitted (a) at the conclusion of each legislative session from 2013 through 2018 inclusive, within 60 days after the final biennial or supplemental operating budget is signed by the governor, and (b) at such other times as the court may order. After the filing of the initial report, subsequent reports should summarize legislative actions taken since the filing of the previous report.

3. A copy of each report shall be filed with the court and served on the respondents' counsel. The report shall be a public document and may be published on the legislature's web page. Within 30 days after receiving a copy of the report, the respondents may file and serve written comments addressing the adequacy of the State's implementation of reforms and its progress toward compliance with article IX, section 1.

4. In deference to ESHB 2261 and its implementation schedule, the court's review will focus on whether the actions taken by the legislature show real and measurable progress toward achieving full compliance with article IX, section 1 by 2018. While it is not realistic to measure the steps taken in each legislative session between 2012 and 2018 against full constitutional compliance, the State must demonstrate steady progress according to the schedule anticipated by the enactment of the program of reforms in ESHB 2261.

5. Upon reviewing the parties' submissions, the court will determine whether to request additional information, direct further fact-finding by the trial court or a special master, or take other appropriate steps.

DATED at Olympia, Washington this 18th day of July, 2012.

For the Court,



CHIEF JUSTICE

Tab 7

THE SUPREME COURT OF WASHINGTON

MATHEW and STEPHANIE McCLEARY,
et al.,

Respondent/Cross-Appellant,

v.

STATE OF WASHINGTON,

Appellant/Cross-Respondent.

ORDER

Supreme Court No.
84362-7

King County No.
07-2-02323-2 SEA

FILED
SUPERIOR COURT
STATE OF WASHINGTON
2012 DEC 20 A 11:42
BY RONALD D. CARPENTER

This matter came before the court on its December 6, 2012, en banc conference following the parties' submissions in response to this court's July 18, 2012 order. *See* Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation; Pl./Resp'ts' 2012 Post-Budget Filing. The question before us is whether, in remedying the constitutional violation of the State's paramount duty under article IX, section 1, current actions "demonstrate steady progress according to the schedule anticipated by the enactment of the program of reforms in ESHB 2261." Wash. Supreme Court Order (July 18, 2012) at 3 (Order). Consistent with ESHB 2261, 61st Leg., Reg. Sess. (Wash. 2009), such progress must be both "real and measurable" and must be designed to achieve "full compliance with article IX, section 1 by 2018." *Id.*

The State's first report falls short. The report details some of the same history set out in this court's opinion, *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012), and it identifies committees in place and the funding task force's assignment. But, the report does not

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sufficiently indicate how full compliance with article IX, section 1 will be achieved. Indeed, since the passage of ESHB 2261 in 2009, significant cuts to education funding have been made. Some of these cuts have been partially restored, but the overall level of funding remains below the levels that have been declared constitutionally inadequate.

Steady progress requires forward movement. Slowing the pace of funding cuts is necessary, but it does not equate to forward progress; constitutional compliance will never be achieved by making modest funding restorations to spending cuts.

It continues to be the court's intention to foster cooperation and defer to the legislature's chosen plan to achieve constitutional compliance. *See McCleary*, 173 Wn.2d at 541-42, 546. But, there must in fact be a plan. Each day there is a delay risks another school year in which Washington children are denied the constitutionally adequate education that is the State's paramount duty to provide.

Year 2018 remains a firm deadline for full constitutional compliance. Whether this is achieved by getting on track with the implementation schedule anticipated in ESHB 2261 or whether it is achieved by equivalent measures, it is incumbent upon the State to lay out a detailed plan and then adhere to it. The upcoming legislative session provides the opportunity for the State to do so. While the State's first report to the court identified the standing committees that have been formed and the additional studies that have been undertaken, the second report must identify the fruits of these labors.

Accordingly, by majority, it is hereby ordered: the report submitted at the conclusion of the 2013 legislative session must set out the State's plan in sufficient detail to allow progress to be measured according to periodic benchmarks between now and 2018. It should indicate the

phase-in plan for achieving the State's mandate to fully fund basic education and demonstrate that its budget meets its plan. The phase-in plan should address all areas of K-12 education identified in ESHB 2261, including transportation, MSOCs (Materials, Supplies, Other Operating Costs), full time kindergarten, and class size reduction. Given the scale of the task at hand, 2018 is only a moment away—and by the time the 2013 legislature convenes a full year will have passed since the court issued its opinion in this case.¹

In education, student progress is measured by yearly benchmarks according to essential academic goals and requirements. The State should expect no less of itself than of its students. Requiring the legislature to meet periodic benchmarks does not interfere with its prerogative to enact the reforms it believes best serve Washington's education system. To the contrary, legislative benchmarks help guide judicial review. We cannot wait until "graduation" in 2018 to determine if the State has met minimum constitutional standards.

IT IS SO ORDERED.

DATED at Olympia, Washington this 30th day of December, 2012.

For the Court,



CHIEF JUSTICE

¹ On a minor point, the State's 2013 postbudget report and any response should be filed as a pleading with the court. This case remains open and it is important that all communications between the parties and the court be part of the open court file.

No. 84362-7

J.M. JOHNSON, J. (dissenting)—Today's order clearly violates two important provisions of our constitution: the separation of powers and the explicit delegation of education to the legislature. This order purports to control the Washington State Legislature and its funding for education until 2018. The order ultimately impairs the implementation of newly designed best available education techniques for our school children. I dissent.

SEPARATION OF POWERS

This case was originally brought as a declaratory action alleging that the State was violating the Washington State Constitution by failing to adequately fund the K-12 school system.¹ RCW 7.24.010 authorizes Washington courts to declare rights, status, and other legal relationships under declaratory judgment actions. Here, the majority actually orders the legislature to take certain specific actions by

¹ *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012).

a specified date, which sounds more in mandamus than declaratory judgment. It also disregards the multitudinal facets of a budget.

A writ of mandamus is used “to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled” RCW 7.16.160. Although this court has limited authority to issue writs of mandamus, it seldom controls state officers, much less the legislature. Furthermore, “such a court order must be justified as an extraordinary remedy.” *SEIU Healthcare 775NW v. Gregoire*, 168 Wn.2d 593, 598-99, 229 P.3d 774 (2010) (denying mandamus).

As the remedy lies in equity, courts must exercise judicial discretion to issue the writ. *Id.* at 601. “[W]hen directing a writ to the Legislature or its officers, a coordinate, equal branch of government, the judiciary should be especially careful not to infringe on the historical and constitutional rights of that branch.” *Brown v. Owen*, 165 Wn.2d 706, 718, 206 P.3d 310 (2009) (quoting *Walker v. Munro*, 124 Wn.2d 402, 407, 879 P.2d 920 (1994)).

Here, the court is issuing what appears to be a writ of mandamus without calling it by its proper name or justifying it as an extraordinary remedy. Further, writs of mandamus must be directed at an “inferior tribunal, corporation, board or

person.” RCW 7.16.160. The legislature is separate and equal, not an “inferior . . . board.” *Id.*

The majority’s order directs the legislature to create a specific educational plan by the end of the 2013 legislative session with further steps to 2018. Considering that the new legislators have not yet been sworn in, and the body to which we are issuing this direction is consequently not even in existence, the order is improper. At the least, the new legislature should be allowed to consider the issue, in good faith, without this court’s orders held to its head.

The Washington State Constitution does not express its separation of powers. ““Nonetheless, the very division of our government into different branches has been presumed throughout our state’s history to give rise to a vital separation of powers doctrine.”” *Brown*, 165 Wn.2d at 718 (quoting *Carrick v. Locke*, 125 Wn.2d 129, 135, 882 P.2d 173 (1994)). The separation of powers doctrine exists “to ensure that the fundamental functions of each branch remain inviolate.” *Carrick*, 125 Wn.2d at 135.

We have recognized that “[t]he spirit of reciprocity and interdependence requires that if checks by one branch undermine the operation of another branch or undermine the rule of law which all branches are committed to maintain, those checks are improper and destructive exercises of the authority.” *In re Salary of*

Juvenile Director, 87 Wn.2d 232, 243, 552 P.2d 163 (1976). Today's order is precisely that—a destructive exercise of authority. Effects on other state funded programs, such as those for the needy, are disregarded. The extensive history of educational studies and reform described in *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012), illustrates the legislature's comparative advantage at identifying policy goals and implementing them.² Although the majority in *McCleary* claimed that this court would not “dictat[e] the precise means by which the State must discharge its duty,”³ today's order no doubt contemplates this court's future assessment of the merits of the legislature's benchmarks, as well as the contents of its plan.⁴ Because we are isolated from the legislative mechanisms

² Examples of such studies and reforms include the Washington Basic Education Act of 1977 (LAWS OF 1977, 1st Ex. Sess., ch. 359), the Levy Lid Act of 1977 (LAWS OF 1977, 1st Ex. Sess., ch. 325), the Remediation Assistance Act (LAWS OF 1979, ch. 149), the Transitional Bilingual Instruction Act of 1979 (LAWS OF 1979, ch. 95), the Education for All Act of 1971 (LAWS OF 1971, 1st Ex. Sess., ch. 66), the Governor's Council on Education Reform and Funding, the Commission on Student Learning, ESHB 1209, the development of EALRs and the Washington Assessment of Student Learning, the Washington Learns study, E2SSB 5841, the Transportation Funding study, the Basic Education Finance Task Force, E2SSB 5627, the creation of the Quality Education Council, and SHB 2776. *McCleary*, 173 Wn.2d at 486-510. A recent example of how educational reforms are constantly evolving is the announcement of Washington State Superintendent of Public Instruction Randy Dorn's proposal to reduce five required testing areas down to three. Press Release, State of Washington Office of Superintendent of Public Instruction, Dorn Proposes Changes in State Assessment System (Dec. 13, 2012), <http://www.k12.wa.us/Communications/PressReleases2012/DornProposesChanges-Assessment.aspx> (last visited Dec. 18, 2012).

³ 173 Wn.2d at 541.

⁴ The order appears to be predicated on the misinformation that more funding is the solution to all problems in education. American students' recent scores on 12th grade National Assessment of Educational Progress (NAEP) tests highlight the mediocrity in K-12 schools. Matthew Ladner et

for gathering public input, such as hearings and committees, courts are undeniably unsuited to decide these policy judgments.

WASHINGTON STATE CONSTITUTION ARTICLE IX, SECTION 2

The constitution enshrines in article IX, section 2 that “[t]he legislature shall provide for a general and uniform system of public schools.” This is supported both by statewide representation in the legislature and by the legislature’s control over the budget. Today’s order is a clear usurpation of the legislature’s constitutionally mandated duty.

Judges sometimes have delusions of grandeur. Our decision-making deals with thousands of criminal and civil cases through one model. Our state constitution allows other major problems to be resolved through elected representatives from the entire state. This includes the committee process, two houses, a governor, and the use of initiatives and referenda as pros.

The United States Supreme Court has long recognized “that judicial inquiries into legislative or executive motivation represent a substantial intrusion

al., *Report Card on American Education* 4 (16th ed. 2010). For example, only 23 percent of 12th graders scored “Proficient” in math (39 percent scored “below Basic”). *Id.* Similarly, only 35 percent of 12th graders scored “Proficient” in reading. *Id.* Nationally, per student annual expenditures have increased from \$4,060 in 1970 to \$9,266 in 2006 (in constant 2007 dollars). *Id.* at 8. Meanwhile, NAEP scores have remained fairly constant and high school graduation rates have dropped slightly. *Id.* What this means is that United States taxpayers are paying more than double per student than they were 40 years ago without seeing any measurable increases in educational outcomes.

into the workings of other branches of government.” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 n.18, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977). We should accordingly presume that legislators act in good faith in discharging their constitutional duties. In *McCleary*, the majority clarified the legislature’s duty under article IX, section 1 of the Washington State Constitution and expressed that we expect to see full implementation of educational reforms. 173 Wn.2d at 547. Because I would continue to presume that the legislature will act in good faith in implementing these reforms, this order oversteps the bounds of proper judicial action.

I agree with and signed Chief Justice Madsen’s concurrence/dissent in *McCleary*, in which she expressed that “[w]e have done our job; now we must defer to the legislature for implementation.” *Id.* at 548 (Madsen, C.J., concurring/dissenting). For this reason, I respectfully dissent.

No. 84362-7
Dissent to Order

J M Johnson

Tab 8

THE SUPREME COURT OF WASHINGTON

FILED
BY RONALD R. CABENDER

CLERK

MATHEW and STEPHANIE)
McCLEARY, et al.,)
)
Respondents/Cross-Appellants,)
)
v.)
)
STATE OF WASHINGTON,)
)
Appellant/Cross-Respondent.)
_____)

ORDER

Supreme Court No.
84362-7

King County No.
07-2-02323-2 SEA

“It is the paramount duty of the state to make ample provision for the education of all children residing within its borders.” WASH. CONST. art. IX, § 1. This is the only “paramount duty” our founders inscribed in our constitution. ROBERT F. UTTER & HUGH D. SPITZER, THE WASHINGTON STATE CONSTITUTION, A REFERENCE GUIDE 169 (2d ed. 2013). Two years ago, this court held unanimously that the State is not meeting its paramount duty. *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012). Recognizing that the legislature had enacted a promising set of reforms, the court deferred to its efforts but retained jurisdiction over this case to ensure timely and full compliance with the mandate to amply fund education. Last year, we recognized that the 2013 legislative session would provide the first full opportunity for the State to “lay out a detailed plan and then adhere to it.” Order, *McCleary v. State*, No. 84362-7, at 2 (Wash. Dec. 20, 2012). Our order dated December 20, 2012 directed the State to set out its plan for implementing education reforms in “sufficient detail to allow progress to be measured according to periodic benchmarks

681/150

between now and 2018” and reiterated that “[y]ear 2018 remains a firm deadline for constitutional compliance.” *Id.*

Today, this matter is before the court following the State’s filing of the 2013 “Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation” (hereinafter Report) and the plaintiffs’ response. The Report summarizes steps taken in 2013, using the 2012 flat level of basic education funding as the baseline for measurement. Report at 5.¹ The Report also continues to rely on the reports of the Quality Education Council (QEC) and the Joint Task Force on Education Funding (JTFEF), which made recommendations to the legislature on how to implement the reforms enacted in 2009 in ESHB 2261 and 2010 in SHB 2776. Report at 7. By the State’s calculation, the 2013-15 operating budget achieves an 11.4 percent increase in basic education funding over 2011-13 estimated expenditures. Report at 2. Measured against maintenance level funding, the \$982 million allocated to K-12 basic education for the 2013-15 biennium translates into a 6.7 percent increase over the constitutionally inadequate level of funding. *Id.* The State also indicates that it has enhanced funding for programs beyond the elements specified in SHB 2776 and continues to “review, revise, and enhance other components within the basic education formulas.” Report at 3.

One thing is obvious from the State’s Report: unlike in 2012, meaningful steps were taken in the 2013 legislative session to address the constitutional imperative of amply providing for basic

¹ The Report acknowledges that the legislature made no changes to basic education funding during the 2012 session. Report at 5. Thus, it describes its 2012 report as establishing a “baseline description of the K-12 budget” and offering information about legislative activities in order to “provide context for future reports.” *Id.*

education. Recognizing there is debate over whether the State can claim a total of \$982 million in enhancements to the program of basic education,² the 2013-15 operating budget is undeniably an improvement over the last biennial budget. Moreover, implementing education reform has become a higher priority for the State, as even a casual observer of the 2013 legislative session could not fail to appreciate.

What is not clear, however, is how the State is measuring success when it asks us to “find that the State is making progress toward implementing the reforms initiated in ESHB 2261 and achieving full compliance with article IX, section 1 by 2018.” State of Washington’s Resp. to the Court’s Orders dated July 18, 2012 and December 20, 2012: The Legislature’s 2013 Post-Budget Report at 5. Looking at the gross numbers, the overall increased investment in basic education is only a modest 6.7 percent above current funding levels that violate the constitution, and there are not even two full budget cycles left to make up the sizable gap before the school year ending in 2018. The Report confirms that the State remains committed to ESHB 2261 and SHB 2776 and intends to fully fund its reforms, consistent with the reports of the QEC and JTFFEF. At the same time, the Report claims substantial progress and even “full implementation” of transportation funding by relying on cost figures that are lower than the projections of its own committee and task force, as well as the Office of the Superintendent of Public Instruction (OSPI). *See* Report at 12-13.

Transportation, for example, is funded at \$131.7 million for the 2013-15 biennium, with a phase in plan that leaves \$109.7 million for the 2014-15 school year. Report at 12-13, 21. As we

² The plaintiffs identify education funding shifts and cuts, such as striking K-12 staff cost-of-living increases in the amount of \$295.5 million, and claim the actual biennial education budget increase was only \$649 million. Pls./Resp’ts’ 2013 Post-Budget Filing (Pls.’ Resp.) at 14 & n.41.

noted in our opinion in this case, the 2010 QEC report estimated that state funding of transportation would *fall short* by nearly this amount during the 2009-10 school year. *McCleary*, 173 Wn.2d at 509. Moreover, the December 2012 JTFFEF Final Report indicated that \$141.6 million would be needed in 2013-15 to stay on target toward full transportation funding, with substantial increases again in 2015-17. JTFFEF Final Report at 3. The plaintiffs' rightly complain that the State appears to have revised the cost estimates based on a formula that its own analysis shows falls short. Pls./Resp'ts' 2013 Post-Budget Filing (Pls.' Resp.) at 23-24 & nn.74, 75 (discussing RCW 28A.160.192 and 2013 OSPI Transportation Update). We cautioned in 2012 that revised funding formulas cannot be used to declare "full funding," when the actual costs of meeting the education rights of Washington students remain unfunded. *See McCleary*, 173 Wn.2d at 532.

Even more troubling is the apparent lack of progress toward fully funding essential materials, supplies and operation costs (MSOCs). The JTFFEF identified MSOCs as the area requiring the greatest increase in state funding, estimating a need for \$597.1 million in 2013-15, followed by \$1.410.9 billion in 2015-17 and \$1.554.7 billion in 2017-19. JTFFEF Final Report at 3. The State's 2013-15 operating budget includes \$374 million for MSOCs. Report at 12. By its own estimates, this leaves a gap of about \$857 million to make up in the 2015-17 biennium, *id.*, and the JTFFEF figures suggest the gap is even wider, JTFFEF Final Report at 3. We agree with the plaintiffs that "[e]stimating the size of the shortfall in the next biennium is not a plan." Pls.' Resp. at 28 n.85. Underfunding MSOCs places an unsustainable burden on school districts. That burden is exacerbated when at the same time nonemployee related costs are underfunded, the State funds instructional and class-size reduction programs that incur additional costs to local districts. Consider,

for example, full-day kindergarten and early elementary class-size reduction. The 2013-15 education budget invests \$89.8 million in full-day kindergarten, anticipating an increase in enrollment from 22 percent to 43.75 percent. Report at 2, 14. It also provides \$103.6 million for K-3 class-size reduction in high poverty schools, with a goal of reducing class size to about 20 students in the 2014-15 school year. *Id.* at 13-14.³ The plaintiffs cite OSPI's 2013 Facilities Capacity Report to note that school districts are strapped for the physical space to meet these goals. Pls.' Resp. at 32, 36. OSPI estimates that additional capital expenditures are required of approximately \$105 million for full-day kindergarten and \$599 million for K-3 class-size reduction by 2017-18. *Id.* Make no mistake, enhanced funding for full-day kindergarten and class-size reduction is essential, but the State must account for the actual cost to schools of providing these components of basic education. We recognized long ago that the paramount duty to amply fund education under article IX, section 1 must be borne by the State, not local school districts. *See generally Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 536-37, 585 P.2d 71 (1978).

Another area in which the State's Report falls short concerns personnel costs. Quality educators and administrators are the heart of Washington's education system. The Report outlines increased state funding for instructional hours, the learning assistance program, and some counseling programs. Report at 15-16. But it skims over the fact that state funding of educator

³ The State acknowledges that the estimated cost of reaching full implementation of the reduced class-size law by the 2017-18 school year is \$1.096 billion for the 2017-19 biennium. Report at 14. The JTFFEF had recommended spending \$219.2 million in the 2013-15 biennium to stay on target to reaching this goal. JTFFEF Final Report at 3. A minority alternative proposal to the JTFFEF Final Report would have put an immediate priority on K-3 class-size reduction, investing \$575 million to fund the first half in 2013-15 and another \$576 million in 2015-17. *Id.* at App. E-3.

and administrative staff salaries remains constitutionally inadequate. Our decision in this case identified salaries as a significant area of underfunding by the State, noting OSPI data suggesting that sizable salary gaps remain to be filled at the district level. *McCleary*, 173 Wn.2d at 536; *see also Fed. Way Sch. Dist. No. 210 v. State*, 167 Wn.2d 514, 522 & n.11, 219 P.3d 941 (2009) (noting with respect to state pay for administrator salaries that “[t]hese figures have no correlation to the real cost of hiring administrators”). The State notes that its 2013-15 budget restores previous temporary salary reductions (1.9 percent for certificated instructional and classified staff and 3 percent for administrators), but at the same time it suspends the cost-of-living increases imposed by Initiative 732, which totaled \$295.5 million. Report at 10, 17. The Report identifies this salary cut as part of “savings and reductions in non-basic education,” Report at 10, but nothing could be more basic than adequate pay. The inescapable fact is that salaries for educators in Washington are no better now than when this case went to trial. This despite the report of the ESHB 2261 compensation work group concluding that the State needs to invest at least a billion dollars a year—above inflationary adjustments—to bring salary funding in line with actual costs. *See* 2012 Compensation Technical Working Group Final Report (June 30, 2012) at 47. It is deeply troubling that the State’s Report does not address this component of ESHB 2261 or offer any plan for meeting its goals.

Overall, the State’s Report demonstrates that it understands what progress looks like, and unlike in 2012, it has taken some steps toward fulfilling its constitutional mandate. But, it cannot realistically claim to have made significant progress when its own analysis shows that it is not on target to implement ESHB 2261 and SHB 2776 by the 2017-18 school year. A rough comparison

of the funding levels for core areas identified in the JTTFEF Final Report and provided in the 2013-15 biennial budget suggests the need for a greater immediate investment. Broken down by category, the JTTFEF Final Report proposed a spending plan for implementing SHB 2776 that would require the 2013-15 budget to include \$141.6 million for transportation, \$597.1 million for MSOCs, \$219.2 million for K-3 class-size reduction, and \$89.3 million for full-day kindergarten. The 2013-15 biennial budget provides \$131.7 million for transportation, \$374 million for MSOCs, \$103.6 million for class-size reduction, and \$89.8 million for full-day kindergarten.⁴ Thus, the current level of funding falls short of the JTTFEF plan in every category except full-day kindergarten, and, as noted, the funding for that category does not account for the additional capital investment needed to implement full-day kindergarten. Moreover, the JTTFEF spending plan projects a steep upward curve in funding levels in the next two biennia, requiring \$3.35 billion in 2015-17 and \$4.48 billion in 2017-19. In order for the court to find the legislature is making progress toward full compliance with its constitutional responsibility, the State must address each of these core areas of basic education and provide a timetable for funding its plan.

⁴ The JTTFEF spending plan also includes \$66.5 million for accountability, evaluation and common core, and \$169.8 million for classified and administrative salary allocations, neither of which is specifically identified as an enhancement in ESHB 2261 or SHB 2776, as well as \$140.4 million for the career and college ready plan. And, the 2013-15 budget includes funding for several other enhancement programs. Our comparison of the core categories identified in the *McCleary* decision and our 2012 order should not be interpreted as suggesting that funding in these other areas is unimportant to fulfilling the State's constitutional mandate. Nor does our reference to the funding recommendations in the JTTFEF Final Report suggest that it provides the only constitutionally viable plan. Rather, these figures illustrate at a minimum the budgeting priorities that would demonstrate real and measurable progress designed to achieve full compliance with article IX, section 1 by 2018.

One reason we retained jurisdiction over this case is to foster dialogue and cooperation in reaching a goal shared by all Washingtonians. The legislature is embarking on a short session in 2014, where it has an opportunity to take a significant step forward. We are aware that OSPI has submitted a supplemental budget request of approximately \$544 million, with \$461 million addressing basic education funding. The need for immediate action could not be more apparent. Conversely, failing to act would send a strong message about the State's good faith commitment toward fulfilling its constitutional promise. This court also made a promise to the school children of Washington: We will not "idly stand by as the legislature makes unfulfilled promises for reform." *McCleary*, 173 Wn.2d at 545. Our decision in this case remains fully subject to judicial enforcement.

We have no wish to be forced into entering specific funding directives to the State, or, as some state high courts have done, holding the legislature in contempt of court. But, it is incumbent upon the State to demonstrate, through immediate, concrete action, that it is making real and measurable progress, not simply promises. Toward that end, it is hereby ordered: the State shall submit, no later than April 30, 2014, a complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year. This plan must address each of the areas of K-12 education identified in ESHB 2261, as well as the implementation plan called for by SHB 2776, and must include a phase-in schedule for fully funding each of the components of basic education. We recognize that the April 30, 2014 deadline shortens the time for the State's report, but it is clear that the pace of progress must quicken. In order to facilitate

judicial oversight, this court may also require more periodic reports detailing the State's strategy for fully meeting the mandate of article IX, section 1.

IT IS SO ORDERED.

DATED at Olympia, Washington this 9th day of January, 2014.

Madsen, C. J.
CHIEF JUSTICE

WE CONCUR:

Johnson

Carson

Fairhurst, J.

Stephens, J.

Wiggin, J.

Conrad, J.

Gearty, J.

Tab 9

Wash. AGO 1961-62 NO. 59 (Wash.A.G.), 1961 WL 62893

Office of the Attorney General

State of Washington

AGO 61-62 No. 59

August 30, 1961

DISTRICTS -- SCHOOLS -- AUTHORIZATION BY VOTERS TO USE MONEY IN BUILDING FUND DERIVED FROM SPECIAL LEVY FOR GENERAL FUND PURPOSES -- VOTE REQUIRED.

*1 (1) Electors of a school district may authorize, at a special election, the use of monies in the building fund (derived from a special levy but not necessary for immediate expenditure) for general fund purposes.

(2) If the school district desires to use the money in the building fund for general fund purposes the matter must be resubmitted to the voters and their approval must be tested by the requirements of the 17th Amendment and RCW 84.52.052.

Honorable R. A. Hensel
Prosecuting Attorney
Douglas County
Waterville, Washington

Dear Sir:

By letter previously acknowledged you requested an opinion of this office on several questions concerning the use of school funds. We paraphrase your questions as follows:

(1) May the electors of a school district at a special election authorize money in the building fund to be used for general fund purposes where said money was derived from a special excess levy for building purposes?

(2) If question (1) is answered in the affirmative, is a majority vote all that is required to authorize said use?

We answer question (1) in the affirmative--question (2) in the negative.

ANALYSIS

You have advised us of the following facts giving rise to your request for our opinion: That the Eastmont School District in Douglas county at a special election authorized in 1960 an excess levy which produced \$70,000 for its building fund; that it now appears the growth in the district has leveled off so that the extra classrooms are not needed at the present time and will not be needed until 1964-65; that inasmuch as the district cannot balance its 1961-62 general fund budget without a special levy, the question has arisen as to whether the residents of the district could legally vote to use the money in the building fund for general operating expenses, and if this question is answered in the affirmative what voting percentages will govern to determine the validity of said election.

As you are aware, a school district is a municipal corporation and as such has only those powers expressly granted by the legislature; those necessarily or fairly implied in or incident to the powers granted, and those essential to the declared objects and purposes of the municipal corporation. Seattle High School Ch. No. 200 v. Sharples, 159 Wash. 424, 293 Pac. 994 (1930); Juntila v. Everett School District No. 24, 178 Wash. 637, 35 P. (2d) 78 (1934); see, also, State ex rel. Griffiths v. Superior Court, 177 Wash. 619, 33 P. (2d) 94 (1934), and RCW 28.58.010.

In AGO 57-58 No. 51 [[to Prosecuting Attorney, Spokane County on April 22, 1957]], this office stated: "It is well settled that when the electors of a taxing district have authorized an indebtedness to be incurred by the sale of bonds for a specific purpose or have authorized the imposition of a tax levy for a specific purpose, the proceeds from the sale of bonds or the imposition of the tax levy cannot be expended for any purpose other than the purpose for which authorized. Sheldon v. Purdy, 17 Wash. 135, 141; Thompson v. Pierce County, 113 Wash. 237, 241. In this state the general rule is reinforced by Article VII, Section 5 of the state constitution... which provides that every law imposing a tax shall state distinctly the object of the same 'to which only it shall be applied.'" (Emphasis supplied.)

*2 Likewise in an early opinion to the prosecuting attorney, Snohomish county, dated February 8, 1924, this office concluded that when funds are raised by taxation for a designated purpose, they cannot be diverted to some other use. However, therein we recognized:

"It follows that the funds raised by the special levy for the purchase of play grounds cannot lawfully be diverted to the general fund. This limitation, however, operates only upon the school district officers and does not, in our opinion, prevent the electors of the district from authorizing the use of the playground levy for general school purposes." (Emphasis supplied.)

In a later opinion written to the Honorable A. E. Edwards, November 14, 1946, this office discussed the power of the electors of a district to rescind an excess levy for one purpose and to authorize the use of the funds for another purpose. Therein we stated: "... In considering a similar question, the Iowa Supreme Court has said:

"* * * Appellant contends that, having once voted the tax, the electors have no power of rescission. It is fundamental that electors of a district township can only exercise such powers as are conferred by statute, either expressly or by reasonable implication. Washington v. Thomas (1882) 59 Iowa 50, 12 N.W. 767. By § 2749 of the Code of 1897, they are given power "to vote a schoolhouse tax, not exceeding 10 mills on the dollar in any one year, for the purchase of grounds, construction of schoolhouses, the payment of debts contracted for the erection of schoolhouses," etc. Having the power to vote the tax, they, by necessary implication, have the right to rescind that vote, unless by so doing they interfere with vested rights. Power to do necessarily implies the power not to do; so that, having voted at one regular annual meeting to vote a schoolhouse tax, they may, at a subsequent meeting, vote not to levy a tax, unless, as we have said, some vested right has intervened. * * * Hibbs v. Adams Township (1900), 110 Iowa 306, 81 N.W. 584, 48 L.R.A. 535.

"...

"There being no vested right which would be impaired by the school district rescinding its original grant of authority and substituting another therefor, it is the opinion of this office that the electorate of a school district which has voted a tax levy, the proceeds of which were to be used by the school board for building a schoolhouse, may subsequently rescind their authorization to the school board for the construction of a schoolhouse by voting to use the proceeds of the taxes previously authorized for the purpose of enlarging existing school house facilities. The opinion of June 24, 1946, hereinbefore referred to, is overruled." (Emphasis supplied.)

At this point, it should be noted that the money with which we are here concerned was derived from a special excess levy authorized by a vote of the people. Under the 17th Amendment to the Washington State Constitution, and RCW 84.52.052, the imposition of such a levy could only be authorized by a vote of 40 percent of the people in the district who voted at the preceding general election, and of those voting on the proposition, 60 percent must have voted in favor thereof. See, AGO 59-60 No. 120 [[to Prosecuting Attorney, Kitsap County on May 31, 1960]].

*3 In the recent case of Davis v. Seattle, 56 Wn. (2d) 785, 355 P. (2d) 354 (1960), our court was presented with the question of determining whether a proposition referred to the voters of the city of Seattle, pursuant to the city charter, was passed when a majority of the people voting thereon, voted in favor thereof. The proposition was to authorize the use of certain funds, derived

from a bond issue and payable from excess levies, for a purpose other than that originally approved. In the cited case the court concluded that the election formula contained in Article VIII, § 2, Amendment 17, of the Washington State Constitution, was not applicable to the referendum election since once the increase in taxes exceeding the 40-mill limit had been approved and the taxing district had been obligated on the bonds, the protection of the 17th Amendment had operated for the protection of the taxpayers.

In our opinion, the basis of the court's decision lies in the referendum election authorized by the charter of Seattle. For that reason, we do not feel that the reasoning of that case is applicable to the instant situation.

The opinion of the court in the Davis case, supra, a five-four decision, is one which we feel must be restricted to the facts of the particular case. Both the majority and dissenting opinions recognized the general principle of law that a measure approved by the voters cannot be changed by another public body, i.e., the measure can be changed by no less authority than that which called it into being. See, State ex rel. Ausburn v. Seattle, 190 Wash. 222, 67 P. (2d) 913 (1937); State ex rel. Leo v. Tacoma, 184 Wash. 160, 49 P. (2d) 1113 (1935); State ex rel. Pike v. Bellingham, 183 Wash. 439, 48 P. (2d) 602 (1935); State ex rel. Knez v. Seattle, 176 Wash. 283, 28 P. (2d) 1020, 33 P. (2d) 905 (1934); Stetson v. Seattle, 74 Wash. 606, 134 Pac. 494, (1913).

We feel that the following language found in the dissenting opinion written by Judge Rosellini is applicable to the instant case: (Davis v. Seattle, supra, 798)

"... If the rule that a change cannot be made without the authorization of the voters means anything at all, it means that the question must be referred back to those who authorized the levy, and their approval must be voiced with the same authority. While amendment 17 does not expressly require that an amendment to a special levy be approved in the same manner as the original levy, this requirement is found in the rule of law and is consistent with the dictates and in harmony with the spirit of that provision of the constitution." (Emphasis supplied.)

Accordingly, it is the opinion of this office that if the school district desires to use the money in the building fund for general fund purposes, the matter must be resubmitted to the voters and said authorization must be tested by the requirements of the 17th Amendment and RCW 84.52.052.

At this time we specifically overrule the opinion written by this office to the Honorable D. J. Cunningham, Prosecuting Attorney, Lewis County, dated August 24, 1949 [[Opinion No. 49-51-113]], in so far as it conflicts with the views expressed herein, wherein we held that a simple majority vote would be all that was required to authorize a diversion of funds derived from a special excess levy election.

*4 In passing, it should be mentioned that we have considered the various arguments under which the rule of the Davis case, supra, could be held controlling in this instance. However, since we are here concerned with funds derived from a special tax levy which was voted for a particular purpose, we feel any doubts as to whether the formula prescribed by the 17th Amendment is to be followed should be resolved in favor of its application. If the proposition is submitted to the people and passes by a mere majority vote, the district may desire to have this matter submitted to the court.

We trust the foregoing will be of assistance to you.

Very truly yours,

John J. O'Connell
Attorney General
Robert J. Doran
Assistant Attorney General

Wash. AGO 1961-62 NO. 59 (Wash.A.G.), 1961 WL 62893

End of Document

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Tab 10

Wash. AGO 1975 NO. 1 (Wash.A.G.), 1975 WL 165890

Office of the Attorney General

State of Washington

AGO 1975 No. 1

January 8, 1975

OFFICES AND OFFICERS -- STATE -- SUPERINTENDENT OF PUBLIC INSTRUCTION -- STATE BOARD OF EDUCATION -- SCHOOL DISTRICTS -- DISCRIMINATION -- EMPLOYMENT.

*1 (1) Neither the superintendent of public instruction nor the state board of education has the authority under any existing statute or constitutional provision to formulate and implement a state-wide [[statewide]]affirmative or corrective action policy for disadvantaged groups such as women or racial minorities which would be binding on all local school districts in their employment of personnel; under the supervisory authority granted to him by Article III, § 23 of the state constitution, however, the state superintendent of public instruction may require local school districts, in connection with their employment of personnel, to formulate and implement their own affirmative action policies for such disadvantaged groups, subject to such constitutional standards as may be applicable to those kinds of programs.

(2) Such a requirement may be enforced by a mandamus action against any noncomplying school districts.

(3) The state superintendent of public instruction has the authority to enforce federal affirmative action programs by refusing to disburse federal funds to noncomplying school districts.

Honorable Lorraine Wojahn
State Representative
27th District
3592 East "K" Street
Tacoma, Washington 98404

Dear Representative Wojahn:

By letter previously acknowledged you asked for our opinion on several questions pertaining to the powers of the state superintendent of public instruction and state board of education. We paraphrase those questions as follows:

(1) Do either the superintendent of public instruction or the state board of education have the authority to require local school districts, in connection with their employment of personnel, to formulate and implement affirmative or corrective action policies for disadvantaged groups such as women or racial minorities?

(2) If this first question is answerable in the affirmative, what legal means of enforcing such a requirement are available to either of these agencies?

(3) Does the superintendent of public instruction have the authority to enforce federal affirmative action programs by refusing to disburse federal funds to noncomplying districts?

We answer questions (1) and (3) in the qualified affirmative; and question (2) as set forth in our analysis.

ANALYSIS

Question (1):

Affirmative action programs are a fairly recent development, and are designed to correct past patterns of discrimination in, among other things, employment. The state human rights commission has adopted rules and regulations for the implementation of such programs, and is encouraging voluntary participation by employers in cases where affirmative action policies are appropriate. See, WAC chapter 162-18. The legal rationale for such rules and regulations is that, in cases where there has been a pattern of discrimination in the past, factors such as age, sex, race, creed, color or national origin may be considered in order to correct a condition of unequal employment opportunity. Accord, WAC 162-18-020 and 162-18-030. In cases where an affirmative action program is deemed proper, these human rights commission rules further provide for avoidance of conflict with chapter 49.60 RCW, the law against discrimination, by allowing for recognition of race, creed, color, national origin, age or sex as a "bona fide occupational qualification" thus bringing the case within the exception to RCW 49.60.180(1), which allows for discrimination upon the above-listed grounds where those factors constitute such a qualification. See, WAC 162-18-090.

*2 Insofar as the constitutionality of affirmative action policies is concerned, we find a similar expression of legal rationale in the seven-judge majority opinion in DeFunis v. Odegaard, 82 Wn.2d 11, 29, 30, 507 P.2d 1169 (1973). In upholding an affirmative action program related to the admission of students to the University of Washington Law School, Justice Neill, in writing that opinion, stated that:

"... the constitution is color conscious to prevent the perpetuation of discrimination and to undo the effects of past segregation...."

"..."

"Clearly, consideration of race by school authorities does not violate the Fourteenth Amendment where the purpose is to bring together, rather than separate, the races...."

Although it is true that the court's decision in that case has since been ordered vacated by the United States Supreme Court on the ground of mootness,¹ it is not thereby to be deemed to have been overturned on its merits. Furthermore, as far as our own state supreme court is concerned, it appears to us that even though less than a majority favored reinstating the court's earlier judgment upon remand from the United States Supreme Court, the underlying concept of affirmative action is still supported by at least five if not more of the present nine members of our court - given a factual justification such as that which the majority earlier found to exist with respect to the law school admissions policy upon which the court earlier ruled with favor.²

For the purposes of this opinion, therefore, we will proceed from that premise without here attempting to pass upon the constitutional validity of any given affirmative action programs which might be adopted by a particular school district in accordance with the views hereinafter set forth. In other words, we will here assume that the program in question is one that conforms to the standards of constitutionality which were deemed by the court in DeFunis, *supra*, to be applicable to such programs if they are to be upheld, and, from that starting point, proceed to pass upon your question from the standpoint, specifically, of the authority of the state superintendent of public instruction.

RCW 28A.58.100, a part of the state education code, provides that:

"Every board of directors, unless otherwise specifically provided by law, shall:

"(1) Employ for not more than one year, and for sufficient cause discharge all certificated and noncertificated employees,..."

Under this statute there can be no doubt that a given school board may establish reasonable employment policies - including such corrective or affirmative action policies as are constitutionally permissible under the DeFunis test as above explained and qualified. The basic issue to be considered, however, is whether either the superintendent of public instruction or the state board of education has the authority under existing law to require those local districts throughout the state to do so - as opposed to

their individual formulation and implementation of such programs at the discretion of each school district acting through its own board of directors.

*3 As you know, both the superintendent of public instruction and the state board of education are state agencies and are, therefore, limited to the exercise of those powers granted by the state constitution or by the legislature. That is, they may exercise only those powers expressly granted to them by these sources, those necessarily or fairly implied or incident to the powers thus granted, and those essential to the declared objects and purposes of such agencies. State ex rel. Eastvold v. Maybury, 49 Wn.2d 533, 304 P.2d 663 (1956); State ex rel. Holcomb v. Armstrong, 39 Wn.2d 860, 239 P.2d 545 (1952).

Under RCW 28A.58.101, every local school board is required to:

“(1) Enforce the rules and regulations prescribed by the superintendent of public instruction and the state board of education for the government of schools, pupils, and certificated employees.”

Likewise, RCW 28A.58.110 provides that:

“Every board of directors shall have power to make such bylaws for their own government, and the government of the common schools under their charge, as they deem expedient, not inconsistent with the provisions of this title, or rules and regulations of the superintendent of public instruction or the state board of education.” (Emphasis supplied.)

Thus, presumably, any directive by either the state superintendent or state board of education would, in order to be effective, have to be in the form of a rule or regulation that would spell out the kinds of action to be required of all local districts in relation to their employment practices. With this in mind, we have initially keyed our research in the preparation of this opinion to an examination of all existing statutes which currently contain express authority for either of these agencies to adopt and promulgate rules of one kind or another pertaining to the activities of local school districts; and, following through on this approach, we have requested and obtained from the state code reviser's office a computer search of all possible sources of such authority.

Although both the state superintendent and the state board of education have on numerous occasions been granted rulemaking powers by the legislature, none of the statutes granting these powers relate to, or purport to provide for the regulation of, any of the employment or hiring practices of local school boards acting under RCW 28A.58.100, supra. Instead, those involving the state superintendent, insofar as they empower him to adopt regulations governing such boards or their districts, cover such matters as the design and operation of school buses (RCW 46.61.380), the design of school buildings (RCW 28A.04.310), the operation of programs for handicapped children (RCW 28A.13.010), budgeting procedures (RCW 28A.65.180), libraries (RCW 28A.58.104), various funding programs (e.g., RCW 28A.34.020 regarding the funding of nursery schools) and a myriad of other matters not touching upon employment practices. In the case of the state board, existing statutes authorize it to regulate with respect to the conduct of mandatory studies of the state and federal constitutions (RCW 28A.02.080), the establishment of secondary programs in nonhigh districts (RCW 28A.04.120(5)), the extension of substantive and procedural due process to pupils (RCW 28A.04.132), the designation of compulsory courses (RCW 28A.05.010), the operation of nursery schools (RCW 28A.34.020) and programs for superior students (RCW 28A.16.020), the processing of applications for school plant facilities financial aid (RCW 28A.47.060, et seq.) and the eligibility of prospective and current professional employees for certification (RCW 28A.70.005). Certification is, of course, a condition to employment (RCW 28A.67.010), but is not controlling with respect to a school district's discretionary decision as to which certificated individuals it shall employ.

*4 Within this entire body of existing statutes authorizing the adoption of rules and regulations there is only one which, although not expressly referring to employment practices, could, conceivably, reach this topic. RCW 28A.04.120(6), dealing with the state board of education, broadly authorizes it to

“... prescribe such rules for the general government of the common schools, as shall seek to secure regularity of attendance, prevent truancy, secure efficiency, and promote the true interest of the common schools.”

We would, however, be most reluctant to place much weight on this provision insofar as the regulation of employment policies is concerned, except to the extent that the state board might legitimately find it necessary to require a particular practice in order to achieve one or more of the objectives stated therein. While it might be possible, within a given school district, that an affirmative action program for the employment of teachers or other personnel would bear an appropriate relationship to one of these objectives, we doubt that this could properly be said without exception in the case of all such districts so as to afford authority for the kind of rule or regulation apparently visualized by your request.

Thus, in summary at this juncture, we do not find in any existing statutes which can be read as authorizing either the state superintendent or board of education to adopt rules or regulations to require all local school districts to formulate and implement such affirmative action programs as you have in mind. There is, however, another possible source of authority to be explored; namely, Article III, § 22 of our state constitution which provides that:

“The superintendent of public instruction shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law....”

In State ex rel. Miller v. Board of Ed. of U. Sch. D. No. 398, Kan., 511 P.2d 705 (1973), the Kansas Supreme Court was concerned with a similar provision of that state's constitution which reads as follows:

“The legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law.”

At issue was the authority of the state board of education, under this provision, to have promulgated a rule providing that:

“The boards of education of every unified school district and boards of control of every area vocational-technical school in Kansas shall adopt rules which: (a) Govern the conduct of all persons employed by or attending such institutions, and (b) provide specific procedures for their enforcement...”

In passing upon the validity of this rule the court first determined that the constitutional provision under which it was adopted was a self-executing grant of authority to the state board to “supervise” the public schools of Kansas, and then it turned to the meaning to be given to that verb. Interestingly, it found the “case most helpful in getting to the problem” to be an early Washington case, Great Northern Ry. Co. v. Snohomish County, 48 Wash. 478, 93 Pac. 924 (1908), from which it quoted at length as follows:

*5 “What is meant by general supervision? Counsel for respondents contend that it means, to confer with, to advise, and that the board acts in an advisory capacity only. We cannot believe that the legislature went through the idle formality of creating a board thus impotent. Defining the term ‘general supervision’ in Vantongerren v. Heffernan, 5 Dak. 180, 38 N.W. 52, the court said:

“The secretary of the interior, and, under his direction, the commissioner of the general land office has a general “supervision over all public business relating to the public lands.” What is meant by “supervision?” Webster says supervision means “To oversee for direction; to superintend; to inspect; as to supervise the press for correction.” And, used in its general and accepted meaning, the secretary has the power to oversee all the acts of the local officers for their direction; or as illustrated by Mr. Webster, he has the power to supervise their acts for the purpose of correcting the same; and the same power is exercised by the commissioner under the secretary of the interior. It is clear, then, that a fair construction of the statute gives the secretary of the interior, and, under his direction, the commissioner of the general land office the power to review all the acts of the local officers, and to correct, or direct a correction of, any errors committed by them. Any less power than this would make the “supervision” an idle act,—a mere overlooking without power of correction or suggestion.’

“Defining the like term in State v. Fremont etc. R. Co., 22 Neb. 313, 35 N.W. 118, the court said:

“Webster defines the word “supervision” to be “The act of overseeing; inspection; superintendence.” The board therefore, is clothed with the power of overseeing, inspecting and superintending the railways within the state, for the purpose of carrying into effect the provisions of this act, and they are clothed with the power to prevent unjust discriminations against either persons or places.’

“It seems to us that the term ‘general supervision’ is correctly defined in these cases. Certainly a person or officer who can only advise or suggest to another has no general supervision over him, his acts or his conduct....”

Thereupon, the Kansas court upheld the validity of the state board rule with which it was concerned, as above quoted, saying: “Considering the frame of reference in which the term appears both in the constitution and the statutes, we believe ‘supervision’ means something more than to advise but something less than to control. The board of regents has such control over institutions of higher learning as the legislature shall ordain, but not so the board of education over public schools; its authority is to supervise. While the line of demarcation lies somewhere between advice and control, we cannot draw the line with fine precision at this point; we merely conclude that the regulation which is the bone of contention between the state and district boards in this case falls within the supervisory power of the state board of education.

*6 “As forcefully pointed out in the brief of amicus, the regulation makes no attempt to prescribe what the rules of conduct shall be or what procedures are to be adopted for enforcing compliance with the rules adopted. As is stated in the brief, ‘The content of such rules and regulations was left entirely to the discretion of the local board.’” (Emphasis supplied.)

We have underscored the final paragraph of this quotation because it signifies to us the crux of the matter. It is one thing for a state agency vested with supervisory authority over local governmental bodies to require those bodies to engage in some general course of conduct - there, the adoption by local school districts of their own regulations governing the conduct of their employees and students. It is another for the supervising agency to prescribe the details of what those local regulations shall say.

Applying this same approach to the subject of your present inquiry, it follows by analogy that the state superintendent of public instruction in our state - being possessed by virtue of Article III, § 22, supra, with essentially the same power of supervision as is vested in the Kansas state board of education by that state's constitution - may adopt a rule directing all local school boards in the state to adopt their own regulations with regard to the standards to be followed in employing teachers or other personnel. But, solely in the exercise of his power to supervise, he cannot himself establish those standards. Therefore, in summary, our answer to your first question is as follows:

Neither the superintendent of public instruction nor the state board of education has the authority under any existing statute or constitutional provision to formulate and implement a state-wide [[statewide]] affirmative or corrective action policy for disadvantaged groups such as women or racial minorities which would be binding on all local school districts in their employment of personnel. Under the supervisory authority granted to him by Article III, § 22 of the state constitution, however, the state superintendent of public instruction may require local school districts, in connection with their employment of personnel, to formulate and implement their own individual affirmative or corrective action policies for such disadvantaged groups - subject, as above explained, to such constitutional standards as may be applicable to those kinds of policies or programs.

Question (2):

The foregoing affirmative answer to so much of your first question as visualizes a requirement by the state superintendent for the adoption of individualized local affirmative action programs by all school districts - as distinguished from a single

state-wide [[statewide]]affirmative action policy formulated and implemented by either the state board of education or state superintendent - requires that we consider, next, the legal means that would be available to the state superintendent to enforce such a requirement.

*7 The basic legal remedy which would be available to the state superintendent³ in the event of noncompliance by a local school district would be a mandamus action under the provisions of chapter 7.16 RCW. In particular, RCW 7.16.160 provides that a writ of mandamus

”... may be issued by any court, except a justice's or a police court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.“

A second possible enforcement mechanism which we have considered but largely rejected as being without sufficient existing statutory authority would be that of withholding some form of state financial support from the noncomplying school district. The difficulty with this approach is that without a specific statutory authorization, any such withholding of funds from a school district entitled to their receipt under the applicable statute (e.g., RCW 28A.41.130, the general state apportionment law) would, in all probability, be successfully met by a mandamus action by the district against the state superintendent.

Thirdly, there is the always present but nonlegal remedy of public pressure. Obviously, the state superintendent could bring such pressure to bear upon any noncomplying school district by simply publicizing the facts and, possibly, bringing the situation to the attention of the Washington state human rights commission for investigation by it to see if the noncomplying school district involved might, thereby, be committing unfair practices under the state law against discrimination, chapter 49.60 RCW.

Question (3):

Insofar as your third question is concerned, we are of the opinion that the superintendent of public instruction does have the authority to enforce compliance with federal affirmative action policies, based on the following provisions of RCW 28A.02.100: “The state of Washington and/or any school district is hereby authorized to receive federal funds made or hereafter made available by acts of congress for the assistance of school districts in providing physical facilities and/or maintenance and operation of schools, or for any other educational purpose, according to provisions of such acts, and the state superintendent of public instruction shall represent the state in the receipt and administration of such funds.” (Emphasis supplied.)

We read this statute to mean that the superintendent of public instruction is responsible for the receipt and administration of federal funds made available to school districts through the state, and that the funds so received must be used “according to provisions of such acts...” Therefore, to the extent that the authorizing acts of Congress or implementing federal regulations require compliance with the affirmative action policies as a condition to the receipt of such federal funds, it is our opinion that the superintendent of public instruction would have the authority, in his capacity as administrator of those funds, to withhold payment to school districts not in compliance with the federal standards.

*8 We trust that the foregoing will be of some assistance to you.

Very truly yours,

Slade Gorton
Attorney General
Robert E. Patterson
Assistant Attorney General

John R. Pettit
Assistant Attorney General

Footnotes

- 1 DeFunis v. Odegaard, 416 U.S. 312 (1974).
- 2 DeFunis v. Odegaard, 84 Wn.2d (December 16, 1974), opinions by Hamilton, J., concurred in by Utter, J., and Stafford, J.; and by Finley, J., fully concurred in by Wright, J.; Hale, C.J., and Hunter, J., dissenting and Rosellini, J., and Brachtenbach, J., not participating with respect to this question.
- 3 Or, for that matter, to any other person sufficiently affected by the noncompliance to have legal “standing” to sue.
Wash. AGO 1975 NO. 1 (Wash.A.G.), 1975 WL 165890

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Tab 11

Wash. AGO 1998 NO. 6 (Wash.A.G.), 1998 WL 127341

Office of the Attorney General

State of Washington

AGO 1998 No. 6

March 9, 1998

SUPERINTENDENT OF PUBLIC INSTRUCTION - STATE CONSTITUTION - LEGISLATURE - SCHOOLS - EDUCATION - Authority of the Legislature to define powers and duties of the Superintendent of Public Instruction.

*1 1. The Legislature has discretion to prescribe the specific duties of the Superintendent of Public Instruction and to create agencies and institutions to administer the state's public education system; however, it must respect the constitutional language granting the Superintendent "supervisory" power over the public school system.

2. The public school system, for purposes of defining the constitutional "supervision" authority of the Superintendent of Public Instruction, includes the common school system of elementary, intermediate, and high schools, and would also include normal schools and technical schools if the Legislature were to create any.

3. The Legislature may not "delegate" to another officer or agency the "supervision" authority of the Superintendent of Public Instruction over the public schools; however, with this restriction, the Legislature has broad discretion to create state and local agencies and institutions to administer the public education system, and to define their respective powers and duties.

The Honorable Peggy Johnson
State Representative, 35th District

The Honorable Harold Hochstatter
State Senator, 13th District

Co-Chairs
Joint Select Committee on Education Restructuring
P.O. Box 40600
Olympia, WA 98504-0600

Dear Representative Johnson and Senator Hochstatter:

By letter previously acknowledged, you have requested our opinion on the following questions:

1. Under Article III, Section 22 of the Washington State Constitution, the Superintendent of Public Instruction is charged with "supervision of all matters pertaining to public schools." What grant of authority and responsibility is given to the Superintendent of Public Instruction by the term "supervision" under this section? Does the term "supervision" place limits on the authority of the Superintendent of Public Instruction?

2. Article III, Section 22 of the Washington State Constitution gives the Superintendent of Public Instruction supervision over all matters pertaining to public schools. Article IX, Section 2 defines public schools as including common schools, normal schools and technical schools. What is the scope of authority and responsibility of the Superintendent of Public Instruction for these schools as they exist today?

3. Can the supervisory authority of the Superintendent of Public Instruction under Article III, Section 22 of the State Constitution be delegated?

We answer your questions in the manner indicated below, supplying a brief summary of the answer to each question at the beginning of the Analysis on that question.

BACKGROUND

Your questions are about the interpretation of a clause in the Washington State Constitution. Article III, Section 22 defines the powers and duties of the Superintendent of Public Instruction and reads as follows:

***2 The superintendent of public instruction shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law. He shall receive an annual salary of twenty-five hundred dollars, which may be increased by law, but shall never exceed four thousand dollars per annum.**

Const. Art. III, § 22. (Emphasis added.) The underscored portions of the section are the basis for your questions.

BRIEF ANSWER

The constitutional language speaks for itself, and would have to be interpreted in light of specific questions. Article III, Section 22 involves three separate elements: (1) a grant of the power of “supervision” to the Superintendent of Public Instruction over whatever “general and uniform” system of public schools the Legislature might establish; (2) a limitation upon the Legislature's power to infringe upon the Superintendent's powers of “supervision”; and (3) a grant of discretion to the Legislature to prescribe specific duties for the Superintendent consistent with the “supervision” language.

ANALYSIS

As you note in your request, our office has considered this question in two formal opinions and in several informal letters and memoranda. In our two previous formal opinions, AGO 1961-62 No. 2 and AGO 1975 No. 1, we did not attempt to define the precise meaning of “supervision,” but applied it to specific fact patterns. There is no way to provide an exhaustive definition of a constitutional term which will cover every conceivable issue.

There are constitutional principles to guide us in interpreting the term “supervision.” First, it is a cornerstone of constitutional interpretation that the Legislature's discretion is unrestrained except where the state constitution limits that discretion (or where it is pre-empted by the constitution and laws of the United States). The courts have recognized this discretion in several cases. In Moses Lake School District No. 161 v. Big Bend Community College, 81 Wn.2d 551, 503 P.2d 86 (1972), the State Supreme Court upheld the Legislature's action creating a new separate system of community colleges and transferring to the new system the functions and property of certain local school districts. See also, Yelle v. Bishop, 55 Wn.2d 286, 347 P.2d 1081 (1959), upholding an extensive restructuring of the powers and duties of the State Auditor.

Thus, Article III, Section 22 should be read primarily not as a conferral of powers on the Superintendent of Public Instruction but as a limit on the powers of the Legislature to define the Superintendent's duties. Note the rest of the sentence in which the “supervision” clause appears:

The superintendent of public instruction shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law.

Const. Art. III, § 22. (Emphasis added.) The “supervision” language appears in the context of a recognition that, insofar as it respects the “supervision” role, the Legislature is quite free to shape the state's education system as it may choose, and to define the Superintendent's role within that system.

*3 We recognized this pattern the first time we considered the “supervision” language in a formal opinion. In AGO 1961-62 No. 2, we concluded that the Legislature could not constitutionally enact a statute making the Superintendent subordinate to the State Board of Education. Such a statute, we found, would deprive the Superintendent of the “supervision” role, because the Superintendent would himself be “supervised” by another agency. Thus, while the Legislature has many choices in structuring the public education system, the Superintendent is entitled to remain the “supervisor” of the system.

Beyond that general formulation, the extent of the meaning of “supervision” would have to be applied to specific ideas or proposals. In the second part of this question, you have asked whether the word “supervision” implies any limitation on the powers which could constitutionally be granted to the Superintendent. We are not aware of any, to the limited extent we can anticipate all the possibilities. In any proposal affecting the role of the Superintendent of Public Instruction, the question to ask is:

Does this proposal place “supervision” of the public system in the hands of the Superintendent of Public Instruction?

If the proposal subordinates the Superintendent to some other officer or body (as discussed in AGO 1961-62 No. 2) or shifts so many responsibilities to other officers or agencies that the Superintendent no longer “supervises” the public school system, the proposal is probably unconstitutional. Otherwise, the Legislature is free to assign specific roles as it thinks best.

2. Article III, Section 22 of the Washington State Constitution gives the Superintendent of Public Instruction supervision over all matters pertaining to public schools. Article IX, Section 2 defines public schools as including common schools, normal schools and technical schools. What is the scope of authority and responsibility of the Superintendent of Public Instruction for these schools as they exist today?

BRIEF ANSWER

The term “public schools” denotes the common school system of primary and secondary education, including such high schools, normal schools, and technical schools as the Legislature may provide. The Constitution does not confer any supervisory power on the Superintendent for the state's higher education system. There are currently no “normal schools” or “technical schools” included within the common school system, although the Legislature could establish such schools.

ANALYSIS

Your second question as phrased breaks into two parts: 1) “What is the nature of the ‘supervisory’ authority of the Superintendent?” and 2) “What are the ‘public schools’ over which such authority is to be exercised?” The first part is essentially the same as your Question 1, and we have analyzed that issue above. In this section of the Opinion, we will concentrate on the second part of your second question: defining the institutions that are a part of the common school system.

*4 The term “public schools” is not defined in Article III, but is somewhat clarified by a related provision of the Constitution, Article IX, Section 2:

The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.

We note initially that in defining the term “public schools,” Article IX, Section 2 does not *require* the Legislature to create high schools, normal schools, or technical schools. The best grammatical reading of the phrase “...as may hereafter be established...,” given the sentence in which it appears, is that it modifies “...such high schools, normal schools, and technical schools.” Thus, the Legislature must establish and provide for “common schools,” but has some choice of what additional types of schools to create as part of the “general and uniform system of public schools.”

However, as to high schools, our courts have ruled that as a practical matter, such schools have long been integrated into the public school system, such that they are now a required component of the “public education” which Article IX, Section 1 of the Constitution requires the state to provide. Seattle Sch. Dist. No. 1 v. State, 90 Wn.2d 476, 585 P.2d 71 (1978) (discussion in 90 Wn.2d at 521-522, suggesting that, having established a high school system, the Legislature may lack the authority to disestablish it). The case law thus establishes that high schools are “common schools” and, therefore, are certainly “public schools” as defined both in Article IX, Section 2, and in Article III, Section 22 of the Constitution.

It is also clear from the case law that the state's public colleges and universities are not “public schools” for constitutional purposes. This was established as early as Litchman v. Shannon, 90 Wash. 186, 155 P. 783 (1916), in which the Court found that the University of Washington was not a “public school” and, therefore, was authorized to charge tuition fees for attendance. The Litchman court noted that the University had been established in territorial days and had charged tuition fees before statehood, giving rise to the inference that the drafters of the Constitution knew the University was not “free” and yet did not include any reference to it in the definition of “public schools” contained in Article IX, Section 2. Id., 90 Wash. At 190-191. Since the colleges and universities are not part of the “public schools” for constitutional purposes, it follows that the “supervision” language defining the constitutional role of the Superintendent of Public Instruction does not extend to these institutions of higher education.

Community colleges were originally the thirteenth and fourteenth grades of the common school system. See Laws of 1945, ch. 115, §§ 2 and 5. As such, these schools were originally under the “supervision” of the Superintendent of Public Instruction. In 1967, the Legislature created a state community college system as a post-secondary system of higher education, transferred to the new system any school district assets relating to the thirteenth and fourteenth grades, and authorized community college district boards of trustees to award suitable diplomas, non-baccalaureate degrees, or certificates. See Laws of 1967, ch. 8. The 1967 law was upheld over several constitutional challenges in Moses Lake School District, *supra*.

*5 Having concluded that elementary, intermediate, and high schools are “public schools” subject to the constitutional “supervision” of the Superintendent of Public Instruction, and having concluded that community and four-year colleges are not “public schools,” we turn to a brief discussion of the two other categories mentioned as “public schools” in Article IX, Section 2: normal schools and technical schools.

State-supported normal schools did not exist in Washington before statehood, but the Enabling Act donated one hundred thousand acres of federal land to the state for the support of normal schools. Enabling Act § 17, 25 Stat. 681 (1889). The first Legislature established normal schools at Cheney and at Ellensburg “...to train teachers in the art of instructing and governing in the public schools.” Act of Mar. 23, 1890, Laws of 1889-1890, § 1, p. 278. A third normal school, at New Whatcom (later Bellingham) was authorized by the 1895 Legislature. The Superintendent proposed that the general management and courses of training be uniform for the normal schools (11 Washington State Superintendent of Public Instruction Biennial Report 64-65, 289 (1892), and the Legislature concurred by enacting a bill creating uniform entrance requirements, curricula, diplomas, etc. Act of Mar. 10, 1893, Laws of 1893, ch. CVII, §§1-23, p. 254-63.

All of the normal schools were eventually converted to full four-year post-secondary institutions of higher education. All award baccalaureate and graduate degrees. They train teachers but also offer courses in many different areas. The conversion to post-secondary institutions began when the Legislature granted these schools the power to grant a B.A. degree in education for the completion of a four-year course of study. Laws of 1933, ch. 13, § 1. With the conversion of the original normal schools to post-secondary education institutions, there are no remaining “normal schools” in this state, although the Legislature could in theory create more.

Washington has never had any public-supported school called a “technical school.” Beale, *supra*, suggests that the drafters of the Constitution may have been referring to the state agricultural college which had been statutorily authorized in 1865 but was not yet in operation as of statehood. L.K. Beale, *Charter Schools, Common Schools, and the Washington State Constitution*,

72 Wash. L. Rev. 535, p. 558 (1997) Beale points out that the original bill creating what is now Washington State University described it as “State School of Science” to be governed by a “Technical Commission.” The bill was later amended to describe the institution as the “...state agricultural college and school of science.” H.R. 90, 1st Leg. (1889). Beale, Wash. L. Rev. 535, 558 n. 185. Thus, the final 1889 legislation did not describe the new college as a “technical school,” nor did it grant the Superintendent of Public Instruction any “supervision” over the college. Since there were no “technical schools” created either before or at the time of statehood, and since we are aware of no debate or contemporary discussion about the term at the time the Constitution was drafted, we can only speculate that the framers of the Constitution contemplated that the Legislature might wish to create one or more “technical” schools which were distinct both from the “common schools” and from the higher education system. In theory at least, the Legislature still has this option.

*6 To summarize then, the Superintendent of Public Instruction has “supervision” over the elementary, intermediate, and secondary (high) schools of the state, all of which are part of the “common school” system. The Superintendent's “supervision” would theoretically extend also to “normal schools” or “technical schools” which the Legislature might create, but there are no current examples of either category. The Constitution did not place the Superintendent in a “supervision” role with respect to colleges and other post-secondary educational institutions. However, the Legislature remains free to expand the Superintendent's role beyond the constitutional minimum, if it so desires.

3. Can the supervisory authority of the Superintendent of Public Instruction under Article III, Section 22 of the State Constitution be delegated?

BRIEF ANSWER

The answer depends on the meaning of “delegation.” Under the traditional meaning of “delegation,” the Superintendent may lawfully delegate her constitutional and statutory responsibilities to employees of her agency, who act under standards established by the Superintendent and under her supervision. The Legislature may not “delegate” the Superintendent's “supervision” responsibilities to other officers or agencies. However, the Legislature may restructure the public education system in a variety of ways so long as it respects the “supervision” role of the Superintendent.

ANALYSIS

In your question, you have used the word “delegate.” This term most often connotes the conferral by an officer or government body of one or more of the delegating body's *own powers*. The largest body of law concerns delegation by the Legislature of some portion of the legislative power, such as by authorizing administrative agencies to adopt rules which carry the force of law. The issue of delegating legislative power does not appear to be part of your question.

There could also be an issue of the extent to which an executive branch officer (such as the Superintendent of Public Instruction) could delegate her constitutional or statutory duties to others. For instance, in State v. Yelle, 4 Wn.2d 327, 103 P.2d 372 (1940), the Supreme Court held that the State Auditor was not required to personally perform all the duties assigned to him by the law, but could lawfully delegate the performance of audit examinations to deputies and assistants. In McNiece v. Washington State University, 73 Wn. App. 801, 871 P.2d 649 (1994), the Court of Appeals held that the University's Board of Regents had lawfully delegated to a subordinate officer the authority to terminate employees. We have also considered this type of delegation in previous opinions. In AGO 1988 No. 26, we found that a municipal treasurer could not delegate to a bank or financial institution the authority to redeem municipal warrants. In AGO 1987 No. 7, we found that the Higher Education Coordinating Board could not delegate to its executive director the power to adopt rules. In AGLO 1978 No. 35, we decided that the Data Processing Authority could delegate to the Supreme Court the authority to acquire data processing equipment. In each of these cases, the authority to delegate depended on the language of the law setting forth the powers of the delegating officer or agency. A “core” discretionary function, such as the authority to adopt rules, generally cannot be delegated. More general functions, such as personnel decisions and performance of auditor examinations, may be delegated to subordinates where the “delegating” officer retains the ultimate authority. However, absent very specific authority, an officer may not delegate his authority to a

private institution or other party not accountable to the delegating officer. Having stated these very general rules, we suggest that any particular delegation would have to be analyzed with reference to the particular facts and law in question.

*7 From your question, however, it appears you are also asking about the authority of the *Legislature* to “delegate” the constitutional powers of the Superintendent to other officers or agencies. It is of course an elementary principle that the Legislature may not enact statutes which are inconsistent with the Constitution. See, e.g., *Gerberding v. Munro*, 134 Wn.2d 188, 949 P.2d 1366 (1998). Therefore, the Legislature could not assign to some other agency or officer the “supervision” responsibilities of the Superintendent of Public Instruction over the state's public school system. Such an act would be directly inconsistent with the express language of the Constitution.

However, as we noted in our answer to your first question, the “supervision” language appears in context of a sentence granting the Legislature considerable discretion in assigning the specific powers and duties of the Superintendent. The Constitution provides this test against which any legislation would be analyzed: does this legislation preserve the “supervision” of the Superintendent of Public Instruction over the public schools?

If the answer to the question is “yes,” the legislation is consistent with Article III, Section 22, of the Constitution. So long as the “supervision” role of the Superintendent is preserved, the Legislature may create offices and agencies and determine their specific roles and duties in a great variety of ways.

We trust the foregoing will be useful to your Committee.

Very truly yours,

Christine O. Gregoire
James K. Pharris
Sr. Assistant Attorney General

Wash. AGO 1998 NO. 6 (Wash.A.G.), 1998 WL 127341

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Tab 12

Wash. AGO 2009 NO. 8 (Wash.A.G.), 2009 WL 4836912

Office of the Attorney General

State of Washington
AGO 2009 No. 8
December 11, 2009

**EDUCATION-PUBLIC SCHOOL SYSTEM-RELIGION-SUPERINTENDENT OF PUBLIC INSTRUCTION-
Constitutional Implications Of Adding Early Learning To Statutory Definition Of Basic Education**

- *1 1. The Legislature may create a basic education program of early learning that is limited to students who are at risk of educational failure. However, article IX, section 1 of the Washington Constitution would preclude limiting such a program to students from low-income households, absent a showing that low family income is an accurate proxy for the risk of educational failure. This would include showing that other students facing the risk of educational failure are not excluded based on family income.
2. Public funds may be used for the operation of early learning programs by sectarian organizations only if the programs remain free of sectarian control or influence, and if the funds are not used for a religious purpose.
3. An early learning program defined to constitute a component of basic education must be supervised by the Superintendent of Public Instruction.
4. If the Legislature defines basic education to include a program of early learning, but the state lacks facilities to fully implement such a program immediately, the Legislature must establish a plan to overcome or correct such limitations within a reasonable period of time.
5. The Legislature may establish qualifications required for teachers in an early learning program that is incorporated within basic education.
6. The Washington Constitution does not require that transportation be provided for students in a basic education program of early learning, except perhaps where the absence of transportation would make basic education unavailable.

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Dear Senators:

By letter previously acknowledged, you requested our opinion on several questions concerning a task force recommendation and proposed legislation to create an early learning program for certain of Washingtons children. For clarity and efficiency of analysis, we have paraphrased and reorganized your questions as follows:

- 1. Article IX, sections 1 and 2 of the Washington Constitution require the state to make ample provision for the education of all resident children and to maintain a general and uniform system of public schools. Does either section constrain the states ability to create a basic education program of early learning for only at-risk students from low-income families?**

- 2. Does either article I, section 12 of the Washington Constitution or the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution constrain the states ability to create a basic education program of early learning for only at-risk children from low-income families?**

- *2 3. Some existing state early learning grants are provided to sectarian organizations under article I, section 11 of the Washington Constitution. If the Legislature were to include an early learning program for at-risk, low-income children ages three and four in the definition of basic education,would the constitutionality of such a program be assessed instead under article IX, section 4 of the Washington Constitution?**

- 4. If the answer to question 3 is yes, would article IX, section 4 of the Washington Constitution prohibit the granting or appropriation of state funds to sectarian organizations?**

- 5. Under article III, section 22 of the Washington Constitution, the Superintendent of Public Instruction supervises all matters pertaining to public schools. If the Legislature were to pass legislation that replaced the current Early Childhood Education and Assistance Program, as applied to at-risk children, with a new basic education program of early learning, would the new program need to be administered by the Office of the Superintendent of Public Instruction?**

- 6. If the Legislature were to create a new basic education program of early learning that replaced the Early Childhood Education and Assistance Program, would the previously-mentioned constitutional provisions permit the state to maintain currently-established waiting lists of eligible students for the new basic education early learning program? Would the answer be different if the state currently does not have the building or staff capacity to provide an early learning program for all eligible children?**

- 7. If the Legislature were to create a new basic education program of early learning, do the constitutional requirements for basic education require that teachers in the early learning program be certified and have completed an education degree program?**

- 8. If the Legislature were to include transportation to and from school as part of the K-12 basic education program, would it also have to provide transportation to students who participate in a basic education program of early learning?**

BRIEF ANSWERS

1. Article IX, sections 1 and 2 of the Washington Constitution do not preclude the state from creating a basic education program of early learning for children who otherwise would be at risk of educational failure. We conclude, however, that legislation providing a basic education program only to students from low-income families would be inconsistent with article IX, section 1, absent a showing that low family income is an accurate proxy for the risk of educational failure. This would include showing that other students facing the risk of educational failure are not excluded based on family income.¹

2. Because the United States Supreme Court has not recognized a fundamental right to education, and the contemplated basic education early learning program does not implicate a suspect class, a challenge under the Equal Protection Clause should be reviewed under rational basis review. Because the Washington Supreme Court has not recognized a fundamental right to education, there is no cognizable privilege conferred that would trigger heightened review under article I, section 12 of the Washington Constitution, and a challenge under that section also should be reviewed under rational basis review. Accordingly, the primary constraint imposed by article I, section 12 and the Equal Protection Clause is that the criteria used to determine eligibility for the program must be rationally related to the program's objective: providing an early learning program to children who otherwise are at risk of educational failure.

*3 3. Once an early learning program is included as part of basic education in Washington, it must comply with both article I, section 11 and article IX, section 4 of the Washington Constitution.

4. Read together, article I, section 11 and article IX, section 4 of the Washington Constitution prohibit the granting or appropriation of public funds to support religious instruction or any basic education program that is subject to sectarian control or influence. Public funds may be granted or appropriated for the operation of early learning programs by sectarian organizations only if the programs remain free of sectarian control or influence, and the funds are not used for a religious purpose. We conclude that the granting or appropriation of state funds to sectarian organizations for the purposes described in SB 5444 can be accomplished in compliance with article I, section 11. However, absent a fact-specific analysis of the structure and operation of each sectarian organization, the particular early learning program operated by that organization, and the conditions imposed on the organization and enforced by the state, we cannot conclude that the granting or appropriation of state funds to sectarian organizations for the purposes described in SB 5444 can be accomplished in compliance with article IX, section 4.

5. A new basic education program of early learning must be supervised by the Superintendent of Public Instruction; however, the Legislature may create an agency or institution to administer the program under the Superintendent's supervision.

6. Whether the state could maintain currently-established waiting lists of eligible students for the new basic education early learning program ultimately would require a fact-specific analysis. However, the Legislature would be establishing a new program, and Washington courts have evidenced a willingness to give latitude and time to a new educational program established by the Legislature. If the program includes a reasonable plan to address waiting lists and building and staff shortages in a reasonable time, we would not expect those shortcomings to support a successful constitutional challenge to a basic education program of early learning.

7. The Washington Constitution does not require that teachers in the contemplated early learning program be certified or that they have completed an education degree program. Qualifications for teachers are determined by the Legislature.

8. The Washington Constitution does not require that transportation be provided for students in a basic education program of early learning except, perhaps, where a student would be deprived of basic education if transportation were not available. However, where transportation is provided for other components of basic education, it would be prudent also to provide transportation for children attending a basic education program of early learning.

FACTUAL BACKGROUND

In your opinion request, you explain that your questions concern proposed legislation. You refer us specifically to Sections 110 and 111 of SB 5444, introduced but not enacted in the last session of the Legislature. You further advise us that Sections 110 and 111 of SB 5444 implement a recommendation of a Joint Task Force On Basic Education Finance created by the Legislature in 2007 to review the current basic education definition and funding formulas and to develop a new definition and funding structure options for basic education in Washington. See SB 5627 (2007).

*4 The Task Force issued its final report on January 14, 2009, which recommended defining basic education to include funding for pre-school programs for all children age three and four whose family income is at or below 130 percent of the federal poverty level, and whose parents choose to enroll in the program. *Final Report of the Joint Task Force on Basic Education Finance* 14 (Jan. 14, 2009). Section 110(1) of proposed SB 5444 essentially mirrors this recommendation by providing that the legislature intends to establish a basic education program of early learning for at-risk children that is part of the program of basic education under this chapter[.] Section 110(3) of proposed SB 5444 defines at-risk children to mean children aged three, four, and five who are not eligible for kindergarten and whose family income is at or below one hundred thirty percent of the federal poverty level, as published annually by the federal department of health and human services. Participation in the program would be voluntary.

We analyze your questions in the context of this proposed legislation.

ANALYSIS

Because your questions ask about constitutional constraints on the Legislature's authority, we preface our analysis by noting the general principles Washington courts apply when considering the constitutionality of legislation.

On many occasions, the Washington Supreme Court has recognized the Legislature's authority to determine how to satisfy the state's obligation to provide ample funding for the education of all of the state's children through a general and uniform system of public schools. See, e.g., *Federal Way Sch. Dist. 210 v. State*, No. 80943-7, 2009 WL 3766092 (Wash. Nov. 12, 2009); *Tunstall v. Bergeson*, 141 Wn.2d 201, 221, 5 P.3d 691 (2000), cert. denied, 532 U.S. 920 (2001); *Seattle Sch. Dist. 1 v. State*, 90 Wn.2d 476, 51820, 585 P.2d 71 (1978); *Newman v. Schlarb*, 184 Wash. 147, 153, 50 P.2d 36 (1935); Sch. Dist. 20, *Spokane Cy. v. Bryan*, 51 Wash. 498, 502, 99 P. 28 (1909). The Court has emphasized that while it ultimately has the responsibility to determine whether legislation satisfies constitutional standards, it is not the function of the judiciary to micro-manage Washington's education system. See *Brown v. State*, 155 Wn.2d 254, 26162, 119 P.3d 341 (2005); *Tunstall*, 141 Wn.2d at 223; see also *Seattle Sch. Dist. 1*, 90 Wn.2d at 496, 520 (While the Legislature must act pursuant to the constitutional mandate to discharge its duty, the general authority to select the means of discharging that duty should be left to the Legislature.).

Legislation is presumed to be constitutional, and the burden is on a person challenging an enacted statute to prove its unconstitutionality beyond a reasonable doubt. *City of Bellevue v. Lee*, 166 Wn.2d 581, 585, 210 P.3d 1011 (2009); *Tunstall*, 141 Wn.2d at 220. The heavy burden of establishing that a statute is unconstitutional is met only if the challenger demonstrates through argument and research that there is no reasonable doubt that the statute violates the constitution. *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 215, 143 P.3d 571 (2006); *Larson v. Seattle Popular Monorail Auth.*, 156 Wn.2d 752, 757, 131 P.3d 892 (2006). As the Court has explained, this demanding standard of proof is justified because, as a coequal branch of government that is sworn to uphold the constitution, we assume the Legislature considered the constitutionality of its enactments and afford great deference to its judgment. *Tunstall*, 141 Wn.2d at 220.

1. Article IX, sections 1 and 2 of the Washington Constitution require the state to make ample provision for the education of all resident children and to maintain a general and uniform system of public schools. Does either section constrain the state's ability to create a basic education program of early learning for only at-risk students from low-income families?

*5 Article IX, sections 1 and 2 do not preclude the state from creating a basic education program of early learning for children who otherwise would be at risk of educational failure. We conclude, however, that legislation providing a basic education program only to students from low-income families is inconsistent with article IX, section 1, absent a showing that low family

income is an accurate proxy for the risk of educational failure. This would include showing that other students facing the risk of educational failure are not excluded based on family income.

Article IX, section 1 of the Washington Constitution. Article IX, section 1 provides that [i]t is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex. As interpreted by the Washington Supreme Court, this provision imposes a duty on the Legislature to define basic education and support it with ample funding from dependable and regular tax sources. *Seattle Sch. Dist. 1*, 90 Wn.2d at 51922; accord *McGowan v. State*, 148 Wn.2d 278, 28384, 60 P.3d 67 (2002).²

Article IX, section 1 also prohibits any distinction or preference on account of race, color, caste, or sex. Providing early education opportunities only to low-income families might be considered to be discrimination based on caste, in violation of article IX, section 1. While no decision of the Washington Supreme Court has defined caste, the dissenting opinion in *Northshore School District 417 v. Kinnear*, 84 Wn.2d 685, 530 P.2d 178 (1974), overruled in part by *Seattle School District 1 v. State*, 90 Wn.2d 476, 585 P.2d 71 (1978), excerpted from a dictionary definition of caste to focus on differences of wealth, from which it can be inferred that economic status is an important component of caste. See *Northshore Sch. Dist. 417*, 84 Wn.2d at 756 n.12.

The *Final Report of the Joint Task Force on Basic Education Finance* recommended that basic education be defined to include a program of early learning only for at-risk students from low-income families. Section 110 of SB 5444 would establish such a program, defining at-risk children solely by reference to family income level. SB 5444, § 110(3). Limiting the availability of a component of basic education to some children, but not others, based only on economic status, raises a possible conflict with the constitutional mandate that the state make ample provision for the education of *all* children residing within its borders, without distinction or preference on account of ... caste [.] Wash. Const. art. IX, § 1 (emphasis added).

Article IX, section 1 does not preclude the Legislature from providing a program of early education preferentially to children who need such a program to access subsequent components of the program of basic education in Washington. We conclude, however, that without a sufficient demonstration that family income is an accurate index of educational need, the use of family income to determine eligibility for an early education program that is part of the state's program of basic education likely would violate article IX, section 1. In other words, once a program of early education is incorporated as a component of basic education, it is no more permissible to limit its availability based on economic status than it would be, similarly, to limit the availability of elementary schools or secondary schools.

***6 Article IX, section 2 of the Washington Constitution.** Turning to article IX, section 2, that section provides, in part: The legislature shall provide for a general and uniform system of public schools. Article IX, section 2 long has been understood as imposing a fundamental duty upon the state to create a general and uniform public school *system*. See, e.g., *Federal Way Sch. Dist. 210*, 2009 WL 3766092 at *4, ¶ 18; *Tunstall*, 141 Wn.2d at 221; *Seattle Sch. Dist. 1*, 90 Wn.2d at 522; *Newman*, 184 Wash. at 152. The Legislature has authority to select the means of discharging this duty. *Seattle Sch. Dist. 1*, 90 Wn.2d at 520.

This uniformity requirement does not mandate a one-size-fits-all approach to education. It is not satisfied by rote equality of facilities and instruction for all students, but rather through free access to certain minimum and reasonably standardized educational and instructional facilities and a degree of uniformity which enables a child to transfer from one district to another within the same grade without substantial loss of credit or standing. *Federal Way Sch. Dist. 210*, 2009 WL 3766092 at *4, ¶ 18 (quoting *Northshore Sch. Dist. 417*, 84 Wn.2d at 729).³ It does not preclude educational assistance to individuals or groups of individuals who need such assistance to acquire those skills and training that are reasonably understood to be fundamental and basic to a sound education. *Northshore Sch. Dist.*, 84 Wn.2d at 729. [T]he State is not obligated to provide an identical education to all children within the state regardless of the circumstances in which they are found. *Tunstall*, 141 Wn.2d at 220. To conclude otherwise would require us to infer from the constitutional language a limitation on the Legislature's authority that the Washington Constitution does not actually express. See *Washington State Farm Bureau Fedn v. Gregoire*, 162 Wn.2d 284, 290, 174 P.3d 1142 (2007) (Legislature has plenary power to act, except as constitutionally limited).

In summary, we conclude that a basic education program of early learning for children who are at risk of educational failure could be implemented without violating article IX, sections 1 and 2 of the Washington Constitution. We do not read either section as mandating absolutely identical educational experiences for all children in disregard of their differing educational needs. See *Tunstall*, 141 Wn.2d at 220 (recognizing the differing circumstances of children). Accordingly, if the Legislature finds, in the exercise of its plenary authority to define basic education, that some children need a particular service and others do not, we see nothing in the constitution that would deny the Legislature the choice to provide the service to those who need it, without extending it to those who do not. That is, the Legislature need not choose between either ignoring the needs of children who are at risk of educational failure, or providing early education to all children, including those who do not need it to succeed. Consistent with article IX, section 1, however, where the Legislature defines an educational program as part of basic education, the program must be available freely to any child who needs that program, without distinction or preference on account of race, color, caste, or sex.

2. Does either article I, section 12 of the Washington Constitution or the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution constrain the states ability to create a basic education program of early learning for only at-risk children from low-income families?

*7 A basic education program of early learning only for children from low-income families could be implemented without violating either article I, section 12 or the Fourteenth Amendment, if it can be demonstrated that the use of family income to determine eligibility for the program is rationally related to the programs objective: providing an early learning program to children who otherwise are at risk of educational failure. Absent a demonstration that family income is rationally related to educational risk, there is no rational basis for concluding that children who are at risk of educational failure are being served.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Under the Equal Protection Clause, the state may not deny to any person within its jurisdiction the equal protection of the laws. A statute that is challenged under the Equal Protection Clause ordinarily is upheld if it is rationally related to a legitimate government purpose. See *Kadrmas v. Dickinson Pub. Schs.*, 487 U.S. 450, 458 (1988). If the statute interferes with a fundamental right or discriminates against a suspect class, an equal protection challenge triggers strict scrutiny, under which the statute must be supported by a compelling government interest and distinctions drawn in the statute must be necessary to further the statutes purpose. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 17 (1973).

Neither the United States Supreme Court nor the Washington Supreme Court has held that education is a fundamental right that should trigger strict scrutiny when the government interferes with an individuals access to it. The United States Supreme Court has explicitly rejected that proposition. See *Kadrmas*, 487 U.S. at 458 (citing *Plyler v. Doe*, 457 U.S. 202, 223 (1982); *San Antonio Indep. Sch. Dist.*, 411 U.S. at 16, 3336). Although the Washington Supreme Court has held that article IX, section 2 imposes on the state a fundamental duty to create a common school system, *Tunstall*, 141 Wn.2d at 221, the Court has not translated that duty into a fundamental right to education that could be asserted in an equal protection challenge, explaining that such an abstract right, taken to its logical extreme, improperly would subject all legislation involving education to strict scrutiny. *Tunstall*, 141 Wn.2d at 226 n.21.

To qualify as a suspect class for purposes of an equal protection analysis, the class must have suffered a history of discrimination; have as the characteristic defining the class an obvious, immutable trait that frequently bears no relation to ability to perform or contribute to society; and show that it is a minority or politically powerless class. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 44041 (1985); *American Legion Post 149 v. Dept of Health*, 164 Wn.2d 570, 609 n.31, 192 P.3d 306 (2008). Race, alienage, and national origin are examples of suspect classifications. *City of Cleburne*, 473 U.S. at 440; *American Legion Post 149*, 164 Wn.2d at 609. Accordingly, where an early learning program is made available to children who are at risk of educational failure, no suspect class is implicated that would raise an equal protection concern. Even where the eligibility is determined using family income as a proxy for educational risk, as in SB 5444, a successful equal protection challenge would be unlikely since socioeconomic condition whether high or low is not a suspect class. *Kadrmas*, 487 U.S. at 458 (citing *Ortwein v. Schwab*, 410 U.S. 656, 660 (1973)); *Bowman v. Waldt*, 9 Wn. App. 562, 569, 513 P.2d 559 (1973).⁴

*8 It, therefore, appears that the contemplated early learning program does not interfere with a judicially-recognized fundamental right, and implicates no suspect class. Accordingly, rational basis review would govern an equal protection challenge, under which a legislatively-established program in which eligibility criteria are rationally related to legitimate educational interests would be accorded a strong presumption of validity and likely would survive an equal protection challenge under the Fourteenth Amendment. See generally *Heller v. Doe*, 509 U.S. 312, 31920 (1993) (a classification involving neither fundamental rights nor a suspect class is accorded a strong presumption of validity and cannot run afoul of the Equal Protection Clause if there is a rational relationship between any disparity of treatment and some legitimate governmental purpose). See also *American Legion Post 149*, 164 Wn.2d at 60809; *Andersen v. King Cy.*, 158 Wn.2d 1, 31, 138 P.3d 963 (2006) (plurality) (citing *Heller*, 509 U.S. at 319).⁵

Article I, section 12 of the Washington Constitution. Article I, section 12 provides that [n]o law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations. Where the Equal Protection Clause is concerned with the discriminatory deprivation of rights to classes of persons, article I, section 12 is concerned with the discriminatory granting of rights to some classes to the disadvantage of others. *Grant Cy. Fire Prot. Dist. 5 v. City of Moses Lake*, 150 Wn.2d 791, 80709, 83 P.3d 419 (2004); accord *Madison v. State*, 161 Wn.2d 85, 9697, 163 P.3d 757 (2007) (plurality). Article I, section 12 is analyzed independently from the federal Equal Protection Clause. *Grant Cy.*, 150 Wn.2d at 80511.

The contours of the analysis used to assess alleged violations of article I, section 12 are not yet fully developed. See *Madison*, 161 Wn.2d at 95 (plurality); *Andersen*, 158 Wn.2d at 127 (Chambers, J., concurring in dissent). It is clear, however, that the only privileges addressed in article I, section 12 are those that implicate a fundamental right belonging to citizens of the state by reason of their state citizenship. *American Legion Post 149*, 164 Wn.2d at 607; *Grant Cy. Fire Prot. Dist. 5*, 150 Wn.2d at 81213. A right to education has not been identified as a fundamental right of citizenship for purposes of article I, section 12. See *American Legion Post 149*, 164 Wn.2d at 607; *Grant Cy. Fire Prot. Dist. 5*, 150 Wn.2d at 813; *State v. Vance*, 29 Wash. 435, 458, 70 P. 34 (1902).⁶

Where no fundamental right of citizenship is at issue, Washington courts follow federal equal protection analysis to decide whether a violation of article I, section 12 has occurred. *Madison*, 161 Wn.2d at 9798 (plurality); *Andersen*, 158 Wn.2d at 9 (plurality). As explained above, rational basis review is appropriate here, under which a legislatively-established program in which eligibility criteria are rationally related to legitimate educational interests would be accorded a strong presumption of validity and likely would survive a challenge under article I, section 12.⁷

*9 We conclude that under existing case law, the basic education program of early learning described in SB 5444 probably would not be subjected to strict scrutiny under article I, section 12 of the Washington Constitution or the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, because there is no fundamental right to education recognized by either the United States Supreme Court or the Washington Supreme Court, and because neither Court has recognized economic status as a suspect class. Accordingly, the primary constraint imposed by article I, section 12 and the Equal Protection Clause is the burden that the state must meet in a rational basis review: The classification must be rationally related to the legitimate educational interests served by the program. In other words, if family income is used to determine eligibility for the program, that basis for eligibility must be rationally related to the programs objective: providing an early learning program to children who otherwise are at risk of educational failure.

3. Some existing state early learning grants are provided to sectarian organizations under article I, section 11 of the Washington Constitution. If the Legislature were to include an early learning program for at-risk, low-income children ages three and four in the definition of basic education, would the constitutionality of such a program be assessed instead under article IX, section 4 of the Washington Constitution?

If an early learning program were included as part of basic education in Washington, it would have to comply with article IX, section 4 of the Washington Constitution, but such inclusion would not release the program from the requirements of article I, section 11. Rather, the new program would be subject to both article I, section 11 and article IX, section 4.

All Washington state programs expending public funds are subject to the prohibition in article I, section 11 of the Washington Constitution, which provides that [n]o public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment[.] This provision is violated if public money or property is transferred or made available for a religious purpose. *State ex rel. Gallwey v. Grimm*, 146 Wn.2d 445, 45566, 48 P.3d 274 (2002) (citing *Malyon v. Pierce Cy.*, 131 Wn.2d 779, 799800, 935 P.2d 1272 (1997)).

Programs that are part of the system of public schools are subject to article IX, section 4, as well as article I, section 11. *Gallwey*, 146 Wn.2d at 45566. Article IX, section 4 of the Washington Constitution requires that [a]ll schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence. By expanding the definition of basic education to include an early learning program for at-risk, low-income children, the Legislature effectively would make such a program part of the general and uniform system of public schools referenced in article IX, section 2 of the Washington Constitution.⁸

*10 Article I, section 11 and article IX, section 4 do not operate in isolation from one another. Both sections arose from the same driving concern of the state constitutional convention [regarding] religious influence in, and control over, public education. *Malyon*, 131 Wn.2d at 794. As explained in *State ex rel. Dearle v. Frazier*, 102 Wash. 369, 375, 173 P. 35 (1918), the two provisions operate together to prevent the teaching of any of the beliefs, creeds, doctrines, opinions, or dogmas of any sect in the public school system and to prevent the appropriation of money for parochial and denominational schools[.]

4. If the answer to question 3 is yes, would article IX, section 4 of the Washington Constitution prohibit the granting or appropriation of state funds to sectarian organizations?

Because article I, section 11 and article IX, section 4 of the Washington Constitution both apply to programs that are part of basic education in Washington, we turn to your question whether article IX, section 4 prohibits the granting or appropriation of state funds to sectarian organizations in support of an the early learning program described in SB 5444. Article IX, section 4, read together with article I, section 11, prohibits the granting or appropriation of public funds to support religious instruction or any basic education program that is subject to sectarian control or influence. Consistent with these provisions, public funds may be granted or appropriated for the operation of early learning programs by sectarian organizations only if the programs remain free of sectarian control or influence and the funds are not used for a religious purpose. Factors useful in identifying sectarian control or influence are presented in the cases discussed below.

Article IX, section 4 of the Washington Constitution imposes a strict separation of religion and public education. In *Weiss v. Bruno*, 82 Wn.2d 199, 509 P.2d 973 (1973), *overruled on other grounds by Gallwey*, 146 Wn.2d at 45566,⁹ the Court applied a two-part test for determining whether article IX, section 4 was violated: (1) Does the challenged program or enactment support the school or school program in question with any public funds; and (2) if so, is the school or school program under sectarian control or influence? *Weiss*, 82 Wn.2d at 20609. If the answer to both questions is yes, the challenged program or enactment violates article IX, section 4. *Id.*

Your question assumes that state funds would be granted or appropriated to sectarian organizations to carry out the early learning program and that the early learning program would be part of the states program of basic education. Consequently, the answer to the first *Weiss* inquiry is yes: The early learning program described in SB 5444 would be supported by public funds. Although public support is assumed here, we note that the Court in *Weiss* took a broad view of what constitutes support, holding that [a]ny use of public funds that benefits schools under sectarian control or influence regardless of whether that benefit is characterized as indirect or incidental violates this provision [article IX, section 4]. *Weiss*, 82 Wn.2d at 211; see also *Mitchell v. Consol. Sch. Dist. 201*, 17 Wn.2d 61, 6667, 135 P.2d 79 (1943) (statute providing free transportation for school children attending sectarian

schools violates article IX, section 4 and article I, section 11 unless it may be said that the transportation of pupils to and from the [sectarian] school is of no benefit to the school itself).

*11 Because public support for the early learning program described in SB 5444 is assumed, consistency with article IX, section 4 therefore depends on the answer to the second *Weiss* inquiry: whether individual early learning programs established under SB 5444 are free from sectarian control or influence. *Weiss*, 82 Wn.2d at 20809. Sectarian control may be manifest, as it was in *Weiss*, where the schools at issue were owned and operated by a religious institution and under the control of parish pastors. *Id.* at 209. In less obvious situations, Washington courts have not set forth a list of specific factors for determining whether a school or program is free from sectarian control or influence, but the factual analysis in *Weiss* suggests some relevant requirements that must be satisfied to find that a particular program is not under sectarian control or influence: (1) The program and its curriculum may not provide instruction in religion or religious practice; (2) Devotional religious symbols or items may not be displayed in the room(s) used for the program; (3) The program may not discriminate against students or staff based on religion or sect; (4) The content of the program and its curriculum may not be determined by a religious institution or its representatives or leaders. *Weiss*, 82 Wn.2d at 20911. *Weiss* does not state or imply that these are exclusive or comprehensive factors in determining whether a school or program is under sectarian influence or control; they merely reflect the facts in the record considered in that particular case. Under other facts and circumstances, additional factors or different factors could be relevant.

Your question assumes state funds would be granted or appropriated to sectarian organizations. It might be possible to establish standards and limitations to ensure that individual early learning programs operated by those organizations are free from sectarian control or influence. Such standards and limitations incorporated into SB 5444 or a similar bill could deflect a facial challenge under article IX, section 4.¹⁰ As we noted above, the factors identified in *Weiss* could be useful in developing statutory standards and limitations, but that list of factors is neither complete nor exclusive.

Even if SB 5444 or a similar bill including statutory standards and limitations were enacted and withstood a facial challenge, specific grants or appropriations to sectarian organizations would be subject to as-applied challenges alleging a violation of article IX, section 4. Such a challenge would require a fact-specific analysis of the structure and operation of the sectarian organization and the particular early learning program operated by that organization, and the conditions imposed on the organization and enforced by the state.

Consequently, we cannot advise you that the granting or appropriation of state funds to sectarian organizations for the purposes described in SB 5444 can be accomplished in compliance with article IX, section 4. Compliance ultimately cannot be determined without analysis of the specific facts and circumstances.

5. Under article III, section 22 of the Washington Constitution, the Superintendent of Public Instruction supervises all matters pertaining to public schools. If the Legislature were to pass legislation that replaced the current Early Childhood Education and Assistance Program, as applied to at-risk children, with a new basic education program of early learning, would the new program need to be administered by the Office of the Superintendent of Public Instruction?

*12 A new basic education program of early learning must be supervised by the Superintendent of Public Instruction; however, the Legislature may create an agency or institution to administer the program under the Superintendents supervision.

Article III, section 22 of the Washington Constitution provides, in part, that [t]he superintendent of public instruction shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law. As indicated above, by defining basic education to include an early learning program, the Legislature is defining the states public school system to include an early learning program. Because the Superintendent of Public Instruction is designated in the constitution as the supervisor of the states public school system, the Superintendent necessarily would be the supervisor of the early learning program as well. As we observed in an earlier opinion, this constitutional authority of the Superintendent cannot be made subordinate to that of another officer or body. AGO 1998 No. 6 at 4 (citing AGO 1961-62 No. 2). Nor may

the authority to supervise early learning, if it is defined as an element of basic education, be vested in any other officer or body not under the Superintendents supervision. AGO 1998 No. 6 at 4.

The constitution does not, however, limit the Legislatures authority to design the organizational structure under which the public education system is administered. See *Washington State Farm Bureau Fedn*, 162 Wn.2d at 290 (It is a fundamental principle of our system of government that the Legislature has plenary power to enact laws, except as limited by our state and federal constitutions.). While article III, section 22 precludes the Legislature from assigning supervisory authority over basic education to any other officer or body besides the Superintendent, it otherwise leaves the Legislature ... quite free to shape the states education system as it may choose, and to define the Superintendents role within that system. AGO 1998 No. 6 at 4. Accordingly, article III, section 22 does not preclude the Legislature from creating an agency or department to *administer* a new basic education program of early learning, so long as the Superintendent retains his or her constitutional authority to *supervise* the program.

6. If the Legislature were to create a new basic education program of early learning that replaced the Early Childhood Education and Assistance Program, would the previously-mentioned constitutional provisions permit the state to maintain currently-established waiting lists of eligible students for the new basic education early learning program? Would the answer be different if the state currently does not have the building or staff capacity to provide an early learning program for all eligible children?

Since the Legislature would be establishing a new program, Washington courts would be likely to recognize some need for time to establish the program and its resources, but the answer to both questions ultimately would depend on the facts. In *Seattle School District 1*, 90 Wn.2d at 53738, the Court evidenced a willingness to give latitude and time to a new educational program established by the Legislature. This willingness is consistent with the Courts recognition that the Legislature establishes the means for discharging its statutory duty under article IX, sections 1 and 2 of the Washington Constitution. *Seattle Sch. Dist. 1*, 90 Wn.2d at 520.

*13 Article IX, section 1 requires that the Legislature define basic education and support it with ample funding from dependable and regular tax sources. *McGowan*, 148 Wn.2d at 28384; *Seattle Sch. Dist. 1*, 90 Wn.2d at 51922. As explained above, once the Legislature includes an early learning program within the definition of basic education, article IX, section 1 mandates that it be provided with ample funding. Whether currently-established waiting lists could be maintained consistent with article IX, section 1 likely would depend on why they are maintained and whether all children ultimately are served. For example, if children on waiting lists did not receive early learning instruction (whether because of inadequate funding, building or staff shortages, or some other reason), a violation of article IX, section 1 would be more likely than if the lists were used to allocate students among early learning programs with different start dates, but with every qualified student eventually being served.

Article IX, section 2 requires the Legislature to provide for a general and uniform system of public schools. As explained in *Parents Involved in Community Schools*, 149 Wn.2d at 67274, this section was intended to ensure a free, statewide system of nonsectarian schools with uniform content and administration of education. The focus is on the uniformity in the educational program provided, not in the detail of funding or administration, and the Court presumes that program is constitutional. See *Federal Way Sch. Dist. 210*, 2009 WL 3766092 at *45, ¶¶ 1824. A challenger conceivably could overcome that presumption of constitutionality if, for example, use of the existing waiting lists resulted in a significant disparity of educational opportunity or content across the state, or if building or staff shortages persisted over a long enough time period; again, the success of any such challenge would depend on the facts.

If access to a basic education program of early learning were limited by building or staff capacity, the legislative establishment of a reasonable plan to overcome or correct the limitations could be consistent with sections 1 and 2 of article IX of the Washington Constitution. In a challenge under article IX, sections 1 and 2, the Court deferred to the Legislatures evolving formulas for funding basic education. *Federal Way Sch. Dist. 210*, 2009 WL 3766092 at *45. Similarly, in the equal protection context, the Court in *Dandridge v. Williams*, 397 U.S. 471, 487 (1970), noted that a state should not have to choose between attacking

every aspect of a problem or not attacking the problem at all. Assuming, therefore, that the Legislature established a plan for providing the building and staff capacity in a reasonable amount of time, and assuming there were not persistent disparities among school districts as to availability of the program, the contemplated early learning program probably would withstand a constitutional challenge premised on alleged building or staff shortages.¹¹

7. If the Legislature were to create a new basic education program of early learning, do the constitutional requirements for basic education require that teachers in the early learning program be certified and have completed an education degree program?

*14 No. The qualifications for teachers are not set in the Washington Constitution, but only in statute. See RCW 28A.410. The constitution does not require certification, and does not restrict the Legislature's authority to set qualifications in statute. See *Wash. Const. art. IX* (providing for a system of common schools without specifying required qualifications for teachers); *Cedar Cy. Comm. v. Munro*, 134 Wn.2d 377, 386, 950 P.2d 446 (1998) (explaining that the Legislature's authority is unrestrained except as limited by the constitution). Teacher qualifications for early learning are accordingly within the Legislature's authority to determine.

8. If the Legislature were to include transportation to and from school as part of the K-12 basic education program, would it also have to provide transportation to students who participate in a basic education program of early learning?

We have found no controlling appellate decision in Washington holding, as a matter of constitutional law, that if transportation is provided for one part of basic education, it must be provided for all parts of basic education. However, the Court in *Lane v. Ocosta School District 172*, 13 Wn. App. 697, 703, 537 P.2d 1052 (1975), implied that there may be a duty to provide transportation to school if a student otherwise would be deprived of his or her right to attend school. Similarly, on remand from *Seattle School District 1*, 90 Wn.2d 476, the trial court ruled that four programs outside the basic education act were part of the state's basic education duties: special education, remedial assistance, bilingual instruction, and some transportation because they were needed to provide some students access to basic education. *Seattle Sch. Dist. 1 v. State*, Thurston County Superior Court No. 81-2-1713-1. Under the reasoning of these courts, transportation might be required where necessary to provide access to an early learning program that has been made part of the state's program of basic education.

If a court were asked to decide whether the Washington Constitution requires comparable transportation for children in a basic education program of early learning where transportation already is provided to students in the K-12 basic education program, we would expect it to apply the principle articulated in *Lane* that transportation to school is mandated for children in a basic education program of early learning where they otherwise would be unable to attend the program, thereby depriving them of a component of basic education. The Legislature has substantial discretion in determining which transportation services must be provided to students. Presumably, the Legislature has exercised that discretion based upon an assessment of student need for transportation services; applying the *Lane* principle, transportation for children attending a basic education program of early learning should be provided if their need for transportation is comparable to that of K-12 students.

*15 We trust the foregoing will be useful to you.

Robert M. McKenna
Attorney General
Alan D. Copsey
Deputy Solicitor General

APPENDIX

TABLE OF STATE CONSTITUTIONAL PROVISIONS CITED IN THIS MEMORANDUM

Citation and Subject	Text
Art. I, § 11 Religious Freedom	Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: PROVIDED, HOWEVER, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional, and mental institutions, or by a countys or public hospital districts hospital, health care facility, or hospice, as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.
Art. I, § 12 Privileges and Immunities	No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations
Art. III, § 22 Superintendent of Public Instruction; Duties and Salary	The superintendent of public instruction shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law. He shall receive an annual salary of twenty-five hundred dollars, which may be increased by law, but shall never exceed four thousand dollars per annum.
Art. IX, § 1 Education: Preamble	It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex
Art. IX, § 2 Public School System	The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.
Art. IX, § 4 Sectarian Control or Influence Prohibited	All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence.

Footnotes

- 1 The provisions of the state constitution that are discussed in this opinion are set forth in full as an appendix to this opinion.
- 2 You have not asked us to address what constitutes amplefunding for an early education program, and we do not do so.
- 3 Much of the decision in Northshore School District was overruled in Seattle School District. The holdings in Northshore School District cited in this paragraph were not overruled.
- 4 Although the Washington Supreme Court has noted the possibility that a classification based on wealth may form a semi-suspect class, it has held that more is required to justify even an intermediate level of scrutiny. In *re* the PRP of Runyan, 121 Wn.2d 432, 853 P.2d 424 (1993). The Court there explained that intermediate scrutiny will be applied only if the statute implicates both an important right and a semi-suspect class not accountable for its status. *Id.* at 448. Where, as in SB 5444, the target class (poor children) is given assistance (access to any early learning program), a person outside the target class would have difficulty demonstrating he or she is in a suspect class (or semi-suspect class) under the criteria identified in *City of Cleburne*, 473 U.S. at 440-41, and *American Legion Post 149*, 164 Wn.2d at 609 n.31 (history of discrimination; irrelevant defining trait; political powerlessness).
- 5 Nor may a statute be challenged based upon an argument that it is not narrowly tailored to serve its purpose when the statute is not subject to strict scrutiny. See *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. 1*, 551 U.S. 701, 783 (2007) (Kennedy, J., concurring) (applying the narrow tailoring requirement only to statutes subject to strict scrutiny).
- 6 In a case alleging sex discrimination in access to interscholastic sports teams, the Court suggested in dictum that in Washington there is a fundamental right to education free from discrimination:
The Supreme Court of Washington has not yet expressly held that education free of discrimination based upon sex is a fundamental right within the meaning of Const. art. 1, § 12 so as to call for strict scrutiny of a classification claimed to infringe upon that right. That in Washington, education (physical and cultural), free from discrimination based on sex, is a fundamental constitutional right, is a conclusion properly drawn from Const. art. 9, § 1 adopted in 1889.
Darrin v. Gould, 85 Wn.2d 859, 869-70, 540 P.2d 882 (1975). The quoted passage is dictum, however, because the Court ultimately decided the case based on article XXXI, Washington's equal rights amendment. *Id.* at 870, 877.
- 7 In a due process analysis, the Washington Supreme Court stated that courts should be reluctant to identify new fundamental rights because, in doing so, a matter is effectively placed outside the arena of public debate and legislative action. *American Legion Post 149*, 164 Wn.2d at 600 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997)). If the Court nevertheless were to find that Washingtonians have a fundamental right to education by reason of their state citizenship, the early learning program described in SB 5444 might be considered a privilege under article I, section 12, because it would be part of basic education. If that program were subjected to strict scrutiny, the state presumably would have to show that eligibility based on family income is precisely tailored to serve the compelling educational interest served by the early education program.
- 8 See *School Dist. 20, Spokane Cy.*, 51 Wash. at 504 (common school, within meaning of article IX, section 2 is one that is common to all children of proper age and capacity, and which is free and subject to, and under control of, qualified voters of the school district); *Litchman v. Shannon*, 90 Wash. 186, 191, 155 P. 783 (1916) (public schools are schools established under the laws of the state, maintained at public expense by taxation, and open without charge to all children in the district); see also *McGowan*, 148 Wn.2d at 293 (holding implicitly that basic education is to be defined by reference to types of educational services or instruction).
- 9 In *Gallwey*, the Court stated [n]othing in today's decision is intended to disturb this court's holding in *Weiss* as it relates to common schools. *Gallwey*, 146 Wn.2d at 466.
- 10 The term facial challenge is used to describe a lawsuit in which a plaintiff contends that a particular law is unconstitutional in all possible applications. *Washington State Grange v. Washington State Republican Party*, 128 S. Ct. 1184, 1190 (2008). In such a case, a plaintiff can succeed only if there are no circumstances under which the law could be constitutionally applied, and the Court will not speculate about hypothetical or imaginary cases in which unconstitutional results may be possible. *Id.* A statute that is constitutional on its face might still be challenged as unconstitutional in specific applications. *Id.* at 1191. A constitutional challenge to a specific application of a law is called an as-applied challenge.
- 11 It may be that the use of private facilities, including those owned or operated by sectarian organizations, and the operation of early learning programs by sectarian organizations are means of responding to inadequate building and staff capacity. However, inadequate capacity cannot justify or excuse noncompliance with article I, section 11 and article IX, section 4, as we explained in response to your fourth question. See *Weiss*, 82 Wn.2d at 206-07 (article IX, section 4 does not permit even a de minimis violation). See also *Perry v. Sch. Dist. 81, Spokane*, 54 Wn.2d 886, 896, 344 P.2d 1036 (1959) (public school teachers mere distribution of registration cards for voluntary, off-campus religious instruction held to be use of school facilities supported by public funds to promote a religious program in violation of article IX, section 4).

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Tab 13

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HISTORY AND DEVELOPMENT OF COMMON
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DENNIS C. TROT

A Thesis submitted in candidacy for the degree of
DOCTOR OF PHILOSOPHY



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II.

COMMON SCHOOL FUND

1. School Support Before 1854

Education was left unmentioned in the Federal Constitution, and the tenth amendment left the matter entirely to the states. This amendment reads:

Article X. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The Organic Act of Congress creating the Territory of Washington was approved March 2, 1853, and in section twenty of this act provision is made that sections sixteen and thirty-six of public lands in every township shall be reserved for common school purposes.¹⁷

The few scattered and primitive schools prior to the Territorial legislature of 1854, were supported by private subscriptions, missionary support, and in rare cases by mutual local taxation, as was the case of support of the school at Olympia. When the first session of the legislature of the Territory of Washington was convened in Olympia on February 27, 1854, the first governor, Isaac Ingalls Stevens, appeared before the body with the first gubernatorial message. In that document is found the following paragraph:¹⁸

"The subject of education already occupied the minds and hearts of the citizens of this Territory, and I feel confident that they will aim at nothing less than to provide a system which shall place within the means of all the full development of the capacities with which each has been endowed. Let every youth, however limited his opportunities, find his place in the school, the college, the university, if God has given him the necessary gifts. Congress has made liberal appropriations of land for the support of the schools, and I would recommend that a special commission be instituted to report on the whole system of schools. I will also recommend that Congress be memorialized to appropriate land for a university."¹⁹

By an act of the first territorial legislature provision was made that the principal of all moneys accruing from the sale of any land given by Congress for school purposes, or which may hereafter be given by Congress for school purposes, shall constitute a permanent and irreducible school fund; the interest accruing from such moneys shall be divided annually among all the school districts in the territory, proportionately to the number of children between the ages of four and twenty-one living in each district. It was specified that this money should be used for the support of common schools and for no other purpose whatsoever. But, owing to the fact that no public land commission had been provided by the legislature for the territory no immediate money from this source was received.²⁰

The following table shows the states receiving township section school grants for public schools:²¹

¹⁷ Constitution of the United States, Article X.
¹⁸ The Organic Act 1853, Section 20.
¹⁹ Dewey (H. B.), *History of Education in Washington*, 1909, p. 7.
²⁰ *Ibid.*
²¹ *Law of Washington*, 1854, pp. 319-20.
²² Swift (F. H.), *Federal Aid to Public Schools*, 1922, Bulletin No. 47, p. 10.

COMMON SCHOOL LEGISLATION IN WASHINGTON
 FEDERAL LAND GRANTS FOR COMMON SCHOOLS
 (States and sections in each congressional township)

TABLE I

Group 1. States receiving Section No. 16		Group 2. States receiving Sections Nos. 16 and 36		Group 3. States receiving Sections Nos. 2, 16, 32 and 36	
Acres	Acres	Acres	Acres	Acres	Acres
Alabama.....	911,627	Louisiana.....	807,271	Utah.....	5,944,196
Arkansas.....	931,778	Michigan.....	2,095,596		
Florida.....	975,307	Mississippi.....	824,213		
Illinois.....	966,370	Missouri.....	1,221,213		
Indiana.....	938,378	Ohio.....	724,266		
Iowa.....	938,196	Wisconsin.....	982,129		
California.....	5,524,923	Nevada.....	2,061,907		
Colorado.....	3,645,618	North Dakota.....	2,095,596		
Idaho.....	2,963,698	Oklahoma.....	1,375,000		
Kansas.....	2,907,520	Oregon.....	1,399,360		
Massachusetts.....	2,874,351	South Dakota.....	2,731,084		
Montana.....	5,196,253	Washington.....	2,376,391		
Nebraska.....	2,749,951	Wyoming.....	3,470,000		

TOTAL (not including Alaska)..... 73,145,078 acres, or 114,304.8 square miles
 Alaska reservations (sections 16 and 36)..... 21,009,209 acres, or 32,823.8 square miles
 GRAND TOTAL..... 94,154,287 acres, or 147,128.6 square miles

Three states, Arizona, New Mexico, and Utah, have received from the Federal Government, for the support of public schools, sections 2, 16, 32, and 36 in each township.

The following table shows the states receiving no Federal land grants for common schools:²²

RECEIVING STATES WHICH RECEIVED NO FEDERAL LAND GRANTS FOR COMMON SCHOOLS

TABLE II

The thirteen original states and four admitted later.

Connecticut	New Jersey	Virginia
Delaware	New York	Vermont (1793)
Georgia	North Carolina	Kentucky (1792)
Maryland	Pennsylvania	Maine (1820)
Massachusetts	Rhode Island	Texas (1845)
New Hampshire	South Carolina	West Virginia (1863)

2. COUNTY AND DISTRICT SUPPORT

In the absence of any available funds from school lands at this time for the purpose of establishing and maintaining common schools, the county commissioners of each county were authorized by an act of the legislature to assess an

²² Reserved but not granted area estimated.
²³ Swift (F. H.), *Federal Aid to Public Schools*, 1922, Bulletin No. 47, p. 9.

annual tax of two mills on a dollar, on all taxable property in the county. All money collected from this source was appropriated for the hire of school teachers. In addition to the two mill levy by the county commissioners, the first territorial legislature gave authority to district meetings, legally called, to levy a tax upon the property of the district for any purpose whatever, connected with, and for the benefit of public schools, and the promotion of education in the district.¹⁸

Special taxes were made possible to meet the deficiencies in the current school funds of the different counties and districts of the territory by an amendment to the school law of 1854, approved January 30, 1858, in which provision was made whereby any legally called school meeting, by a majority vote of the legal voters subject to school tax, could vote to levy a special tax not to exceed twenty-five cents on the one hundred dollars valuation of the taxable property of the district, for school purposes.¹⁹ The county tax was changed a number of times to meet emergencies. Three mills on the dollar was authorized in 1860.

Another scheme for raising local school funds which apparently was carried over from pre-territorial times by the legislature of 1860 and enacted into law, was that of authorizing the directors to assess parents or guardians of children attending school for their portion of the necessary expense of sustaining the school, in the way of tuition, fuel, and the like, in proportion to the number of children sent by each.²⁰

For further support of common schools, the county treasurer was required to set aside all money received by his office arising from fines for breach of any penal laws committed in the territory. The money received from this source was added to the yearly school fund raised by tax, and apportioned in the same manner.²¹

During the Civil War when the territory became burdened with financial obligations, school finances suffered and as a measure of relief the legislature of 1861 enacted a law authorizing the county commissioners of any county, when they were convinced that the welfare of the common schools demanded it, to sell the lands within their respective limits, which had been donated by Congress for school purposes.²² This land was to be sold in subdivisions of not more than one hundred and sixty acres, to the highest bidder, at the minimum price of one dollar and twenty-five cents per acre.²³ The moneys received from these lands were to be loaned out at the legal rate of interest. The law specifically states that the principal should not be reduced, but should be a perpetual fund for school purposes only.²⁴ If there was no school district within the limits of the township in which the land was sold, the voters, by a two-thirds vote could appropriate the money received from the sale of the land to the

¹⁸ Laws of Washington, 1854, p. 525, Section 6.

¹⁹ *Ibid.*, 1858, p. 22, Section 21.

²⁰ Session Laws, 1860, p. 34.

²¹ *Ibid.*, 1854, p. 320.

²² Laws of Washington, 1860, p. 316, Section 10.

²³ Laws of Washington, 1861, p. 31, Section 1.

²⁴ *Ibid.*, 1861, p. 32, Section 4.

²⁵ *Ibid.*, 1861, p. 32, Section 4.

support of schools in the districts convenient to them. This last provision was not applied to Whatcom, Killebuck, Skamania, Pierce, Chelan, Clark, and Walla Walla Counties until later.

Two years later, January 23, 1863, provision was made whereby the county commissioners, under certain conditions, could sell certain school lands at private sale for not less than one dollar and fifty cents per acre. Such sales were confined to persons who were rightfully in possession of any part or parts of sections sixteen and thirty-six previous to the public survey.²⁵ This protection to the possessor was provided for in the Donation, or Pre-emption Act.²⁶

In January, 1868, the need for funds became so general throughout the territory that an act was approved allowing the directors in any school district, after the public money was expended, to levy a special tax not exceeding two mills for sustaining a school in that district, upon a petition signed by a majority of all the parents and guardians of the scholars and resident property holders paying taxes in such districts.²⁷

On November 20, 1871, another law was approved to take effect January 1, 1872, which raised the annual tax for schools to four mills on the dollar. The law also gave districts power to levy taxes for school purposes, additional to the four mill tax.

A law approved November 14, 1873, repealed all preceding acts in relation to common schools, and enacted a new law, with the following changes in regard to school funds: (1) Provision was made for levying a tax of not more than four mills; (2) the new law restricted the power of district meetings to levy a district tax, for any purpose whatsoever connected with and for the benefit of schools and promotion of education in the district, to a tax not exceeding ten mills on a dollar, for the purpose of building and repairing school houses; (3) it requires voters in districts to be taxpayers as well as residents; (4) repealed the compulsory feature of the former law.²⁸

An act approved November 9, 1877, relative to the public school system of the Territory of Washington gave boards of directors of any school the privilege, when they deemed it advisable, to submit to the qualified school electors of such district the question of whether a special tax, which should not exceed ten mills, should be raised to furnish additional school facilities for the district or to maintain any school or schools in the district, or for building one or more school houses, or for removing or building additions to one already built, or for the purchase of globes, maps, charts, books of reference and other appliances or apparatus for teaching, or for any or all of these purposes.²⁹

²⁵ *Ibid.*, 1861, pp. 32-33, Section 8.

²⁶ *Ibid.*, 1863, pp. 47-8.

²⁷ Donation Act, Section 9.

²⁸ Laws of Washington, 1873, p. 18, Section 1.

²⁹ Session Laws, 1877, pp. 13-14.

³⁰ Laws of Washington, 1873, p. 43, Section 8.

³¹ *Ibid.*, p. 436, Section 20.

³² *Ibid.*, p. 436, Section 31.

³³ Laws of Washington, 1877, Title XV, Section 41, pp. 280-1.

Again in 1881 the directors of school districts composed of incorporated towns or cities were authorized to levy a special tax not exceeding ten mills in any one year when in their opinion it was necessary for building school houses.¹¹ The same legislature made provision for levying a special tax not to exceed five mills in any one year for tuition purposes.¹² In 1883 a law was enacted making it the duty of the county commissioners to levy a tax of not less than three mills nor more than six, for the support of common schools.¹³ When more money was needed for additional school facilities school directors could submit the question of an additional levy to the qualified voter.¹⁴

The last territorial legislation affecting school funds was enacted by the legislature of 1886 whereby the county commissioners were required to levy a tax of not less than three mills nor more than six, for establishing and maintaining public schools.¹⁵ In case further funds were needed for building purposes or equipment the directors were authorized to place the question before the qualified voters for a decision in the matter.¹⁶ School laws regarding school funds, have been passed at nearly every session of the territorial legislature from 1854 to 1889, but the object aimed at has been but slightly changed.

The legislature of 1889-90 made it the duty of the county commissioners to levy a tax of not less than four nor more than ten mills for school purposes. The district directors were authorized to levy a tax of five mills. A higher levy than five mills required a majority vote of the district. This could not exceed ten mills.¹⁷

In 1891 the minimum county levy remained at four mills but the maximum levy was reduced to six mills.¹⁸

The county school tax was again changed in 1897 by authorizing the county commissioner to levy a tax not to exceed eight mills for school purposes. The district levy remained, the minimum at five mills, and the maximum at ten mills.¹⁹

In 1901 school directors were authorized to levy a special tax not to exceed ten mills for the purpose of furnishing additional school facilities for their district. No tax exceeding five mills could be levied until such levy was ordered by a majority vote of the electors of the district, at a special election. The boards of directors of union districts could levy a special tax not to exceed three mills, and the levying of such tax by union school district boards could not prevent the electors of any district within such union district from levying a tax of ten mills.²⁰

In 1903 a law was enacted which prohibited the annual expense of a district

¹¹*Ibid.* 1881, p. 25, Section 4.

¹²*Ibid.* 1881, p. 23, Section 5.

¹³*Ibid.* 1883, p. 17, Section 52.

¹⁴*Laws of Washington*, 1883, p. 21, Section 80.

¹⁵*Ibid.* 1885-6, p. 20, Section 50.

¹⁶*Ibid.* 1885-6, p. 25, Section 60.

¹⁷*Ibid.* 1889-90, p. 43, Section 52.

¹⁸*Ibid.* 1891, p. 39, Section 74.

¹⁹*Ibid.* 1897, p. 107, Section 63.

²⁰*Ibid.* 1901, p. 33, Section 17.

from exceeding the annual revenue. The county commissioners were authorized to levy not to exceed three mills, the proceeds of which constituted a special fund for the payment of the district indebtedness. The same law authorized the county commissioners to levy a tax not to exceed eight mills in rural districts. In districts of ten thousand or more population a ten mill levy was authorized. Two more mills could be levied by a vote of the district. The county commissioners were also authorized to levy a tax of one-tenth of one mill for library purposes.²¹

For the purpose of school sites, buildings, furnishings of, and so forth, and the creating of a sinking fund for the payment of indebtedness, the directors were authorized, in 1907, to expend, in cities having a population of more than ten thousand and less than fifty thousand, a sum not exceeding fifty thousand dollars; in cities having a population of not less than fifty thousand, nor more than one hundred thousand, a sum not exceeding one hundred thousand dollars; and in cities having a population exceeding one hundred thousand, a sum not exceeding two hundred thousand dollars. When a greater expenditure was required, in any one current school year, the question was submitted to a vote of the district. The board of directors had power to proceed to condemn and appropriate sufficient land for a school house site not to exceed five acres in extent.²²

In cities of ten thousand or more inhabitants the aggregate tax should not exceed one per cent in one year, provided, the board of directors, by unanimous vote of all the members, could determine upon a greater tax, not exceeding two per cent.²³

In 1909 the legislature enacted a law which was a long step in equalizing taxation and educational opportunities within the various counties of the state by requiring the county commissioners to levy a county tax sufficient to produce ten dollars for each child of school age, providing the tax shall not exceed five mills. Two-thirds of this revenue is apportioned on the basis of actual days attendance, and the remainder on the basis of the number of teachers employed.²⁴

In 1909 a large increase in both county and district levy was authorized. The school boards of districts of the first class were authorized to levy a school tax not to exceed one per cent of the assessed valuation of the district. When a greater expenditure was necessary the matter was submitted to a vote of the district. The maximum of a special levy was two per cent of the assessed valuation of the district. The same law applied to districts of the second class and of the third class.²⁵

In 1917 the county commissioners were authorized to levy a tax not to exceed two mills, against all non-union high school districts for the purpose of educating non-resident high school pupils.²⁶

²¹*Laws of Washington*, 1903, p. 339, Section 1.

²²*Ibid.* 1907, p. 41, Section 4.

²³*Ibid.* 1907, p. 42, Section 5.

²⁴*Ibid.* 1909, p. 332, Section 1.

²⁵*Ibid.* 1909, Chapter 97, p. 303.

²⁶*Ibid.* 1917, Chapter 2, p. 68.

Table III. (continued)

Stevens	27,701.24	15,529.15	62,112.02
Thurston	24,173.13	9,848.60	14,354.53
Wahkiakum	8,671.54	2,305.83	5,765.69
Walla Walla	47,611.80	25,506.95	22,014.84
Whitman	29,593.82	10,112.23	19,451.34
Yakima	78,691.40	47,539.15	31,322.25
Yakima	131,559.54	14,772.69	117,187.23
Totals.....	1,968,578.50	518,306.32	1,450,272.18

E. STATE AID FOR COMMON SCHOOLS

Immediately after Washington Territory became a state, in 1889, there were among the leaders of the people of our new state men who looked forward to the realization of their dreams of a well organized system of common schools enjoying financial support from the state.

The new state had had the advantage of the experience of other states in educational matters, and its leaders had learned to perceive the true meaning of education as an influence molding state and national life. They looked to the diffusion of light, through education, as the resource most to be relied on, for promoting the virtue and advancing the happiness of the citizens of the state. The idea of an intellectual aristocracy was not in their minds. A system of general instruction was desired, which would reach every description of citizen.

The early educational leaders of our state accepted the Jeffersonian doctrine of democracy in education, and regarded it as an economic question, believing that ignorance will in the future cost more in consequence than would have been the cost of proper education. An educated citizen will produce more revenue and be less likely to become a liability.

It is on the theory of an investment, and an economic necessity, that the state assumes that it is its duty to protect itself from ignorance and its consequences—that it can justify the imposition of state taxes for public education. It was on the basis of this theory that in the State of Washington education early found a place in the evolution of the democratic idea of government.

The state's larger view of the function of government than that of mere police protection, to which Spencer's doctrine would apparently limit it, was forcibly expressed by the introduction of a bill into the legislature in 1895 and enacting it into law which became known as the "Barefoot School Boy Law." This law authorizes the State Board of Equalization to levy annually, when levying state taxes, a sufficient tax which, when added to the fund derived from the permanent school fund, would amount to six dollars for each census child between the ages of five and twenty-one living within the state.¹⁰³ This fund was apportioned to the different districts on the basis of the number of children in each district. This gave a system which operated uniformly throughout the state, whereby each school district would share in the state fund, the state tax, the county tax, and it gave each district the option of levying a district tax. The State Board of Education was authorized to levy a tax, not to exceed four mills,¹⁰⁴ to meet this obligation.

¹⁰³ Laws of Washington, 1895, Chapter LXVIII, p. 122, Section 1.
¹⁰⁴ *Ibid.*, 1895, p. 123.

Since enacting the "Barefoot School Boy Law" the state has, in the matter of public education, quite definitely refuted the doctrine enunciated by Herbert Spencer in 1950 that "the taxation of one man's property for the purpose of educating another man's children is robbery, and that the state has no more right to administer education than it has to administer religion," but it has rather followed Macaulay's doctrine that "whoever has the right to hang, has the right to educate."

In 1899 the legislature increased the state aid from six to eight dollars per census child by authorizing the State Board of Equalization to levy for this purpose a tax not to exceed five mills.¹⁰⁵

The legislature of 1901 again authorized the State Board of Equalization to levy a tax not to exceed five mills¹⁰⁶ which should raise the state support, in the same manner, to ten dollars per census child. When the new school code was passed by the 1909 legislature, the tax levy for ten dollars per census child¹⁰⁷ was again passed by the legislature and approved by the governor.

A growing conviction that education is a duty of the state as expressed in Article IX, Section I of the State Constitution is evinced by the rapid successive increases in state aid and especially by an act of the legislature in 1920,¹⁰⁸ which provided for state aid in the same manner as it was provided in 1895, 1899, and in 1901, to the amount of twenty dollars per census child; an increase of one hundred per cent in state aid given. The legislature in this case placed no limit on the levy necessary as was done in previous cases.

To prevent a possible misconception of state aid for school purposes, it should be stated that the support provided by the "Barefoot School Boy Law" of 1895, the two dollar increase secured in 1899, the two dollar increase again secured in 1909, and the ten dollar increase secured from the state in 1920, does not mean that these have been wholly new financial supports for education. As state aid was increased from time to time the local district tax, where it had become burdensome, was privileged to decrease its burden. Thus we see that it was the purpose of the legislature to shift, in a large measure, the unequal burden of educational finance to the state where it becomes equalized.

TABLE IV

The Respective Percentages of School Revenue Contributed by the Several States as Such in 1920¹⁰⁹

1. Texas	54.0	11. Vermont	33.1
2. Mississippi	52.1	12. Utah	31.5
3. Alabama	51.3	13. North Carolina	31.1
4. Georgia	43.5	14. Nevada	26.6
5. Maryland	41.6	15. Louisiana	24.5
6. Kentucky	37.1	16. Wyoming	24.3
7. Virginia	36.7	17. Arkansas	23.7
8. New Jersey	35.6	18. California	23.4
9. Maine	35.6	19. Minnesota	19.5
10. Delaware	35.3	20. Arizona	18.7

¹⁰⁴ Laws of Washington, 1899, Chapter CXLII, Section 19, p. 320.

¹⁰⁵ *Ibid.*, 1901, Chapter CLXXVII, Section 16, p. 380.

¹⁰⁶ *Ibid.*, 1909, (sub.) Chapter IX, Section 3, p. 321.

¹⁰⁷ Laws of Washington, 1920, Chapter 2, Section 1, p. 15.

¹⁰⁸ Washington Educational Journal, April, 1920, pp. 233-4.

ment. Each succeeding legislature adds new duties and new responsibilities for the Superintendent of Public Instruction.

The Superintendent of Public Instruction is designated by statute as a member of certain state boards and commissions, and vested with responsibilities and duties additional to those required as the head of the State Department of Education.

These boards and committees with the official position of the Superintendent of Public Instruction are as follows:

- State Board of Education—president.
- State Board for Vocational Education—chief executive officer.
- State Library Committee—chairman.
- State Humane Bureau—member.
- State Archives Committee—member.
- State Agricultural and Rural Life Commission—chairman.¹⁴⁴

It is the duty of the superintendent to issue certificates as provided by law to keep on file all books and papers pertaining to the business of the office, including records of statistics pertaining to educational interests of the state, to keep records of meetings of the State Board of Education. It becomes his duty to decide points of school law which may be submitted to him, and to publish his decisions, which are final unless set aside by a court of competent jurisdiction. It is the duty of his office to prepare a State Manual of Washington and distribute the same according to law.¹⁴⁵

The State Superintendent of Public Instruction shall apportion from the annual state fund to union high schools the sum of \$100 for each grade above the grammar grades, provided high school was maintained for six months during the last preceding year. Such high school grade must consist of not fewer than four pupils who have completed the work of previous grades and must have an average daily attendance of not less than three pupils.¹⁴⁶

3. TERRITORIAL BOARD OF EDUCATION

The educational system of early territorial days, like the laws under which it operated, grew up in a more or less haphazard manner to meet the most imperative needs of a rapidly increasing population and rapidly changing conditions.

At the beginning, the schooling of the children was left wholly to the initiative of local communities, and perhaps rightly so for the reasons that differences in social and industrial conditions, the customs, predilections and ideals of the people made the educational needs of the territory essentially diverse. Moreover, a central body of any kind was too remote to act effectively as a stimulating and regulating agency. The first central body designed for the ad-

¹⁴⁴ Twenty-sixth Biennial Report of the Superintendent of Public Instruction, June 1922, p. 6.

¹⁴⁵ Laws of Washington, 1909, p. 231, Section 5.

¹⁴⁶ *Ibid.*, 1901, Chapter 19, Section 5, pp. 161-2.

ministration of the schools was the Territorial Board of Education which came into existence under the law of 1877. This board was appointed by the governor, who appointed as a member one person from each judicial district to serve for a term of two years. In 1883 the appointment required the confirmation of the senate.¹⁴⁷ The territorial superintendent was ex-officio chairman of this board.¹⁴⁸ The territorial office was located in the home town of the territorial superintendent, and from 1877 to 1889, when Washington became a state, the office had been located in Olympia, Goldendale, Waitsburg, Port Townsend, Garfield and Ellensburg.¹⁴⁹ In 1889 it was located permanently in Olympia.

The first Territorial Board met at Olympia April 1, 1878, and gave notice of a meeting for the adoption of text books for use in the common schools of the territory; formulated the rules and regulations for the board of examiners, examinations and promotions, defined the duties of teachers, the duties of pupils, outlined the course of study in the subjects of language, arithmetic, geography, reading, writing, spelling, composition, drawing, music, morals and manners, and management.¹⁵⁰

The territorial legislature outlined the powers and duties of the Territorial Board of Education as follows:¹⁵¹

1. Meet at Olympia on the first Monday of April, annually.
2. The Board shall have power:
 - (a) To adopt territorial text books for the common schools.
 - (b) Prescribe rules for the general government of the public schools as shall secure regular attendance, prevent truancy, secure efficiency and promote the true interest of the schools.
 - (c) Prepare or cause to be prepared blank forms for reports of teachers, directors, county superintendents and for other necessary purposes.
 - (d) The Board shall have general supervision of the Territorial Normal Schools, whenever the same shall be established by law.
 - (e) To use a common seal.
 - (f) To sit as a Board of Examination at their semi-annual meeting and grant territorial certificates.
 - (g) To revoke territorial certificates for cause.
 - (h) To grant territorial certificates or certificates or diplomas of equal rank from other states and territories.
3. Prepare examination questions semi-annually to be used by county boards in the examination of teachers.
4. Certificates granted by the Board may be revoked for immoral or unprofessional conduct.
5. Territorial treasurer shall pay for stationery and printing authorized by
 - ¹⁴⁷ Laws of Washington, 1883, p. 5, Section 10.
 - ¹⁴⁸ *Ibid.*, 1877, Title II, p. 261.
 - ¹⁴⁹ Twenty-third Biennial Report of Superintendent of Public Instruction, 1916, p. 9.
 - ¹⁵⁰ *Ibid.*, 1920, p. 37.
 - ¹⁵¹ Laws of Washington, 1877, pp. 261-2.

the Board, also the necessary expenses of the Board shall not exceed \$200 annually.

6. Vacancies shall be filled by the Governor by appointment.

On November 28, 1883, a new law went into effect which fixed the salary of the territorial superintendent at six hundred dollars and allowed a sum not to exceed three hundred for expenses. The territorial Board had been increased to five members corresponding to the judicial districts.

The legislature of 1886 increased the total expenses allowed to the Board not to exceed \$500 annually. The membership of the Board was increased in 1886 one member on account of the judicial districts having been increased on district.¹¹²

4. STATE BOARD OF EDUCATION

When Washington Territory was admitted into the Union as a state in 1889 there followed, by virtue of her new status, changes in her school system. The manner of selecting the State Board of Education was somewhat modified. The appointments were made by the governor, to be approved by the senate. Two of the members were to be selected from among the qualified teachers actually teaching in the common schools.¹¹³ The term of office of the territorial superintendent of public instruction was increased to a four-year term. The state superintendent, by virtue of the office being held, became president of the State Board of Education.

An important additional duty of the office of state superintendent, and above that of the territorial superintendent, was that of preparing a course of study for the common schools of the state which had previously been made by a committee for that purpose in the various counties.

It was provided that the Board meet annually, and for special meetings at the call of the state superintendent.

Duties.—1. The Board was empowered to adopt a uniform series of text books for the use of common schools throughout the state.

2. To prepare a course of study for the common schools, except graded schools, and to prescribe general rules and regulations for the government of the schools as shall secure regularity of attendance.

3. To adopt an official seal.

4. To grant state certificates and life diplomas. State certificates were made valid for five years.

5. To prepare a uniform series of questions to be used by county boards of examiners in the examination of applicants for teaching.

In case of a vacancy in the Board by death, removal, resignation or otherwise the governor should fill the vacancy by appointment.¹¹⁴

¹¹² Twenty-sixth Biennial Report of Superintendent of Public Instruction, p. 38.

¹¹³ Laws of Washington, 1889-90, Title III, Section 4, p. 438.

¹¹⁴ Twenty-sixth Biennial Report of the Superintendent of Public Instruction, 1920, p. 10.

¹¹⁵ Laws of Washington, 1889-90, p. 353-4.

The Board remained appointive and consisted of four members to serve for a term of two years.

5. BOARD OF HIGHER EDUCATION

In 1897 there was created a board of higher education, consisting of the president of the University of Washington, the president of the State Agricultural College and the principals of the state normal schools,¹¹⁶ whose power and duty it was to adopt courses of study for normal schools, adopt the preparatory requirements for entrance to the University of Washington and to the Agricultural College, to adjust the courses so as to place the state institutions in harmonious relations with the common schools and with each other, and to unify the work of the public school system.

Another of the duties of the State Board of Higher Education was to prepare questions for the examination of the teachers of the state. The work of grading teachers' manuscripts and issuing certificates was done by county boards until 1897, when a law became effective whereby teachers' manuscripts were sent to the state office to be graded and the certificates issued therefrom. In 1903 the state eighth grade examinations were put into operation. The questions were sent from the state office, but the grading was done by the county boards, as it is now.

The legislature of 1909 abolished the Board of Higher Education, as its mission had been fulfilled. At this time a new school code was enacted for the state which gave us our present Board of Education.

The new board was constituted in a different manner from that of the previous board. The new board was composed of the president of the University of Washington, the president of the Washington State College, the principal of one of the state normal schools, to be elected by the principals of the normal schools, and three other persons holding life diplomas issued under authority of the State of Washington, actually engaged in educational work, one of whom must be selected from among the county superintendents of the state, one to be a superintendent of schools in a district of the first class and the other member to be selected from among the principals of the four yearly accredited high schools of the state.¹¹⁷

Powers and Duties.—The newly organized State Board of Education was empowered with authority and duties similar to those which had been conferred upon the Board of Higher Education. The powers and duties of the new board were as follows:

1. Approve preparatory requirements for entrance into the University of Washington, into the State Agricultural College, and the state normal schools.

2. To approve courses for the normal training departments in all institutions of higher learning in the state; the graduates from such courses being eligible to receive professional certificates or life diplomas.

¹¹⁶ Laws of Washington, 1897, Section 24, p. 356.

¹¹⁷ *Ibid.*, 1909, p. 234.

¹¹⁸ *Ibid.*, 1909, p. 326.

3. To investigate the quality of work required for entrance to the University of Washington, the State Agricultural College, and the state normal schools, and other schools that are permitted to grant certificates and diplomas recognized by the state department.
4. To prepare a list of schools in other states granting life diplomas and life state certificates upon which certificates may be issued by the superintendent of public instruction of this state.
5. To inspect and accredit secondary schools in the state.
6. To inspect, and accredit, if proper, the normal training department of other institutions of higher learning in the state.
7. To prepare an outline of study for each department of the common schools of the state and to provide a system of rules and regulations for their government.
8. To prepare examination questions for teachers' examinations and to prescribe rules governing examinations.
9. To prepare answers for the examination questions.
10. To prepare uniform series of examination questions to be used in examination of pupils who are completing the grammar school course, and to prescribe rules governing the examinations.
11. To hear and decide appeals from the decision of the superintendent of public instruction.¹⁴⁹

In order to comply with the Smith-Hughes Act, in creating a State Board for Vocational Education the legislature of 1917 conferred upon the existing board the powers and duties of a State Board for Vocational Education.¹⁵⁰

Because of criticism arising as the result of duplication of courses in the various institutions of higher learning in the state, the legislature of 1917 specified the major lines of instruction to be offered in each of the institutions.

It was provided that the courses of instruction of the University of Washington shall embrace as exclusive major lines, law, architecture, forestry, commerce, journalism, library economy, marine and aeronautic engineering, and fisheries.¹⁵¹

It was provided that the courses of instruction of the State College of Washington shall embrace as exclusive major lines, agriculture in all its branches and subdivisions, veterinary medicine, and economic science in its application to agriculture and rural life.¹⁵²

Provision was made that courses of instruction of both the University of Washington and the State College of Washington shall embrace as major lines, liberal arts, pure science, pharmacy, mining, civil engineering, electrical engineering, mechanical engineering, chemical engineering, home economics, and professional training of high school teachers, school supervisors, and school super-

¹⁴⁹ *Session Laws, 1909*, p. 326.

¹⁵⁰ *Laws of Washington, 1917*, p. 831.

¹⁵¹ *Ibid.*, 1917, Section 2, p. 34.

¹⁵² *Ibid.*, Section 3, p. 34.

intendants. These major lines shall be offered and taught at these institutions only.¹⁴⁹

The courses of instruction for the professional training of teachers for elementary schools were given over exclusively to the normal schools.¹⁵⁰

ADVANTAGES OF THE STATE BOARD OF EDUCATION

In Article IX, Section 1 of the State Constitution the state recognizes that "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders". Such a duty recognizes that a certain body to exercise supervision over the schools of the state is essential. The doctrine that the taxable property of the entire state should educate the children of the state has been generally accepted. A complete state educational system, therefore, is essential, and a State Board of Education with liberal powers, and opportunity for discretion in matters of detail, is an indispensable part of such a system.

One of the greatest advantages to be derived from a State Board of Education is systematic organization of the educational forces of the state. System means economy, the elimination of waste, immediate action to meet unexpected emergencies, orderly progress. The development of system characterizes all progress, particularly all industrial progress. Business men are quick to see the advantages of it, as is illustrated by any progressive and successful industrial corporation.

The superintendent needs the board of education for some of the same reasons that the executive officer of an industrial corporation needs a board of directors.

A State Board of Education should give to the school system an expansiveness that is highly desirable and that could hardly exist without it. With some discretion in matters of administrative detail it would enable the system to adjust itself more or less automatically to the changing educational needs and conditions of a growing commonwealth.

¹⁵¹ *Ibid.*, 1917, p. 34, Section 4.

¹⁵² *Session Laws of Washington, 1917*, p. 34.

V.

CERTIFICATION OF TEACHERS

1. EARLY CERTIFICATION

The history of our common school system as revealed by a study of legislative enactments from territorial days to the present time shows a constant movement toward higher standards in educational requirements and an expansive policy in school development. Perhaps in no department is this more strongly marked than in the certification of teachers.

At the time of the organization of the territorial school system, in 1854, the county superintendents, only, were authorized to grant certificates for one year, based on an examination in certain required subjects.²⁴⁴ From 1857 to 1871 school directors were authorized to judge of the qualifications of teachers. A certificate from the board of directors of any district was regarded as sufficient evidence of the qualifications of teachers employed by them.²⁴⁵

On January 24, 1859, the legislature required the district directors, when they chose to pass on the qualifications of teachers, to examine them in orthography, reading, writing, arithmetic, English grammar and geography. Such a certificate was good for a term of three months.²⁴⁶ In 1861 an attempt was made at establishing a higher educational authority with powers of certification by providing for a territorial superintendent of schools to be elected triennially.²⁴⁷ Because of difficulties in coordinating the work of the office, dissatisfaction arose and the act creating the office was repealed and the office discontinued in January, 1862.²⁴⁸ Directors seldom examined teachers and the law of 1871 does not recognize the right but provides that directors require applicants to be certified by the territorial or the county superintendent.²⁴⁹ These conditions arose, no doubt, because of the slow settlement of the country, inconvenience of transportation, and the increasing need of teachers and schools in the scattered and isolated districts. On January 1, 1867, the subject of history was added to the subjects required in teachers' examinations. At the same time the county superintendent was authorized to make a distinction in certificates, granting certificates of qualification to teach in specific districts, and not a county certificate, such certificates were good for six months.²⁵⁰

The office of territorial superintendent was discontinued in January, 1862. In November, 1871, the legislature recreated the office of territorial superintendent²⁵¹ of schools and authorized the office to issue certificates upon examination, which were good in the entire territory. The county superintendents

²⁴⁴ Laws of Washington, 1854, p. 231, Section 5.

²⁴⁵ *Ibid.*, 1857, p. 34, Section 3.

²⁴⁶ *Ibid.*, 1859, p. 911, Section 7.

²⁴⁷ Laws of Washington, 1859, p. 55, Section 1.

²⁴⁸ *Ibid.*, 1861-2, p. 26, Section 1.

²⁴⁹ *Ibid.*, 1871, p. 21, Section 5.

²⁵⁰ *Ibid.*, 1867, p. 27, Section 6.

²⁵¹ *Ibid.*, 1871, pp. 1213, Section 1.

continued to issue certificates which were good in their respective counties only. In 1873 English composition was by law added to the required list of subjects for the examination of teachers for certification.²⁵²

2. CERTIFICATION IN 1877

In 1877, a very material change took place in the certification of teachers. A Territorial Board of Education made its appearance,²⁵³ which issued territorial certificates of two classes,²⁵⁴ while the county superintendent was authorized to grant first, second and third grade certificates, valid only in the respective counties. Experience in teaching was required, also, as a prerequisite to higher certification. Educators from other states were coming in, for we find that the Board of Education was authorized to grant, at their discretion, without examination, certificates to persons presenting valid diplomas or certificates from other states²⁵⁵ of like grade and kind. A county examining board was provided for, consisting of the county superintendent of schools and two persons holding the highest grade of certificate in the county.²⁵⁶ In 1877 the subjects of School Law and Theory and Practice of Teaching were added to the list in which prospective teachers should be examined for certification.²⁵⁷

Up to 1885-86 practically no further changes were made, but at that time another step upward was taken. The University of Washington Territory was accredited and examining boards were authorized to grant certificates without examination to graduates of the Normal Departments of the University, as well as to those of other states holding certificates of like grade and kind. At this time also, teachers were required to know and to teach hygiene in the schools.²⁵⁸ A law was passed in 1888 requiring that certificates should not be granted to candidates under eighteen years of age.²⁵⁹

From statehood up to the present date, the standard of certification has never been lowered and the tendency has been always toward higher educational requirements. But at all times, care has been taken to preserve the validity and standing of the certificates and diplomas earned and granted under previous territorial and state enactments.

3. CERTIFICATION IN 1897

In 1897, a new Code of Public Instruction was passed which materially modified the law relative to the certification of teachers by the state.²⁶⁰ Teachers' certificates authorized by the state in 1897 consisted of the following:

1. (a) Life diplomas, valid during the life of the holder. (b) State certificates, valid for five years. Life diplomas and state certificates were

²⁵² Laws of Washington, 1873, p. 424, Section 6.

²⁵³ *Ibid.*, 1877, p. 261, Section 10.

²⁵⁴ *Ibid.*, 1877, p. 232, Section 11.

²⁵⁵ *Ibid.*, 1877, p. 233, Section 25.

²⁵⁶ *Ibid.*, 1877, p. 283, Section 38.

²⁵⁷ Laws of Washington, 1885, p. 29.

²⁵⁸ *Ibid.*, 1888, Chapter CXIII, p. 203, Section 2.

²⁵⁹ Laws of Washington, 1897, Chapter CXVIII.

²⁶⁰ *Ibid.*, 1897, Chapter CXVIII.

VII.

HIGH SCHOOLS

The modern high schools of Washington had their beginning in the system of graded schools that were established in the seventies. When communities grew populous enough to have their schools graded, many added such subjects as algebra and bookkeeping to the common branches. Although high schools were flourishing in other states, the report of the Commissioner of Education in 1877 contained nothing concerning high schools in Washington Territory. For years, however, the University had maintained a high school department to prepare students for college.

The legislature of 1877 provided for union, or graded³²⁸ schools in which instruction should be given in the higher branches. Also the Board of Education, created by the same act, was given authority to prescribe rules for the general government of the public schools,³²⁹ and among other things it classified these union schools as primary, intermediate, grammar and high schools. The curriculum of the junior class of the high school included algebra, English, and analysis throughout the year, physiology, and zoology the first half, philosophy and bookkeeping the second half. The senior curriculum included geometry and history throughout the whole year, with botany and the United States Constitution the first half and astronomy and chemistry the second half. Rhetorical exercises were given throughout the whole high school course.³³⁰

In 1881, the legislature enacted a law to the effect that no language other than English and no mathematics higher than arithmetic should be taught in these schools.³³¹ This clause met with bitter opposition everywhere and the next legislature made provision permitting these subjects to be taught in graded schools maintained by incorporated cities.³³² Again, in 1885, Latin was eliminated by an act of the legislature.³³³

There is no information to be found in state and national reports concerning high schools in the territory between the years 1881 and 1889; however, a few such schools were in existence. A Seattle school report shows that a high school was started in that city in the year 1883 and that the first class was graduated in 1886. The school for the first year had a registration of fifty-six, which is evidence that there was a public demand for a high school. This, as far as can be learned, was the first regularly organized public high school in the State of Washington. Only a three-grade high school was at first maintained, and no foreign languages were taught.

It might be interesting to note in this connection that high schools had no legal status in Washington during its territorial days, nor during its statehood,

³²⁸ *Laws of Washington, 1877*, pp. 277-8.

³²⁹ *Ibid.* 1877, p. 262, Section 11.

³³⁰ Report of Superintendent of Public Instruction, 1879, pp. 16-22.

³³¹ *Laws of Washington, 1881*, p. 27.

³³² *Ibid.* 1883, p. 18, Section 63.

³³³ *Ibid.* 1885-6, p. 22, Section 63.

until the year 1895.⁸⁸⁴ All public money spent in the maintenance of high schools during this period was illegally spent, but illegally spent as it was, high schools in the territory and state notwithstanding grew in number, their scope of work was made more comprehensive, and their efficiency increased. The people demanded them, and the legality of their support was never questioned until the spring of 1893, when a few overburdened taxpayers in the city of Seattle (times having grown hard) threatened the city school board with an injunction should it continue the illegal expenditure of the city's money in the support of high school. Because of threatening legal entanglements, the high school was abolished by action of the school board.

As soon as the action of the board became known to the public, friends of the school instituted a campaign to have the board rescind its action if possible. The best legal talent of the city was summoned to help devise some scheme or plan whereby the school could be legally reopened and continued.

Two weeks later, at the termination of the vacation, the school was brought back into official existence under the name of "The Senior Grammar School of Seattle," under which name it operated until 1895, when the legislature of that year passed an act giving high schools their first legal status in Washington.

At the time of its abolishment, the Seattle high school had a registration of 264 pupils in a city of 45,000 population, or six high school pupils to every one thousand inhabitants.⁸⁸⁵ At present, 1925, Seattle has an enrollment of 13,168⁸⁸⁶ high school pupils out of a population of 411,578⁸⁸⁷ inhabitants, or thirty-one high school pupils to every one thousand population.

In the course of time parts of the state were becoming densely populated and the management of school was becoming a complex problem. In 1890, a law was passed making all incorporated cities of 10,000 or more inhabitants, individual districts, each having its own board of education, consisting of five members having the power to adopt and enforce such rules and regulations as might be necessary to establish and maintain such grades and departments (including night schools) that would best promote the interests of education in the district.⁸⁸⁸

The larger high schools were now free to put what they chose into their curricula. A glance at the curricula of the high schools in 1891 shows that such academic subjects as algebra, geometry, minerology, and ethics were offered. Most schools maintained only three-year courses. Olympia, however, gave a thorough Latin preparatory course in addition.⁸⁸⁹

The next biennium shows the curricula divided into distinct courses, the typical ones being Classical, Scientific, English, Commercial, and Industrial

⁸⁸⁴ *Laws of Washington*, 1895, Chapter 150, p. 375.

⁸⁸⁵ Twenty-sixth Biennial Report of the Superintendent of Public Instruction, 1922, pp. 293-4.

⁸⁸⁶ Information obtained from the office of the Superintendent of Seattle Public Schools, July 2, 1925.

⁸⁸⁷ *Seattle Daily Times*, Information Bureau, July 2, 1925.

⁸⁸⁸ *Laws of Washington*, 1889-90, p. 455, Title XIV, Section 64.

⁸⁸⁹ Tenth Biennial Report of the Superintendent of Public Instruction, 1890, pp. 50-55.

Arts. The latter, besides some academic subjects and bookkeeping, included work in wood and metal, and industrial drawing. Tacoma was the only school reporting this kind of work.³⁴⁰

The work of the large schools was by no means uniform, and each school was introducing as much as possible into its curriculum apparently to attract students. They were attempting to do work that was distinctly of university and college character. There was little or no coordination between the high schools and the institutions of higher learning, and as a result the institutions of higher learning had to maintain preparatory classes.³⁴¹ Throughout the history of the development of high schools in Washington there is no record of legislative enactment to provide for the establishing of high schools. Its early development came about as the result of local school interests in the various communities throughout the state. The grammar school system was in a sense, superimposed by state authority, and willingly accepted by the people, while the high school had its origin among the people, and gained the recognition of the legislature in 1895, after it had demonstrated its merits. The first recognition by the legislature of the high school was in the following bits of legislation in 1895:

"All common schools shall be taught in the English language, and instruction shall be given in the following branches, viz., Reading, penmanship, orthography, written arithmetic, mental arithmetic, geography, English grammar, physiology and hygiene, and such other studies as may be prescribed by the State Board of Education."³⁴²
 "It shall be the duty of the State Board of Education to prepare a course of courses of study for the primary, grammar and high school departments of the common schools."³⁴³

The State Board of Education immediately sought to better conditions by adopting a course consisting of English, Science and Latin courses for high schools, and have it printed in the Teachers' Manual as supplement. Its use was not compulsory, but did much toward unifying the work of the smaller schools.³⁴⁴

TABLE XIV

*First Course of Study for High Schools*³⁴⁵
 Adopted by the State Board of Education 1896

First Year

	English Course	Scientific Course	Latin Course
1st Term	Algebra Physical Geography Grammar & Composition Option—Bookkeeping or Drawing recommended	Same as English Course	Substitute Latin for Option in each term
2nd Term	Algebra Physical Geography or Option, Grammar and Composition Option		

³⁴⁰ Eleventh Biennial Report of the Superintendent of Public Instruction, 1892, pp. 115-129.

³⁴¹ Twelfth Biennial Report of the Superintendent of Public Instruction, 1894, pp. 88-90.

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1890, pp. 50-55.

Second Year

1st Term	Plane Geometry Rhetoric Civics or Option Botany	Same as English Course	Plane Geometry Botany or Rhetoric Civics and Latin
2nd Term	Plane Geometry Rhetoric Botany Option		Plane Geometry Botany or Rhetoric Latin—Option

Third Year

1st Term	Algebra Physics Literature Option	Algebra Physics Literature German or French	Algebra Physics Latin and Roman History and German
2nd Term	Higher Arithmetic Literature Physics Option	Higher Arithmetic Physics Literature German or French	Higher Arithmetic Physics Latin and Roman History and German

Fourth Year

1st Term	Solid Geometry Chemistry or Zoology Pol. Econ. or Option General History	Solid Geometry Chemistry or Zoology German or French General History	General History Chemistry or Zoology German, Latin Grecian History
2nd Term	Trigonometry or Option Chemistry or Zoology Elem. Psych. or Option General History	Trigonometry or Option Chemistry or Zoology German or French General History	General History Chemistry or Zoology German, Latin Grecian History

Classical Course: First and Second year, same as Latin Course; Third and Fourth year, same as Latin Course except that Greek is substituted for German.

"It is recommended that in the above schedule each subject be taught five times a week in periods of not less than forty minutes, and that a year be considered thirty-six weeks. The foregoing course for high schools is designed for those schools which are able to maintain a course of four years. If a shorter course is desired, any school may adopt the first three years as a three-year course or the first two years as a two-year course."³⁴⁶

In 1893 the State University modified its entrance requirements, permitting graduates from four-year high schools to enter without an examination, provided credentials were presented from high schools or any other educational institutions whose course of study had been approved by the University faculty.³⁴⁷ High school text books were also adopted by the State Board of Education in 1898, to be used until 1900. These books were generally accepted and used throughout the state.³⁴⁸ Text books in physics, chemistry, botany,

³⁴² *Laws of Washington*, 1895, Chapter 5, p. 8.

³⁴³ *Ibid.* 1895, Chapter 150, p. 375, (second).

³⁴⁴ Thirteenth Report of the Superintendent of Public Instruction, 1896, pp. 77-129.

³⁴⁵ Thirteenth Biennial Report of the Superintendent of Public Instruction, 1896, pp. 129-30.

³⁴⁶ *Ibid.*

³⁴⁷ *Laws of Washington*, 1893, p. 297, Section 6.

³⁴⁸ Fourteenth Biennial Report of the Superintendent of Public Instruction, 1898, p. 58.

Tab 14

WASHINGTON SCHOOLS.

Territorial Suggestions to the Constitutional Convention by the Board of Education.

Provisions for the Government of the Schools and Disposal of Lands and the Funds.

The provision for the government of schools was prepared on the 10th inst. by the territorial board of education, and placed in the hands of the committee on education and educational institutions, to be presented to the convention. It was prepared by Prof. W. B. Farnes of Spokane Falls, and signed by every member of the board. Following is a synopsis of the provisions:

The legislature shall provide for a uniform range of education, from the primary grade to the university, and for intermediate and high schools, as necessity requires to preserve unity of system, and provide for their liberal maintenance.

All teachers' certificates, diplomas and contracts to hold good under the state the same as under the territory.

SPOKANE FALLS REVIEW: WEDNESDAY MORNING, JULY 14.

justice.

All teachers' certificates, diplomas and contracts to hold good under the state the same as under the territory.

Besides the income from the school and public lands, which shall constitute the fund at interest, to be applied to the support of schools, the public school fund shall be the proceeds of all lands that may be granted for educational purposes by the United States; appropriations for educational purposes by the state; proceeds of the estates of all persons who die intestate, or any other property that may accrue to the state by any escheat or forfeiture; all property granted to the state when the purpose of such grant is not specified; all moneys which may be paid as exemptions from military duty; all fines which may be collected under the penal laws of the state, and such portions of the poll tax as may be prescribed by law. No part of the fund to be transferred or used for other purposes.

The state treasurer shall be custodian of the fund and the same shall be profitably invested by a commission, to consist of the state superintendent of public instruction, the secretary of state and the state treasurer.

The state shall supply all losses from the fund that shall occur in any way.

The legislature may provide for special local school funds by levying a tax of not more than 5 mills.

A direct tax of not less than 1 mill, in addition to other sources of income, shall be levied, which may be reduced to $\frac{1}{2}$ of a mill if deemed advisable.

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and term of office of the state superintendent of public instruction shall be equal to that of the secretary of state. He shall be elected by the people, and the requirements for eligibility to be not less than now.

The board of education shall consist of five persons, of which the state superintendent shall be a member ex-officio, four members to be appointed by the governor from different sections on a non-partisan basis. Eligibility required to be the same as for state superintendency. The duties of the board to be such the same as now and the members to be considered as successors of the present board.

The university of Washington shall be a public trust. In addition to the usual classical, scientific and literary courses, the schools shall include agricultural colleges and colleges of mining and mechanical arts, and military tactics shall be a feature of all. They shall be free from political and sectarian influences and open to both men and women.

The legislature shall establish, as soon as practicable, one normal school.

The length of the school term shall be at least six months, for all children between the ages of 6 and 21 years.

The apportionment of the school funds shall be based on the enrollment and attendance, all districts, however, to have \$800 per year.

The next section provides for reapportionment of unused funds and the distribution of same to schools, as an incentive to keep open longer than six months.

All children between the ages of 6 and 9 years must attend public schools at least three years, unless educated by other means.

Provision is also made for the education of the blind and deaf and dumb, and the establishment of reformatory institutions.

The legislature may provide that women may vote at school elections and be eligible for school officers.

The following letter prepared by W. B. Turner, of Spokane Falls, a member of the territorial school board, was presented to the committee on state, school and granted lands:

Olympia, July 12.

To the Honorable Committee on State, School and Granted Lands, Government: We, the undersigned members of the territorial board of education, respectfully ask to incorporate in your report the following suggestions, relative to the school lands, if they meet with your favor.

In addition to the provisions of the enabling act that no school lands be sold for less than \$10 per acre, or leased for longer terms than five years, and that the land arising therefrom in sales or leases, shall be an irreducible one, whose interest only shall be used to support public schools, (which latter provision will probably be incorporated into the educational article, likewise a plan for a board of investment and apportionment of funds), we would recommend that no more than one-third of these lands be allowed to be sold in five years, not more than two-thirds in ten years, and that the time for selling the last one-third be decided after ten years by the legislature, and that such lands as are not sold be subject to lease; that all lands sold or leased shall be sold or leased at duly advertised public auction, in quantities not exceeding one section to any one person or company, provided that the most valuable lands be sold first, and provided further that any school lands situated within a radius of five miles from the center of any town or city of 5000 inhabitants or over, be subject to the following special regulations in addition to those already mentioned, viz: That they shall be subject to special appraisal and where the land is available for town or city lots, that it shall be platted into blocks and lots, and sold in quantities not exceeding one block to any one purchaser or company, and where it is not available for town or city lots within said radius it shall be sold in quantities not to exceed one-quarter section to any one purchaser or company.

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The term of all of said sales to be one-fourth cash, each of the remaining three-fourths to be paid at intervals of two years, with interest on deferred payments at not less than 8 per cent, payable annually in advance. All sales to be conducted through a commissioner of school and public lands, who, with the state auditor, county surveyor, and county superintendent of schools of said county, shall constitute boards of appraisal and grading of lands, said boards of appraisal to have the right to examine the value of timber lands, both with reference to the land and the timber thereon, and decide whether the lands or the timber be sold separately or together.

The proceeds of all said sales to be invested in school lands, municipal bonds, county bonds, state bonds, or first farm mortgages, at not less than 6 per cent. In case of investment in farm mortgages the three county commissioners aforementioned to be boards of appraisal for their own county to appraise the value of the farm land sought to be mortgaged, not more than one-half of the appraised value of the farm to be loaned, and not more than \$4000 to be loaned to any one person or association in said county, the

Tab 15

PUBLIC SCHOOLS AND THE CONVENTION.

NO. 2.

In formulating a school system our constitutional convention should carefully consider every scheme laid before them in order to select the best. Prussia's school system is probably the most perfect in the world, and because it was so Prussia was enabled to lift herself from the deplorable condition which she occupied at the close of the Napoleonic wars to be the arbiter of European empires.

Austria has copied the Prussian system with magnificent results. Victoria, the smallest of the colonies, had a population of 5000 forty years ago, while to-day she boasts the possession of 1,000,000 people, as skilled, enterprising and cultured as any in the world. Melbourne, its capital, has a population of 500,000, and in it is established a university containing schools of art, medicine and engineering which outstrip those of medieval origin. Her primary schools are absolutely controlled by a state bureau. There is perfect uniformity in charts, manuals and method, and highly competent inspectors secure the adoption of every new improvement in the matter and manner of teaching. Pupils of talent and industry are provided with free places in the higher schools and universities.

Americans have a wholesome objection to the establishment of bureaucracies in any shape or form, and they

JULY 3, 1889, P. 3, COLS. 1-2

Americans have a wholesome objection to the establishment of bureaucracies in any shape or form, and they dread the dangers of centralizing their schools under a uniform state authority. But better to have our whole school system operated by a state commission, with its apparent dangers, than by local bodies if the bureaucratic system gives us schools vastly superior to those operated by boards of school districts. What guarantee has the state that a ring will not get control of local school boards and will run them not in the interest of education, but of hoodlums? Are not such things done elsewhere? A regular state system, radiating from the capital, and building schools and supplying teachers when and where needed would be of vast benefit to the poorer and more thinly populated districts. And, moreover, it would produce a uniform and reliable teaching in elementary schools. Are the elementary schools of other states all that they should be? Are not the schools of many states graduated more to form a leisure class than a trading, mechanical and business people? In how many of them precious time that should be given to instruction in elementary chemistry, botany, physiology and physics is devoted to acquiring a smattering of dead and living languages that are of no earthly use to 90 per cent of our population afterwards.

We are well aware of the superiority of the classics, ancient and modern, for mental discipline and real culture. But we live in an eminently practical age, and if we are to hold our own our schools must be eminently practical too. Our primary schools must not be shaped to give America poets, artists and dreamers; they must be shaped to fit the children

We are well aware of the superiority of the classics, ancient and modern, for mental discipline and real culture. But we live in an eminently practical age, and if we are to hold our own our schools must be eminently practical too. Our primary schools must not be shaped to give America poets, artists and dreamers; they must be shaped to fit the children of the people to be mechanics, horticulturists, farmers, miners and business operators. We are going to have one of the mining countries of the world, and it is absolutely essential that our rising generation should be instructed in inorganic chemistry and physics to understand the use and value of the ores and metals with which our mountains are literally stored. Above all things, then, guard the schools from falling under the direction of fools who in educational matters are guided by the exploded methods of a generation ago. We want our brightest intellects, men with a general knowledge of the practical workings of the school systems of the world to give aid and advice in forming the best of systems for Washington.

LOUIS LERARO.

Tab 16

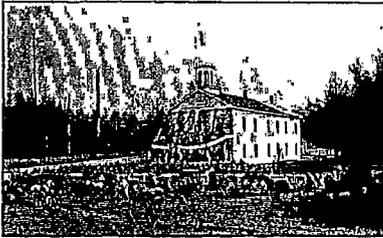
UNIVERSITY OF WASHINGTON PUBLICATIONS
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THE SOCIAL SCIENCES

Volume 12, pp. 1-298

August, 1940

MESSAGES OF THE GOVERNORS OF THE
TERRITORY OF WASHINGTON TO THE
LEGISLATIVE ASSEMBLY, 1854-1889

Edited by
CHARLES M. GATES



Inauguration of Elisha P. Ferry as First Governor of the State of Washington,
Olympia, November 18, 1889

UNIVERSITY OF WASHINGTON PRESS
SEATTLE, WASHINGTON
1940

was done. The commission have made their award, and it has been approved by the Department familiar with such subjects. Justice demands the immediate liquidation of the debt to the full amount found due by the commission.

In conclusion, I would respectfully suggest that, as the present session of Congress will terminate on the 4th of March next, such matters as may require the action of our Delegate should receive the early attention of the Legislature.

HENRY M. MCGILL.

EXECUTIVE OFFICE, Olympia, December 6, 1860.

L. JAY S. TURNEY

L. Jay S. Turney of Illinois became secretary and acting governor of Washington Territory in the summer of 1861. A personal friend of President Lincoln, he was appointed to succeed Henry M. McGill. At the same time William H. Wallace was named governor but he resigned the office without qualifying, when nominated (and later elected) by the Republicans as territorial delegate to Congress. Turney therefore held the executive position until Governor Pickering arrived in June, 1862. Following his retirement from office, Turney continued in territorial politics and himself ran for the office of delegate to Congress in the election of 1863. He was, however, defeated by George E. Cole.*

*Snowden, *History of Washington*, IV, 140, 144, 173.

Acting Governor L. Jay S. Turney to the Ninth Annual Session of the Legislative Assembly, December 19, 1861.

Gentlemen of the Legislative Assembly of the Territory of Washington:

Custom requires the infliction of a "speech" on this occasion. A temporary and accidental occupancy of my present position, and my opportunities for becoming familiar with the geography, topography and history of our Territory having been limited, this requirement is somewhat onerous. I hope, therefore, you will not expect minute details in the thoughts now to be submitted.

From what I have heard, seen and read, however, I believe there is a bright, a glorious future, for the Territory of Washington. She lies between, and in the thoroughfare of populous and mighty nations; a large part of the world's commerce must ultimately pass over her bosom. She borders upon the majestic Pacific, and has within her limits an inland sea, sufficiently capacious to furnish safe anchorage for all the shipping now built, and it is filled with clams, crabs, oysters, salmon, and all the best varieties of fish. She is drained by the great Columbia and its beautiful tributaries. There is on these rivers the finest water-power on the globe, and enough to propel all the machinery in use. She has the thickest, largest and tallest timber that grows, and is undoubtedly the best lumbering country on earth; and yet she contains many beautiful and lovely prairies. Her coal, iron, copper, silver and GOLD fields, bid fair to equal, if not surpass, any yet discovered. Her fertile soil produces apples, pears, plums, and all the berries to perfection. Wheat, rye, oats, peas, beans and barley grow admirably. Her yield of hemp, flax and the grasses is unsurpassed; and in the production of cabbages, turnips, POTATOES and vegetables generally she is unequalled. Besides, her valleys are blessed with a mild pleasant climate—a climate neither too hot nor too cold, too dry nor much too wet!

Everything considered, Washington Territory certainly possesses greater natural advantages, more of the elements of wealth and true greatness, than are found in any other Territory or State on this continent. There is found nowhere else so many facilities for acquiring all the staples which supply the wants of life, and make a people prosperous, independent and happy. Here agriculture, commerce, manufacturing, MINING, lumbering, fishing, and all the various employments of industry may be profitably and successfully pursued. No other people are equally blessed with pure, clear cold water from snow-capped mountains, and at the same time breathe the pure air and enjoy the gentle breeze from the great ocean—consequently no people are in a greater degree blessed with the best of earthly blessings, good health; a health that invigorates, cheers and completes true greatness and produces perfect enjoyment. With a proper development of her illimitable natural advantages, who shall predict the future greatness, or assign limits to the brilliant destiny of the Territory of Washington?

Let it never be forgotten, however, that these great advantages and blessings bring with them corresponding duties and responsibilities—duties we *must* perform, responsibilities we *cannot* shirk.

School-houses, college edifices and temples in which to worship Almighty God, must be erected and sustained, public highways opened and kept in repair; bridges built and kept up; and public morals established and maintained; for no people can be truly prosperous and happy who do not duly appreciate and properly guard public and private morals. With a view to the proper and permanent establishment of morality, I commend to your favorable consideration the common school—the poor, though intellectual and honest boy's college. Legislators who would establish the liberties and happiness of the people, must not neglect their education. Experience demonstrates the perfect success of the common school system—that the masses can be educated, and that it is cheaper to educate the people than to punish the vices and crimes incident to ignorance. History shows that those communities having the largest number of well sustained schools, colleges and churches, need fewest jails and gibbets; therefore, I earnestly recommend the enactment of liberal laws on the subject of common schools—laws which will put them on a permanent basis, and thus secure to all our children a liberal education.

In warmly urging you to take under your fostering care our free schools, I would by no means have you forget or neglect the great interests involved in our present and future seminaries and colleges. Our munificent donations of lands for educational purposes, should be carefully watched and guarded, and no part of them suffered to be squandered under any pretext. In all cases, those intrusted with the selection or sale of these lands, or with the management or disbursement of funds arising from their sale, should be held to a strict and scrutinizing accountability.

In my judgment, you should consider well what powers and privileges are conferred over these lands by existing laws of Congress, and should not transcend them yourselves nor suffer others to do so. I cannot advise a ratification of illegal acts in relation to them. Their safety depends upon a rigid and faithful observance of the law *as it is*. A want of such observance may, and I fear will lose us a part, if not the whole of these lands, and wreck all our hopes based upon them. All wrong doers who would squander any part of these lands, should be frowned down by an enlightened and patriotic public sentiment.

A conviction of duty compels me to say in this connection, I regard the acts of the last Legislative Assembly in relation to the UNIVERSITY LANDS, as illegal and void; and the action of the Commissioners hasty and unwarranted. It is for you to determine, after a careful examination of the law and the report of

Tab 17

Index to the
Laws, Memorials and Resolutions

Passed by the
Washington Territorial Legislature
1853 - 1887

Office of the Secretary of State
Ralph Munro, Secretary of State

Division of Archives & Records Management
Sid McAlpin, State Archivist

Compiled by:

Sid McAlpin
Mary Oletzke
Jan McKenzie
Kathleen Waugh
David Hastings

Olympia, Washington
March, 1993

Introduction

On March 2, 1853 Congress, passed the Organic Act, establishing the Territory of Washington. This vast new territory included all of the land west of the Rocky Mountains, north of the Columbia River, and south of the British possessions. President Millard Fillmore named Isaac I. Stevens the first governor of the territory.

The Organic Act dictated the kind of government Washington Territory would have. Republican in form, it was to have an executive branch, a judicial branch and a legislative branch. The legislative branch consisted of two houses, a legislative assembly with eighteen members and a legislative council of nine members. The legislature could pass general and local laws, but all of its laws were subject to the approval of the U. S. Congress.

The Organic Act required that at their first assembly, the members of the legislative council (equivalent to the senate) divide themselves into three classes. The seats of the members of the first class would be open for re-election after the first year, those of the second class would be vacant after the second year, and those of the third class would be vacated at the expiration of the third year, so that one-third of the council seats would be chosen each year. The Act stated that the legislative assembly, or house of representatives, would initially consist of eighteen members, elected for one-year terms. The number could be increased in proportion to the population as long as the total membership of the council and the assembly combined did not exceed thirty.

The Organic Act provided that prior to the first election of the territorial legislature, a census would be ordered by the governor so that representation in the legislature could be properly apportioned. The task of taking the census was assigned to U. S. Marshal J. Patton Anderson, who preceded Stevens and the other new territorial officials to Washington Territory. The results of the census showed that there were 3,965 citizens in the territory (excluding Indians), of whom 1,682 were qualified to vote.

With the results of Marshal Anderson's census, Governor Stevens apportioned the territory and on November 28, 1853, issued a proclamation calling for the election of a legislature and other territorial officials. The election took place on January 30, 1854. The Legislature assembled in Olympia on February 27, 1854, for its first meeting, which took place in a plain, two-story wooden building fronting the bay in Olympia. The first floor was occupied by the Parker, Coulter & Co. general store. The legislative

chambers were on the second floor, which could only be reached by an outside wooden stairway.

The average age of the members was only twenty-eight years. They included ten farmers, seven lawyers, four mechanics, two merchants, two lumbermen, one civil engineer, and one surveyor. The members of the first legislative council were George N. McConaha representing King and Pierce Counties, Daniel Bradford of Clarke County, W. H. Tappan from Lewis County, Seth Catlin from Monticello, Henry Miles from Lewis County, D. R. Bigelow and B. F. Yantis representing Thurston County, Lafayette Balch of Steilacoom, and William P. Sayward. Elwood Evans served as chief clerk.

The members of the first legislative assembly were Francis Chenoweth, Benjamin F. Kendall, Arthur A. Denney, Calvin H. Hale, David Shelton, Ira Ward, L. D. Durgin, Samuel D. Howe, J. A. Bolon, John D. Biles, Henry R. Crosby, A. Lee Lewis, L. F. Thompson, Henry C. Mosely, John M. Chapman, Daniel F. Brownfield, H. D. Huntington, John R. Jackson, and Henry Feister (who died of apoplexy the day after his swearing-in).

Governor Stevens delivered his first address to the legislature on February 28. He asked the members of the legislature to lay the foundations of a body of law which would help ensure a prosperous future for the territory. Stevens stressed the need for roads and schools, and he advised memorializing Congress for help in establishing treaties with the Indians so that the land could be opened for white settlement.

Nearly all of Stevens' suggestions were acted upon by the legislature. To draft a code of laws, the legislature appointed a commission consisting of Chief Justice Edward Lander, Justice Victor Monroe, and former Oregon Justice William Strong. The commission closely followed the code of New York, with additions and changes derived from the codes of Indiana and Ohio, the states from which two of the commissioners had come.

The Organic Act provided that the first session of the legislature should not last longer than one hundred days. At the end of sixty-four days the first legislature had completed its work and its members were ready to return home. In this short time they had formulated and adopted a civil code, a criminal code, a probate law, a general election law, and nearly all other legislation necessary for the conduct of government. They also created eight new counties: Cowlitz, Wahkiakum, Clallam, Skamania, Whatcom, Sawamish, Chehalis, and Walla Walla. Several acts to locate roads in western Washington were also passed.

Some important memorials were also passed at this session, asking Congress for new ports of entry, a marine hospital, lighthouses, and recognition of the land ownership rights of George Bush, the first black to settle in the territory.

The first session of the legislature was considered a success, although two important measures, women's suffrage

and prohibition, failed to pass. The members made their way home by canoe and horseback, generally feeling that the job of establishing a government for the territory was well begun.

The second session of the legislature convened on December 4, 1854, and remained in session until February 1, 1855. During this session, the legislature passed a militia law, amended the road, school and fence laws and changed the time of the general election from June to July. The territorial penitentiary was voted to Clarke County, the capitol to Olympia, and the university to Seattle with a branch campus at Boisfort in Lewis County. An act prohibiting the sale and manufacture of "ardent spirits" was also passed but failed when presented to the people for approval.

The third session of the legislature met during the winter of 1855-56, in the midst of the Indian War. This legislature was preoccupied with the conduct of the war, and, to a lesser degree, with changes in the practices of the courts mandated by Congress. The members spent a great deal of time debating Governor Stevens' wartime declaration of martial law in Pierce County and compared their views on how to prosecute the war. One view was in support of General Wool, who simply closed eastern Washington to white settlers, thereby eliminating the friction between whites and Indians. The other view was represented by Governor Stevens and his Washington Territorial Volunteers, who saw defeating the Indians and forcing them onto reservations as the way to end the hostilities. In the end, two political parties came into being: the Stevens Party and the Anti-Stevens Party.

Both parties had successes. The Anti-Stevens Party managed to win a vote of censure of Stevens' martial law actions, but the next year Stevens proved his popularity by winning the office of delegate to Congress. General Wool was recalled by the Army, but his policy of closing eastern Washington was retained.

Washington remained a territory for thirty-six years. During that time the population grew from the initial 4,000 citizens to about 250,000. Cities took the place of frontier settlements, and the "Wild West" became civilized. The Territorial Legislature kept pace with the changes, amending old laws and passing new ones to meet the needs of the growing population and changing circumstances.

In total, the Territorial Legislature created twenty-six new counties and reapportioned the territory twelve times. In 1866 the sessions of the legislature were changed from annual to biennial, and in 1879 membership in the Legislative Council was raised to twelve members, while the number in the Legislative Assembly was raised to twenty-four.

By the early 1870's it was widely held that Washington was ready to become a state. The population level was sufficient and the legislature had created the necessary

legal infrastructure. Numerous memorials were sent to Congress requesting admission to the Union, but these were repeatedly denied because of party politics in Washington, D.C.

Most of the early legislators were men who were not very familiar with legal forms or parliamentary methods. They were plain and practical men, who had a certain vision of what they wanted Washington to be and they relentlessly worked toward that goal. Their work compares favorably with that of other states with more polished politicians. There were never any charges that they were improperly motivated. No member was ever charged with corruption, and the effectiveness of lobbyists was minimal. To be sure, frivolous laws were passed, including the concept of "legislative divorce" which was later condemned, but when Washington became a state, the laws of the territory were considered to be so valuable that they were adopted in their entirety and formed the basis for the laws of Washington State.

Although many of the territorial laws have been superseded by newer state laws, some still remain on the books. These relics from the days of Washington Territory were so well drafted that they still reflect the values of the citizens of Washington.

Tab 18

**THE JOURNAL OF THE
WASHINGTON STATE
CONSTITUTIONAL CONVENTION
1889**

with Analytical Index

by

Quentin Shipley Smith

Edited by

Beverly Paulik Rosenow

Analytical Index, Articles IX-XI (pp. 685-732)
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1999**

ARTICLE IX EDUCATION

The Convention was practically unanimous in drawing up an education article which protected the common school fund and set up a democratic, nonsectarian system of public education. In the early days of the Convention, the *Tacoma Daily Ledger* ran a series of four editorials featuring an educational system for the new state.¹ It is not known how effective these ideas were, but it is certain that the delegates were influenced in their work by a list of provisions for the governing of schools which was prepared by the territorial board of education and placed in the hands of the Committee on Education.²

Stiles later praised the school system which had been thus provided. He explained that the Convention was familiar with the disappointing history of school funds in many other states, and wanted to provide an irreducible fund for its common schools.³

The Committee for Education and Educational Institutions was appointed July 9. (p. 19)

Members: Blalock, chairman; Lindsley, Lillis, Dickey, Eshelman, Dunbar, and Allen.

Section 1**Present Language of the Constitution:**

PREAMBLE. It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

Original language same as present.⁴

Text as given in report of committee, August 7:

Same as final. (p. 276)

1. *Tacoma Daily Ledger*, July 1, 3, 4, 6, 1889.

2. *Spokane Falls Review*, July 17, 1889.

3. Theodore L. Stiles, "The Constitution of the State and Its Effects upon Public Interests," *Washington Historical Quarterly*, IV (October, 1913), 284.

4. *Education of Children*: Original.

Section 2

Present Language of the Constitution:

PUBLIC SCHOOL SYSTEM. The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.

Original language same as present.⁵

Text as given in report of committee, August 7:

Same as final except that the last sentence read, "But the entire revenue derived from the state school fund, and the state school tax shall be exclusively applied to the support of the common schools." (p. 276)

Final action by Convention, August 10:

Motion: Turner moved to strike out the last sentence.

Action: Motion lost. (p. 328)

Motion: Cosgrove moved to have a school session of not less than six months.

Action: Motion lost. (p. 328)

Motion: Griffiths moved to change "common" to "public" in the last line.

Action: Motion lost. (p. 328)

Motion: Turner moved to amend the last sentence to its final form.

Action: Motion carried. (p. 328)

5. Uniform System: Ore., Const. (1857), Art. 8, sec. 3. [Similar. Many states have a provision similar to this.] Includes What; Support of: Cal., Const. (1879), Art. 9, sec. 6. [Very similar.]

Section 3

Present Language of the Constitution:

FUNDS FOR SUPPORT. The principal of the common school fund shall remain permanent and irreducible. The said fund shall be derived from the following named sources, to wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or public for common schools; the proceeds of lands and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state when the purpose of the grant is not specified, or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of timber, stone, minerals, or other property from school and state lands, other than those granted for specific purposes; all moneys received from persons appropriating timber, stone, minerals or other property from school and state lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on said lands; five per centum of the proceeds of the sale of public lands lying within the state, which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section 13 of the act of congress enabling the admission of the state into the Union; the principal of all funds arising from the sale of lands and other property which have been, and hereafter may be granted to the state for the support of common schools. The legislature may make further provisions for enlarging said fund. The interest accruing on said fund together with all rentals and other revenues derived therefrom and from lands and other property devoted to the common school fund shall be exclusively applied to the current use of the common schools.

Original language same as final.⁶

Proposition submitted to Convention by Turner, July 12:

That the school fund be invested under rules prescribed by law, the interest only be used for schools, any deficit be supplied by taxation, and the funds augmented by fines, for-

6. Common School Fund: Ore., Const. (1857), Art. 8, sec. 2; Hill, Prop. Wash. Const., Art. 8, sec. 3; Wash., Const. (1878), Art. 11, sec. 4. [Similar.]

feitures, unclaimed witness and jury fees, gifts and grants of property to the state not otherwise directed. (p. 86)

Text as given in report of committee, August 7:

Same as final except that it had "educational institutions" instead of "common schools" after "bequests by individuals to the state or public for" and omitted "other than those granted for specific purposes" after "persons appropriating timber, stone, minerals, or other property from school and state lands." (p. 277)

Final action by Convention, August 10:

Motion: Godman moved to strike out "and state" from every mention of "school and state lands." This would have left school lands to furnish the revenue from lands.

Action: Motion lost. (p. 328)

Motion: Turner moved to strike "educational institutions" and insert "common schools" in line four.

Action: Motion carried.

Motion: Bowen moved to add "other than those granted for specific purposes" after "state lands."

Action: Motion carried. (p. 328)

Motion: Cosgrove moved to add that this would not affect lands the state owned by its sovereignty.

Action: Motion lost. (pp. 328-9)

Motion: Turner moved to amend the clause to read, "The interest accruing on said fund together with all rentals and other property devoted to the common school fund shall be exclusively applied to the current use of the common schools."

Action: Motion carried. (p. 329)

Section 4

Present Language of the Constitution:

SECTARIAN CONTROL OR INFLUENCE PROHIBITED. All schools maintained or supported wholly or in part

Tab 19

The Washington Historical Quarterly

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THE WASHINGTON UNIVERSITY
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THE CONSTITUTION OF THE STATE AND ITS EFFECTS UPON PUBLIC INTERESTS*

The feature of the constitution of Washington which was most frequently criticised at the time of its adoption was its length, but time and experience has shown that its principal fault is that it is really not long enough.

The American people have become so used to living under written constitutions that a sort of constitutional common law has come to exist, which enforces an unconscious uniformity in the substantial provisions of all them.

Each state is under obligation to its people to afford them republican form of government, and our ideas of such an institution are so fixed by usage and judicial interpretation that the constitution of each new state, in all the essentials, is but a copy of some older one.

Certain questions, as, for instance, the right of the people to take or injure property of individuals only upon making compensation therefor, the imperative necessity of guaranteeing the absolute secrecy of the ballot, the evils attending the public contributions to the building of railroads, and others, became so well settled in the public mind many years ago, that the people in remodeling old constitutions and in enacting new ones, insisted upon withdrawing them from possible legislative disturbances.

There is no reason why firmly settled principles or policies of government should not be expressed in written and unalterable law, even if the expression of them requires more words than were used in an older constitution. The Constitution of the United States and the constitutions of many of the older states were framed by men who had the benefit of sufficient experience or sufficient foresight to anticipate what the demands of the future would be. Yet it required twelve amendments to the federal constitution to put that instrument into satisfactory operation.

The constitution of Washington, therefore, contained little that was new, or that was not, in substance, expressed in some preceding document of like character or, at any rate, in well considered and long enacted legislation. The difficulty which most greatly embarrassed the convention, as it turns out, was in expressing definitely and certainly the meaning of many of the important acts framed and proposed by it. I doubt whether a majority of the people of the state would think it worth while

*This article appears as Appendix 2 of Mr. Knapp's thesis published in this issue. Mr. Stiles was a member of the Constitutional Convention and was later elected a Justice of the first Supreme Court of the State.

to change the plan and scope of their constitution, though they might desire to state more clearly some of its provisions, and thereby cause the course of interpretation to be changed or reversed. In its operation upon the executive, and especially upon the legislative branches of the state government, the constitution is an instrument of limitation, and both of these departments have been pressed hard upon, and as many people believe, over, the lines laid down by their fundamental law, without being checked by the judicial department, which is always slow to exercise control over a coordinate branch of government, unless compelled to do so by unmistakably binding statute. A few more words or some different words, had they been employed by the constitution, would, in every instance which now occurs to me, have served to express a meaning which would have been more satisfactory to the people, and which, I am convinced, was the understanding and intention of that body.

But the convention did its best. It worked honestly and earnestly to accomplish, in the short time allotted to it, the highest good to the incoming state. There were no cranks, and very few politicians in it, and I verily believe that in no body of like character has politics been more completely subservient to the public welfare. Its weakness was that it had to be chosen from the common people of the territory, who were not numerous, and who had not had the training in schools of the lucid and comprehensive statement. Its members had ideas enough, and they knew well what they wanted, but when it came to setting it down in precise and unmistakable language, they lacked the necessary experience. More things were taken for granted or left to implication than should have been, as the sequel proves.

One instance of oversight of this kind may be mentioned for illustration. Section 22 of the second article declares that no bill shall become a law unless on its final passage the vote is taken by yeas and nays and a majority of the members elected to each house be recorded as voting in its favor. Yet section 22 is practically a dead letter, and not a session of the legislature has been had where numerous bills did not go through and become law, without even a substantial compliance with this requirement, and the practice will continue simply because the constitution provides no way by which the question of the actual passage of a bill may be tested, the supreme court holding that there can be no inquiry into the history of a law beyond the enrolled bill.

Section 16 of the first article on the subject of compensation of property taken for the use of the public was a very clear proposition, until a member who thought that municipal corporations should be allowed to take possession of lands condemned for streets as soon as the damages

had been ascertained without actual payment into the court caused the words "other than municipal" to be inserted in it by amendment. The convention was satisfied to adopt the suggestion, but the only result of the amendment was to bring on a conflict between the property owners and the cities, in which the latter were worsted, because the words above quoted, in the place where they were found, did not have force enough to overcome the flat declaration contained elsewhere in the same section, that no private property should be taken until compensation had first been made or paid into court for the owner. The ablest man in the convention proposed the amendment, and no one was more surprised than himself at the outcome of it. A few words more or perhaps the same words set in a different place, might have made the exception intended clear, instead of merely confusing the whole section.

Among the meritorious provisions of our constitution which had any degree of novelty at all, I pronounce the judicial system first. Not many of the states have constitutional courts, and still fewer of them have undertaken to define the jurisdiction of their courts by the higher law. We have an appellate court, with a slight measure of original jurisdiction, whose powers are broad and universal for the correction of all errors of the inferior courts, and yet whose interference stops at the line where cases are small and concern mere questions of money. No legislative whim can disturb or destroy the steady course of judicial decision. The judges are numerous enough to secure the deliberate investigation, and the length of term and rotation of office are well adapted to secure the dignified but not servile response to the popular will.

Every county has its superior court with almost universal original jurisdiction and with judges enough to keep abreast of the business. The hard times and great unexpected falling off of all commercial enterprises caused some of us to say that we had more courts than we needed, but it is noticeable that no county has yet voluntarily offered to surrender the advantage it has in having a court always open at the service of its citizens. There is less complaint in Washington than in any other state in the Union growing out of crowded calendars and delays in the administration of justice. Such complaints as justly exist here are due to the forms of practice prescribed by the statutes, and not to the courts or the system under which they exist.

In the matter of the elective franchise Washington took an advanced position. None but citizens of the United States can vote; the ballot must be absolutely secret, and registration is compulsory, in all but purely rural communities, where everybody is known. The consequence of these

provisions has been that election scandals are almost unknown here, and there is nowhere a more independent body of voters.

By prescribing limitations to the power of creating public indebtedness and restricting the objects for which indebtedness might be created the constitution has doubtless served a valuable purpose. Its framers certainly expected that it would be more literally construed, than it has been; but the peculiar exigencies of the times have caused the provisions on this subject to be more hardly pressed than any others. Unfortunately there was no definition of indebtedness in the constitution and the legislature has never supplied the deficiency. Reckless assessments in the earlier years deceived the people and encouraged them to extravagance; and when the borrowed money was spent there were presented two miserable alternatives of repudiation or stoppage of government unless the letter of the law could be made to give way in some measure to its supposable spirit.

No other state has placed the common school on so high a pedestal. One who carefully reads Article IX. might also wonder whether, after giving to the school fund all that is here required to be given, anything would be left for other purposes. But the convention was familiar with the history of school funds in the older states, and the attempt was made to avoid the possibility of repeating the tale of dissipation and utter loss. At the minimum rate at which school lands can be sold, the state will, sometime, have an irreducible fund for its common schools of more than \$25,000,000, an endowment greater than that of any other educational system now existing.

In a few of its features, mostly original ones, the constitution has, in my judgment, not worked well. It was a good thing to do away with the old plan of granting special charters to cities and towns by special act of the legislature. Two hundred and eighty-six pages of the laws of 1896 were taken up with enactments of this kind, which, it was notorious, were passed without any consideration of the legislature; and doubtless, by this time that record would have been distanced but for the prohibition contained in Article IX. But the concession which followed, that cities of 20,000 inhabitants and upwards might make their own charters, was a melancholy mistake. It has cost the cities capable of availing themselves of this privilege more than \$50,000 to get themselves under the provision of their present charters and there is scarcely an important provision in any of them that does not require an opinion of the supreme court to determine whether it is not in conflict with the "general law" before it can be enforced. This is one of the few instances where special interests got control of the convention. The county members did

not care to oppose their city brethren, and the latter, spurred by their ambitious constituents at home, really thought that nothing the legislature ever would, or could do, would be large enough to meet the requirements of the growing metropolises. The committee report on this subject favored 75,000 as the minimum population, but the convention got hold of it and ran the figures down by successive amendments to 1,500, where a halt was called by killing the whole proposition. It would have been well if it had remained in that condition, but a compromise was effected, a reconsideration had, and the result is the article named.

Article XV. has been a failure and probably always will be. It was an attempt to legislate about a subject upon which the convention had little or no information, and one, the treatment of which, must necessarily depend upon the circumstances of each particular case. Harbors are built and maintained for the benefit of commerce, and the contour of the land and the depth of water where it is proposed to establish a harbor necessarily determine the best form for its construction. There may be some places on the face of the earth, or even within the state of Washington, where an arbitrary fixed line laid out on navigable waters, with a 600-foot reserved area behind it, will serve as a safe plan for a harbor, but there are not many such. Commerce has not yet felt the effects of this article, because it has not been put into operation beyond the wholesale selling out of tidesflats, and because the surveys have been so made, in most instances, that vessels do not use the harbor areas at all.

The article on impeachments is inadequate, and every attempt to follow it has proved to be a farce. The legislature has not the time, in the course of its short sessions, to lay aside its other business and attend to the details of a trial; besides, partizanship is always too rife in such bodies to enable them to act with the judicial fairness which ought to characterize such a proceeding.

The constitution ought to have destroyed the warrant system as a means of paying public obligations. The public ought to pay money to its creditors whenever their demands are due and, if necessary, it ought to borrow the money outright from those who have it to lend, instead of putting off claimants with paper redeemable at no fixed time, and at extravagant rates of interest. This state need never have been paid more than four per cent for all the money required, and the counties and cities would have done nearly as well, if all had been on a cash basis. What sort of credit would a business man have who paid for his goods only in non-negotiable notes not due until he got the money? The cash system would have checked extravagance; it would have lowered the price of supplies, and it would have prevented the loss of hundreds of

thousands of dollars in broken banks, and, perhaps, saved the banks themselves from insolvency.

There have been some excellent provisions in the constitution from which the people have had no benefit, because they depend for operation upon action by the legislature, and that body has neglected to do its duty in the premises. Considering that by section 29 of the first article every direction contained in the constitution is mandatory unless expressly declared to be otherwise, it is at least surprising that in some instances no attempt has been made whatever to set these provisions at their legitimate work. The first of these provisions which occurs is that contained in section 30, Article II., where it was prescribed that the offense of corrupt solicitation of members of the legislature and other public officers should be defined by law and appropriately punished, and witnesses were denied the privilege of refusing to testify to matters incriminating themselves. Several cases have occurred where lack of legislation on this subject has been severely felt in cases arising within the legislature itself.

Section 18, Article XII., requires the passage of laws establishing a reasonable rate for the transportation of freight and passengers by all common carriers, and no honest effort has been made to give the public the relief provided for. All that has been done for the benefit of a single interest, and applies only to certain classes of freight.

I am sure the author of section 22, Article XII., never thought that many legislatures would come and go without the introduction of a single bill to carry out his prohibitions against monopolies and trusts, yet the section ends with these words, "The legislature shall pass laws for the enforcement of this section." Just what must be the form of the laws necessary in this instance is more than I know; but I believe we are suffering from the want of them. With almost everything in the way of raw materials at our hands, we manufacture almost nothing that can be shipped from the great trust neighborhoods, because our business men dare not undertake manufacturing for fear of being crushed by the foreign octopi. There should be at least an investigation to see what effect these combinations, unlawful everywhere, are having upon our prosperity, and, if it is true that they are preying on our very vitals, whatever may be done under the section mentioned should be done with the utmost vigor.

Through obvious neglect in not prescribing regulations supplementary to Article XIII., the legislature has allowed the provisions of that article to have no practical force, so far as the appointment of boards for the control of the public institutions of the state is concerned. The senate does not, in practice, concur in the appointment of any of these officials, but

the whole matter is left to the discretion of the governor, who appoints and removes them at his pleasure. From the system into which we have fallen it results that there is not an independent appointive officer in the state, whose continuation in office is certain even for a day.

Wherever our constitution is self-executing, it has been found in the main satisfactory, but these portions which require to be supplemented by statute have met with little intelligent interpretation and much neglect. It deserves to be given a full trial and when it arrives at that state I believe it will be found to be an efficient guiding instrument, unnecessary to be materially altered for years to come.

THEODORE L. STILES.

Tab 20

UNIVERSITY OF WASHINGTON PUBLICATIONS
IN
SOCIAL SCIENCES

Vol. 6, No. 1 pp. 1-154

June, 1929

HISTORY OF EARLY COMMON
SCHOOL EDUCATION IN
WASHINGTON

BY
THOMAS WILLIAM BIBB



UNIVERSITY OF WASHINGTON PRESS
SEATTLE, WASHINGTON
1929

England."² At another place we find the statement, "Knowing Mr. Atkinson to be familiar with the graded schools of Boston and vicinity, they requested him to start the graded school for them (at Oregon City)."³ Dr. Atkinson himself wrote:

"The men and women who were forced to leave England in order to secure and enjoy the rights which they deemed inalienable began to exercise those rights not only in the churches, but in their school districts. Those school districts were their smallest voting precincts. . . . The school district was a pure democracy, . . . a perfect self-government in its sphere of legislation, and the colony or state a larger one. . . . Within this district every child had equal rights to all its provisions."⁴

All this is interesting as presenting the background and viewpoint of the character who is largely responsible for the law of 1849, which had its influence on the later legislation of both Oregon and Washington.

The New England influence came into Oregon, then, by two distinct routes; indirectly, through the Iowa law; directly, through the well-crystallized ideas of the New Englander who was greatly responsible for the law. While the general trend of the population came from the Middle West, where the influence of the New England system had already been spread, still there seem to have been no educational leaders among them. Perhaps this will explain, however, why it was that the law had such unanimous support.

The New England ideas on the importance of free education; the extreme localization of control as reflected in the district system; the permanent school fund; the certification of teachers; a state tax to support education; the election of district trustees; religious freedom of teacher and pupil; all were incorporated in the Oregon law.

² *Ibid.*, p. 29.
³ *Ibid.*, p. 138.
⁴ *Ibid.*, p. 252.

IX

THE DARK ERA

THE FORMATION OF WASHINGTON TERRITORY

In 1851 the movement started to separate Northern Oregon from the original territory. D. R. Bigelow, who enters so prominently in later educational history, made a Fourth of July oration at Olympia that launched the movement in all seriousness. A newspaper, *The Columbian*, was started on September 11, 1852, and immediately began the agitation for the new territory. As a result of this, a convention was called to meet at the house of H. D. Huntington at Monticello, near the mouth of the Cowlitz River, on October 25 of that year. A memorial was addressed to Congress praying that the territory of Columbia be set off as an independent political unit.

The details of this important move are not relevant to this phase of history. Suffice it to say that with the aid of Oregon the Organic Law of March 2, 1853, was passed creating Washington Territory. This law, with some amendments, served as a constitution for Washington Territory until February 22, 1889, when what was known as the "Enabling Act" was approved, establishing the State of Washington.

The population of the Territory at the time of its formation was as follows:

Island County	195
Jefferson County	189
King County	170
Pierce County	513
Thurston County	996
Pacific County	152
Lewis County	616
Clarke County	1,134
Total.....	3,965 ¹

¹ Meany, (Edmond S.), *History of the State of Washington*, p. 156.
² *Pioneer and Democrat*, Dec. 17, 1853.

LACK OF AUTHENTIC RECORDS

A few words of explanation seem pertinent at this point in order that the reader may grasp fully the difficulties felt by the historian in presenting the history of Education of the Second Period—from the inception of the Territory of Washington in 1853, to the foundation of the State in 1889.

I am inclined to call the time previous to 1873 the Dark Era; for it was not until that year that the administrative organization was efficient enough to give us much light on the condition of educational affairs in the Territory. In 1873 the first regular report of the Superintendent of Public Instruction, of that unbroken series which we now enjoy, was made. Before that time there was much confusion. The system, if indeed, it could be called a system, was without a central head; with two or three possible exceptions, it was also without proper county organization; and lastly, district matters were anything but ideal. No official records are to be found for these two decades of the Dark Era, with the exception of the report of the Superintendent of Public Instruction for the year 1862, of which more will be said.

Let us turn, then, to the counties. Here we are more fortunate, inasmuch as a few keen county superintendents published their reports. But for the most part, loss of the records, failure to collect data, failure of the clerks of the districts to furnish reports, all go to substantiate the fact of the confusion of the time.

Indeed, one need only turn to the later reports and documents for still greater evidence bearing on this point. Dr. Nelson Rounds, who was the newly appointed superintendent of Public Instruction, in an article written in 1872, stated that it was very difficult to get material from the counties, upon which to base a report. He said in part:

"I will only add the following extract from a letter lately received from an excellent superintendent: 'Your letter came to hand Saturday. I am glad to hear from you, and especially glad to see a little enthusiasm in the cause of education. This Territory, which as you intimate, is the germ of a great state, I fear is sadly in need of some enthusiasm and a great deal of energy in the cause. To convince you of this fact, I have to inform you that the clerks of the several districts of this county have barely sent me the number of children entitled to draw public money. You will therefore excuse me, if I am unable to furnish you such items of information as you desire. So far as I know, it has never been the custom in this

country to require more, (than that one item). Should you think it advisable to issue an address to the clerks of the school districts in the Territory, it might have the effect to spur them to their duties.'"³

The cause of education would have been strengthened had it been centered around a head several years before it actually was. In 1861 a superintendent was provided by the statutes, but he was legislated out of office at the end of the year. Not for another decade was there enough interest shown on the part of the leaders to provide another law of like nature. It was Governor Edward S. Salomon, who in his message of October 2, 1871, brought the need of a superintendent before the legislature. He said:

"I have endeavored to obtain some statistics in regard to education, from the different county superintendents of common schools. Only a few have replied to my inquiries, and I am therefore unable to lay before you such a statement as I desired to make. I deem it, however, of the utmost importance that a suitable person should be appointed Superintendent of Public Instruction, whose duty it should be to bring uniformly into our public school system, and who should have the necessary powers vested in him to exercise a control over the county superintendents, compelling them to report, and thus enable him bi-annually to lay before the Legislature an intelligent statistical report, with such recommendations as his experience and observations would suggest.

"I have received a great number of letters from all parts of the Union, requesting information about this Territory, its soil, climate and resources, but the first and most important question invariably asked is: 'What are the facilities for educating my children?' These facilities are not what they ought to be, and I could only answer that the Legislature would undoubtedly give this question due consideration. It is true our taxes are heavy; but no citizen who can appreciate the value of a good education will object to pay for procuring it for his children. I hope this subject will receive careful attention."⁴

What greater evidence is there, of the chaotic condition in which the system found itself, than the fact that the governor of the Territory himself could not get reports from the various counties of the Territory? It was a Dark Era, indeed.

SLOW GROWTH IN DARK ERA

That there was a growth during the two decades, 1853 to 1873, there can be no doubt; yet the growth was not consistent with the expansion of the Territory in other lines of activity. It

³ *Weekly Echo*, April 25, 1872.

⁴ *House Journal*, Appendix, p. 105, 1871.

is true, the University of Washington had been established and was playing a role in educational matters; it is true some colleges and academies existed; it is true the common schools had been organized and were assuming the part legally assigned to them; nevertheless, there was that lack of co-ordination that crystallizes the public mind to a realization of the importance of education—to the power of it.

The causes of this slow growth are hard to determine. Perhaps they could be shown very briefly under three statements: first, there were two serious political matters before the Territory during that time, the Indian wars of 1855, and the great Civil War of the 'sixties; second, the experiment of appointing a superintendent in 1861 had resulted unsatisfactorily for education, in that the office was short-lived, and there was a reaction against centralized control; third, there was a type of population that held education somewhat too lightly; and fourth, private schools thrived, which filled the need of schools to a great extent.

Of the first of these little need be said. That affairs in the Territory revolved around the serious problems incident to war, is shown by the extended space given those matters in the newspapers of the era; that the brief term of Superintendent Lippincott was not satisfactory to the people, will later be shown; that there were people who had no particular favor toward education, is a matter that should be given some thought; that private schools thrived, will be clearly shown as the facts are correlated.

Calling attention at this place, then, to the third point shown above, we have the opinion of the Hon. D. R. Bigelow, an attorney, who served in the Territorial Legislature for some time, and who served as Superintendent of Thurston County several years. In his annual report of December 1, 1870, he wrote:

"Some surprise has been expressed by new settlers, that our educational interests are so backward, after twenty years' growth. It is perhaps true that we have as yet made little more than a hopeful beginning; yet there are many men in the county who deserve great praise for the efforts they have made to educate their children and to promote the cause of education. I know of one poor man, living in a remote settlement, with a large family, who, with the labor of his hands, has earned and paid to educate his children more than \$1,600. And I know of others who have made noble efforts and great sacrifices, laboring under apparently almost insurmountable obstacles. . . . And while it is undoubtedly true that our county and Territory compares unfavorably with other territories of the same age, yet it is not just to bestow indiscriminate censure, but rather

to inquire the causes of our slow growth in educational interests. The growth in population of our Territory has kept pace almost identically with the growth of the population of New England the first twenty years of its history.

"The commencement of our Territorial history dates back just about twenty years. We have now about 24,000 inhabitants. At the end of the first twenty years of New England's history, it had just about the same population. In most things we have had greatly the advantage. We have had a better soil and a better climate; and I suppose Uncle Sam has spent more money in this Territory, than all the inhabitants that lived in New England for the first twenty years ever saw while there. Yet, in all the elements of empire, New England was far ahead of us now, and in none more conspicuously than in education. Her chief advantage over us, was in the indomitable industry, and in the moral heroism of its citizens. They came to make homes and surrounded them with all that make homes desirable; whereas in our case, a majority of our citizens, who have been best able, both in talents and money, to build up the country's moral and educational interests, have been adventurers; their citizenship in the Territory depending on some contingency; and consequently they have not felt that interest in the education of the country, either of the present or future generations as to induce them to make any adequate effort to accomplish it. And some of our old citizens of fifteen and more years' residence in the Territory, who have grown too rich to be public spirited, have retired apparently within an impervious shell, oblivious alike to their early blessings, and of their duty to transmit them to future generations. But while our hopes are bright for the Territory's future in other things, let us also hope that the first generation of native born Washingtonians may not all pass their majority until all the educational privileges enjoyed by their fathers and mothers shall be provided for them also."

To the mind of Mr. Bigelow, the Territory had made too slow a growth in education, and its chief cause was to be found in the fact that a majority of its citizens were adventurers, and were not primarily interested in building up permanent institutions.

There is much more evidence to support the viewpoint that the two decades were truly a Dark Era. In a report to the Hon. John Eaton, Jr., Commissioner of Education of the United States, made by James Scott, Secretary of Washington Territory, in 1870, we learn that the statistics of the Territory were so meager in relation to education, that he could scarcely do more than approximate the information which the Commissioner of Education desired.

"We have no territorial commissioner or bureau as a head of the school system, through which the census of our school population and other

Weekly Echo, Dec. 8, 1870.

statistical information in relation to our schools can be gathered," he reported. "The only school officers provided for by our laws are County Superintendents and district school directors. It is hoped by the friends of education in the Territory that the evil will soon be remedied by the creation of a central bureau having a supervision over all the schools, and to which the county superintendents will be required to report. The number of school population in our Territory, as well as the number of schools, teachers, and children attending school, must be conjectured to some extent.

"The number of school population in Washington Territory, of course, is not as great compared with the whole population as in the states, but larger than in any of the other Territories, for the reason that it is the scion of them all, and the pioneers have had ample time to prepare homes and bring out their families. I think that the number of school population can safely be put down at one-fourth the whole population, or 7,500."⁴

The condition of the schools at the end of these two decades is shown in the table below, the first statistical report we have, that of Superintendent Rounds.

TABLE I. 1872—STATISTICS⁵

Counties	School Houses	Districts	School Taught	No. Attend- ing	Persons of School Age	Amount Paid Teachers
Chehalis	5	9	3	90	150	\$ 500.00
Chilham	1	4	3	57	114	500.00
Clatsop	26	31	31	641	1,390	2,225.91
Cowlitz	5	8	6	132	261	800.00
Island	6	6	2	80	150	1,048.00
Jefferson	3	4	3	134	259	2,788.82
King	8	12	8	213	556	1,952.40
Kitsap	5	5	5	92	180	2,690.90
Klickitat	2	4	3	66	114	500.00
Lewis	7	13	10	166	414	840.00
Mason	1	4	1	16	47	356.71
Pacific	3	11	4	115	239	1,020.00
Pierce	5	12	9	157	320	1,300.00
Snohomish	2	2	2	40	75	240.00
Skanania	2	3	2	28	45	225.00
Stevens	0	4	3	48	90	540.00
Thurston	17	22	21	500	970	3,300.00
Wakiakum	1	1	1	13	25	60.00
Walla Walla	37	48	33	1,035	2,479	7,250.00
Whatcom	3	5	2	90	183	369.90
Whitman
Yakima	5	14	5	115	229	700.00
App. Total	144	222	157	3828	8290	\$29,318.64

⁴ Report of the Commissioner of Education, 1870, p. 333.
⁵ From Puget Sound Courier, Jan. 10, 1873, Superintendent Rounds' Report.

Certainly, if there is any single period in the life of a state or nation which is of greatest importance, it is the critical period immediately following its birth. As the infant industry struggles through the first few years of its life with the protection afforded it by a benign government, just so struggled our Territory through the first two decades of its existence—an era of construction and organization, possibly the most important single period of its history.

At the beginning of this Dark Era, as we have seen, there were very few schools in existence, and these were mostly clustered around Olympia; at the end, there were over eight thousand children of school age, two hundred twenty-two school districts scattered throughout twenty-two counties, and more than twenty-nine thousand dollars were being paid out for teachers in a single year. In view of these facts, it is safe to say that the formative Era was undoubtedly the most important single period in the whole history of education in the State of Washington. It is the one about which least is known. It was the time of heroism, of struggle—the Era in which was laid the foundation for one of the foremost school systems in the United States.

HIGH SCHOOLS

Probably the first high school that we find in the Territory was in 1881 at Dayton, although no information is found on this fact in the superintendent's report of 1883. In fact, the report of 1883 shows that there were only fifteen graded schools in the Territory, and in 1881 there were none. Throughout the territorial period we hear of "high schools," but there can be said to have been no public school of this grade before the one mentioned above.

The first high school in Seattle was organized by Superintendent E. S. Ingraham in 1883. There was much opposition to the idea at that time on the part of taxpayers who saw no need for higher education, and on this account it was not officially recognized as a high school. Mr. Ingraham called the high school work "higher grade" work.

The history of high schools very properly belongs to the history of state education. According to official reports there were six high schools at the time Washington became a state, with enrollment of three hundred twenty students. We might say then, that save a few feeble attempts, high schools were of little importance during the territorial period. They had no legal recognition until 1895.

CONDITION OF THE TERRITORIAL SCHOOLS IN 1889

A brief summary of the condition of the schools at the end of the territorial period will help us to understand the growth and the complexity of the problems with which the characters in the foregoing pages have had to contend:⁴⁸

PLANT	
Estimated value of school houses.....	\$1,094,462
Estimated value of furniture.....	88,678
Estimated value of apparatus.....	22,156
Number districts in the Territory.....	1,161
Number of school houses.....	1,044
Number districts maintaining school.....	1,066
Average number of months of school.....	4.6
Number of graded schools.....	49

⁴⁸ Report Superintendent of Public Instruction, 1889, pp. 33-35.

XIII

THE TERRITORIAL SUPERINTENDENTS

WEAKNESS OF THE LAW

One of the greatest weaknesses of the Law of 1854 was that it did not provide for a centralized control of the educational system. This weakness has been emphasized elsewhere but it should be noted again here. Section 7 provided:

"It shall be the duty of the superintendent (county) to receive the district reports hereinafter provided for, and keep them on file in his office; and he shall at least ten days before the first Friday in November of each year, make out from the district reports, a statement of the number of scholars in the county—the number of school libraries—the number of school houses—the number of districts—in how many districts school has been kept in the past year—what school books are principally used—what proportion of all the scholars in the county have attended school for the past year—the amount of money paid to teachers. This statement, together with such other information and suggestions as he may deem important to the cause of education, he shall file in his office, and may, if convenient, publish it in some newspaper of this Territory."

Very few of the reports were published, and from the difficulty that has been encountered in getting information from the counties, one may assume that if the reports were filed as required by law, the files must have been destroyed, as few of the reports seem to be in existence.

The least function of a territorial superintendent was to collect these county reports and get together the statistics. But this was not done for some twenty years. Again, who was there to interpret the law? Superintendent William H. Wood, of Pierce County, propounds some important problems in his report of 1861 which illustrate clearly the need of a central interpretative authority:

"I would submit for your consideration and opinion, whether school funds paid to district clerks out of the county treasury, in the superintendents' warrant, can be legitimately expended for any other purpose than paying teachers' salaries.

"In one of the reports I find the following items:

Paid L. H. Tucker, sheriff \$17.10.

Paid Frank Clark for legal services \$50.

Paid W. H. Wallace for rent \$30.

(114)

Paid E. Higgins, interest on school order, \$17.53.

Paid E. Higgins, interest on school order, \$20.

"Are these expenditures legal? I think not."

This illustration shows the lack of efficiency that may result in the absence of a central checking system. Who it was that brought this matter to the attention of Governor Henry C. McGill is not known. His seems to have been the first voice raised in the matter, and his logic was so convincing that, no doubt, the provision of the legislature in 1861 for a territorial superintendent was the direct result of his influence. He said:

"There is no subject in which our citizens feel so deep an interest as in the progress of education, and none which merits to a higher degree the attention of the Legislature. Our common school system, although devised with much care, is, I conceive susceptible of many improvements, and among the first important, I would suggest the passage of a law providing for the appointment by the Legislature of a Superintendent or Commissioner of Public Instruction, to be charged with the general supervision of education throughout the Territory. The Superintendent, if such a law should prevail, should be a man well qualified in every particular for the position, and should be allowed such co-operation as will permit him to devote his entire time to the duties of the office. I am confident that I express the sentiment of our citizens, when I state that there is no object for which they could more cheerfully bear taxation than for the thorough education of their children.

"By the present law it is made the duty of the County Superintendent to visit the schools of his county annually, and to prepare a statement containing abstracts from the district reports, and such other information or suggestions as he may deem important to the cause of education. This statement he is required to file in his office, and if convenient to publish in some newspaper of the Territory. I am not aware that these statements are ever published. If not, of what practical use can they be to the cause of education?"

The Legislature passed the law requested by the governor, and an appointment was made.¹

B. C. LIPPINCOTT (1860-61)

The honor of having served as the first superintendent of Washington Territory fell to the lot of B. C. Lippincott, a Methodist minister who was principal of the Puget Sound Wesleyan Institute. The special abilities of Mr. Lippincott have been mentioned in a previous chapter. Here it is only proper to weigh

¹ McGill, (Henry C.), Message to Legislative Assembly, House Journal, 8th Session, pp. 25-26.

impartially his work and give him the place in history which that work acclaims for him.

The statement has been made that his report was unsatisfactory. His report, however, seems to be not only as complete a report as it was possible for him to make, but it was constructive.

There are a few things to which it is proper to call attention at this point. He acknowledges first that his report was unsatisfactory because of the immaturity of the common school system and also because the law did not require the county superintendents to report to his office. It is shown in another instance that the governor of the Territory himself complained that he could not get reports from county superintendents. How could a newly-elected superintendent of schools be expected to accomplish what a governor could not demand nearly ten years later? Certainly his recommendations to the legislative assembly that county superintendents and chartered institutions be required to report to the office of the territorial superintendent is a constructive matter involving the highest wisdom. Again his proposal that the superintendent of public instruction be authorized to issue certificates which would be good in any county was a sign of advance. His recommendation about apportioning the county funds was a good one.

On the whole, then, his report was constructive. He gave what information he was able to get from the counties in the face of inadequate laws; he recommended text books. Nevertheless, there was one section of his report which was not popular. It was his stand against the university. He felt that the common schools should be looked after before the university, he even doubted the legality of the disposal of the lands; he stated that there was no need for the university. This seems to have been the fatal mistake that caused him to be legislated out of office. The very body that received his report voted to discontinue the office of superintendent of public instruction.

That there was a division on this question there is little doubt. One ardent admirer wrote:

"Rev. Mr. Lippincott, in his official report as superintendent of education, in the honest performance of his sworn duty, took exceptions and entered his earnest protest against this abolition, for which he and his office were erased from the statutes. I never could divine the wonderful amount of principle herein manifested, but I easily discovered that in this unkindest cut the cause of education received an irrefragable stab, even in

the very house of his friends. The reverend gentleman need not mourn his treatment, as other good causes have met like fates, so let our kind friend take hope that "Truth crushed to earth shall rise again."¹

It seems quite plausible that the centralization of the common school system was delayed a decade because of this one section of his annual report.

DR. NELSON ROUNDS (1872-74)

The second superintendent of public instruction came into office with an especially difficult task on his hands. In the first place there was no precedent for him to follow. Only once in the history of education had there been an attempt to unify the educational system, and a decade had elapsed since that attempt had ended. The system was disorganized.

Dr. Rounds' report gave us the first statistical material ever compiled for the territory. In addition he gave a brief summary of the number of institutes that had been held in the Territory, and a few interpretations of the law. The great bulk of the report was a dissertation on the value of moral training in the public schools.²

JOHN P. JUDSON (1874-80)

John P. Judson was the third superintendent of public instruction. It was largely through his ability of organizing that the law of 1877 was put on the statute books. The manner in which this was done is shown in the chapter dealing with teachers' organizations. In his report of 1879, he stated that, although the county superintendents had been asked specifically to point out

¹Lane, (Joe), M.D., *Puget Sound Herald*, Jan. 8, 1863.
²The Rev. Nelson Rounds, D. D., was born in Winfield, New York, May 4, 1807, and died at his residence near Vancouver, Washington, January 2, 1874. As his parents were poor, he obtained his education by his own exertions, paying his way by teaching or manual employment. He studied three years at Hamilton College, and then went to Union College, where he graduated in 1829 at the age of twenty-two.
 Dr. Rounds entered the traveling ministry of the Methodist Episcopal Church in the year 1831. He served at two different times as professor of ancient languages in a seminary in New York. In 1844 he was elected by the general conference as editor of the *Northern Christian Advocate*, which position he occupied for four years. The degree of D.D. was conferred on him by Dickinson College, Castile, Penn. In 1868 he was elected president of Willamette University, Salem, Ore., and presided over this institution for two years with marked ability and success, though much of the time in poor health. Resigning in 1870, he moved to Washington Territory, and was elected by its legislature a territorial superintendent of public instruction. *Report of United States Commissioner of Education*, 1873, p. 466.

the defects in the law, none of a serious character had been indicated. The changes he recommended in that report were minor.

His term was one of the most important in all territorial history:

1. Because of its length; he served six years. This long service of Mr. Judson was due in part to the fact that Mr. Sovey in the legislature refused to vote for any of the nominees for that office, and was thus able to prevent the election of Mr. Moore of Walla Walla, who was a strong bidder for the term beginning in 1876.⁴
2. Because of the passage of the law of 1877. The features of this law are enumerated in another place. Although the proposed legislation had wide advertising, there can hardly be a question that Mr. Judson was the inspiring force behind the movement.
3. Because of the growth in professional spirit and usefulness through the instruments of county and territorial institutes.
4. Because of the initiation of the Board of Education. This deserves special mention.

First Board of Education

The first board of education met on April 1, 1878. It was composed of Superintendent John P. Judson, the Hon. Thos. Burke, of King County, Mr. Charles Moore of Whitman County, and Mrs. Ruth E. Rounds of Clarke County. Regulations were established for the government of the common schools and the examination of teachers and a uniform series of text books was adopted, during the first year's operation of the board.

For the first time there was laid down a set of rules and regulations that governed the teachers and pupils in their work. Space does not admit of a full treatment of these rules and regulations.⁵ Suffice it to say that there were detailed duties of teachers to the school authorities, to pupils, to parents, and others; pupils' duties to the school, to teachers, to property and to themselves; regulations for the graded schools; and a course of study for the schools. This board of education made a list of questions to be used in all counties for the examination of teachers—the first time this was put on a uniform and fair basis:

⁴ *Puget Sound Courier*, Nov. 27, 1875.

⁵ A detailed report of these will be found in the Report of Superintendent of Public Instruction, 1879, pp. 12-23.

Another splendid work done by the board was the adoption of a uniform series of texts. Superintendent Judson reports with regard to this:

"Having for years experienced the annoyance and expense incident to the promiscuous use of all kinds of text books, the Board of Education, at its first meeting took steps to secure uniformity. Notice was published in each Judicial District of the Territory, that at the next meeting of the Board a uniform series of text books would be adopted, provided publishers would furnish us books under the peculiar provisions of our law . . . Many publishers declined to send books when they ascertained that under the provisions of our statutes they were required to exchange their new books, if adopted, even for our old ones."⁶

The board submitted its list to the Territorial Institute in October, 1878, in order to get the opinion of the educators on them. The board approved the selection made by the institute.⁷

JONATHAN S. HOUGHTON (1880-82)

In his report of 1881, Dr. Houghton made some rather constructive recommendations to the legislature. He urged them to place the office of territorial superintendent upon a better basis. The appropriation allowed for the superintendent was insufficient to allow him to be of the best service to the territory. He asserted that the great flow of immigration since 1877, had more than doubled the number of school districts in many of the eastern counties.

"Our population is not yet sufficiently enthusiastic on educational matters, to support a journal in this Territory, devoted wholly to school interests; so for that reason, the superintendent should visit a large number of school districts, and talk with the people on this vital subject. The majority of people are willing to do all that is necessary to support our public schools, but, in many instances, they do not know what is really necessary. I have found some individuals who did not seem to understand that blackboards, even were really necessary in the schoolroom of today."

⁶ Report of Superintendent of Public Instruction, 1879, p. 31.

⁷ John P. Judson was born in Prussia in 1840. His father emigrated from Prussia in 1845 and settled in Illinois, where he resided until 1853. When a young man Mr. Judson earned money in mining on the Fraser River with which he paid for two years schooling at Vancouver. In 1863 he was territorial librarian and chief clerk of the House of Representatives one year later. He was employed as school teacher until he finished his law studies in 1867. He was a partner in the law office of Judge McPadden. He became president of the Tenino-to-Olympia railway and was appointed superintendent of public instruction in 1874.—*Bancroft's Works*, Vol. XXXI, p. 285.

The proposed law suggested some rather interesting clauses according to the newspaper. It suggested that the clause which proposed to "constitute every little school board a court to decide what publication is of a partisan or denomination character, or what political, sectarian or denominational doctrine," should be given close scrutiny. Further,

"We are not prepared to pronounce in favor of the one man power implied in the first section, authorizing the Territorial Superintendent to say what books shall be used throughout the Territory, what course of study, and rules and regulations for all public schools in the Territory shall be adopted. This is decidedly too much power to vest in one man, who can be hired for three hundred dollars per year."

The bill was submitted to the various educators of the Territory before final consideration by the legislature. Despite the impetus given the matter at the territorial convention in 1873, and the work of the territorial superintendent, there were only two changes in the law of 1875. The first, an amendment, the other an added section granting power to school districts to vote a special tax of two mills. This was not sufficient to satisfy educators, and it remained for further work on their part, which as we shall see was undertaken the following year.

THREE PHASES OF ORGANIZATION

The history of teachers' organizations in the territorial years may be divided into three distinct periods. The first was centered around the problem of finding suitable texts and establishing uniformity; the second period had as its aim the passage of a better school law; the third aimed at better instruction in the schools. The first period found practical evidence in the conventions called at Olympia by D. R. Bigelow; the second was in evidence in the educational association of 1873 and the early Washington teachers' institutes, the first of which met in 1876. The later institutes turned their attention almost entirely to the matter of better teaching methods and administration of schools.

With this brief summary of the general trend we will proceed with the consideration of the next attempt to organize the educators of the Territory.

THE WASHINGTON TEACHERS' INSTITUTE

The first Washington teachers' institute convened at Olympia, July 26, 1876, at the call of the Hon. J. P. Judson, superintendent of public instruction. The aim of the meeting was expressed in the address of superintendent Judson, who called attention to the "unfortunate condition of the common school interests, consequent upon ill-considered and poorly digested school laws," and urged "zealous and harmonious action toward securing the proper and efficient school legislation."⁸

Thus we have the keynote of the convention. While some of the people present objected to tampering with the law, the Superintendent with others claimed that an entirely new law was necessary; hence, a committee consisting of J. P. Judson, J. E. Meeker, Geo. F. Whitworth, Mrs. A. J. White and Mrs. J. E. Allen, were appointed to draft a new school law to be submitted to the next legislature for adoption.

The institute takes a very prominent place in the history of school legislation in Washington. The resolutions which were adopted, and which expressed the research of this body of educators and which were incorporated in the proposed new law touched upon the following matters:

1. The territorial school tax should not be more than six mills nor less than four mills on the dollar.
2. The legal voters of any school district might vote a special school tax for school purposes, not to exceed ten mills on the dollar, and that not more than one special school tax shall be voted in one year.
3. Teachers' certificates should be of three grades and were to run for not more than two years.
4. County teachers' institutes were recommended to be held in every county each year, and that attendance at same was to be made compulsory.
5. A special temporary certificate to be issued by the county superintendent of schools, to be used until a regular certificate could be obtained.
6. Normal school graduates from any state to be allowed to teach in Washington without examination.
7. The institute went on record as favoring the adoption of

⁸ Clark, (J. E.), *Washington Teachers' Institute*, p. 25.

uniform texts for all the schools at the first meeting of the institute after the passage of a new law, the texts to remain in use four years.

8. The establishment of a normal school or a normal department in connection with the Territorial University, for the instruction of teachers.

The leadership in this matter was taken by J. E. Clark, who claimed that persons wishing to adopt teaching as a profession should enter a normal school. The stand he took on granting immunity from examination to teachers who were graduates of normal schools of other states goes to make him the leader in the normal school movement in the Territory.

9. The establishment of a territorial board of examiners or board of education was advocated, the territorial superintendent being ex-officio chairman of the board.

Increased salary and duties for the superintendent of public instruction were advocated as shown in the following resolution:

"Resolved: That this Institute deem it important that the Territorial Superintendent should be one who is well qualified to teach, and of high mental and moral attainments; that it should be his duty to visit every County in the Territory at least once a year, and secure, so far as practicable, the organization of Teachers' Institutes, both County and Territorial; and in order to enable him to do this, and to discharge the other duties of his office, such as correspondence, making reports, etc., he should receive a salary of not less than six hundred dollars per annum, and all necessary expenses incurred for stationery, office rent, traveling, etc. He should be ex-officio Chairman of the Board of Education, and be required to attach his official signature to all certificates and documents issuing from said Board."¹⁰

In addition to the above, there was a long discussion on the necessity of the county superintendent in the school system. Suggestion was made that the office be abolished. This aroused much opposition, which was led by Nathan S. Porter of Olympia. He said in part:

"A glance at the school systems of some of the older States, it seems to me, is sufficient to convince those who may consider the subject, that the most important of all school officers is the County Superintendent. In a measure he is under the control of a superior officer and yet empowered with functions which the State Superintendent does not

¹⁰ Clark, (J. E.), *Washington Teachers' Institute*, p. 27.

possess. I allude to the proper distribution and disbursement of the county school funds.

"It would be impossible for the State Superintendent to visit all the schools in his State, and yet how essential that they should be visited, while in session, by some superintending officer? In short, without local superintendence, schools as well as all other societies must fall short of accomplishing all they are designed to accomplish, if they do not in some instances fall entirely.

"The duties of a County Superintendent are too multifarious to be enumerated here; all of which are important to a perfect school system. What other officer can perform those duties? To permit directors of districts to examine teachers and issue certificates to them, would very soon lower the standard of qualifications and institute favoritism."¹¹

However, the institute decided that the new law should provide for the county superintendent.

The second annual meeting was held at Seattle, July 18, 1877. Those present were:

"Rev. G. F. Whitworth, E. S. Ingraham, Rev. Daniel Bagley, C. D. Young, Miss Hattie Young, Mrs. H. Pierce, M. W. Thayer, Rev. J. F. Ellis, Miss Lena Smith, Miss Eugenie McConaha, and Rev. D. W. Macfie, from Seattle; R. E. Ryan, Superintendent of Jefferson County, from Port Townsend; C. O. Bean and Miss Frances Meeker, from Pierce County; J. E. Clark, from Olympia."¹²

With this meeting we have the inception of the idea of improvement of teachers in service. Not the main part of the program was taken up with the idea, however, as the consideration of a new school law absorbed much of the time. Of interest in this sphere was an address by L. P. Venen on "The Necessity for a National School System."

A third meeting was held on October 10, 1877, at Olympia. This special meeting was presided over by Mr. J. P. Judson and continued in session four days.

"Considering the tedious, slow and difficult work to be done—reading, considering, altering, amending and perfecting the proposed school law—the attendance was large. F. S. Ingraham, Superintendent of King County, O. S. Jones, Assistant Secretary, and Rev. Geo. F. Whitworth were present from Seattle. About two hundred copies of the proposed law were printed at the *Standard* printing office in Olympia, several weeks prior to the meeting of the Institute. These were distributed throughout the Territory, but the time to elapse before the assembling of the Legis-

¹¹ Clark, (J. E.), *Washington Teachers' Institute*, p. 28.

¹² *Ibid.*, p. 31.

lature was scarcely sufficient for general criticism. In due time the proposed law was submitted to the Legislature and after very few alterations by that body it was enacted as the school law of the Territory."¹³

Thus we have concrete evidence that the educators of the Territory drafted the law of 1877. This law was the most applicable law that the Territory had had. Experience in the needs of the Territory gave definite shape to the recommendations made by the teachers. It was the first time in our history that educators had the means to make their opinions felt. Ever since that day, the educational legislation has been more or less the direct result of the best educational thought. It is quite in line with the above statement to give a brief summary of the chief changes incorporated in the law of 1877, so that comparison may be made with the discussions of the educators as set forth earlier in this chapter. Space will not permit the incorporation of the entire act.

1. The territorial superintendent had considerable additional duty imposed upon him, such as visiting schools, addressing the people on educational matters, holding annually a territorial teachers' institute and aiding in establishing county institutes. He was allowed, instead of the scanty pittance of \$300 annually, granted by law in 1871 and 1873, \$600 a year, with a possible \$300 more for traveling and incidental expenses.

2. County superintendents were forced to forfeit \$100 from their salaries for failure to make reports to territorial superintendent as required by law.

3. Each county containing ten or more school districts was required to hold annual institutes, which teachers must attend.

4. The establishment of union or graded schools was authorized upon vote of majority of voters in two or more districts. This was a type of consolidation. Single districts were given power to establish graded schools.

5. Children of ages eight to sixteen were compelled to go to school in towns of more than 400 inhabitants, for at least six months a year.

6. County commissioners were compelled to levy an annual tax of not less than three nor more than 6 mills to support the county schools.

¹³ Clark, (J. E.), *Washington Teachers' Institute*, Vol. I, p. 39.

7. School age changed to five to twenty-one instead of four to twenty-one.

8. Women were made eligible to all school offices.

9. Territorial superintendent appointed by the governor for term of two years, with consent of the Council.

10. Territorial board of education was created with power to adopt uniform texts, prescribe rules for government of the schools, to issue territorial certificates, make examination questions for county superintendents, etc.

11. County superintendent's duties were enlarged. Salary also increased.

12. County board of examination provided for the conducting of semi-annual examinations of those desiring to teach.

"The public school system has been much more efficient in every particular under the operation of the new school law, which went into effect January 1, 1878. The law was framed by the chief educators of the Territory, who were called together for this purpose once in 1876 and twice in 1877. It was also printed and distributed over the Territory for criticism, and was generally approved before being submitted to the legislature."¹⁴

Thus has been established rather clearly the service of educators in improvement of the educational system of the Territory.

LATE TERRITORIAL INSTITUTES

The character of the later institutes changed. No longer were educators working for revision in the law, as the act of 1877 was the culmination of a long struggle to put an adequate organization into operation. There was, therefore, no immediate need for further legislation at once. Hence, the change of character of deliberations of this annual body.

— The third annual meeting at Olympia in October, 1878 recommended the series of text books to the board of education. In fact, the board was in session at the same time that the institute was held. Mr. Judson informed the institute on the last evening that the board had adopted the books recommended by the various committees. The tenor of this session will be explained by listing a few of the subjects discussed: "Method of Teaching Arithmetic to Primary and Intermediate Classes;" "Object Teach-

¹⁴ Report United States Commission of Education, 1879, p. 238.

ing;" "How Shall We Teach History of the United States?" "Punishment in the School Room," and "To What Extent Should Oral Instruction be Used in Our Public Schools?"

At the fourth and fifth annual meetings of 1879 and 1880, we have the same general trend. To the student of methods the proceedings of the fifth meeting at Seattle, a pamphlet of eighty-eight pages, is a very valuable contribution. At the meeting the institute split into an eastern and western division, in order to make it possible for all teachers to be able to attend. As to the success of this plan there seems to be much doubt. Said the *School Journal* of October, 1884:

"I notice with pleasure that the two divisions of our Territorial Institute have unanimously agreed to consolidate, and that the next meeting will be held at Vancouver in August, 1885. The division of the institutes occurred in 1880, and hence we have had a pretty fair trial of what they should accomplish. What is the result? So far as the writer has been able to observe, the institute has hardly equaled the associations of teachers in the larger counties. In 1882 at Spokane Falls, the attendance was not large; in 1883 at Walla Walla, only a half dozen teachers from outside counties attended; and at Dayton this year, we note a similar result. Perhaps our friends in Western Washington have fared better; but at all events, the teachers have decided to consolidate, and therefore we rejoice."¹⁸

At the meeting of the western division at Tacoma, August 16, 1881, the chief emphasis was again placed on better teaching. In a resolution the legislature was called upon to support liberally "our young but vigorous university, and provide ample means to make its struggling normal department all that it should be to meet the growing demand for good teachers in Washington Territory."

This then summarizes the aim and purpose of the state institutes during the last decade of territorial history. They tended to become normal institutes, as did the county institutes.¹⁹

In 1884 the territorial institutes were held at Dayton and Tacoma, on August 4 and August 18, respectively.

¹⁸ McCully, (P. M.), From papers loaned through the courtesy of Mrs. F. M. McCully.

¹⁹ Dr. Henry Gremer's thesis on "History of Teacher Training in the Public Higher Institutions in Washington," deals exhaustively with this phase of teachers' institutes. I am, therefore, abbreviating matters which pertain more particularly to this thesis.

At the joint institute at Vancouver, August, 1885, the matter of school law was again taken up, but the recommendations were chiefly of a minor nature. There were no radical changes. R. C. Kerr recommended in his report that the law be so amended as to require a normal institute for each judicial district presided over by a member of the territorial board of education from that district or a council district institute.²⁰

This recommendation was adopted by the legislative assembly and four judicial district institutes were held in 1886. These were: the first judicial district at Colfax, attendance 60; second at Olympia, attendance 50; third at Seattle, attendance 100; fourth at Spokane Falls, attendance 60.

In 1887 they were held at Walla Walla, North Yakima, Tacoma, and the one which was planned for Port Townsend was not held. The year following they were held at Waukegan, Olympia, Port Townsend, and Spokane Falls. In addition, then, to the county institutes these were held as normal institutes to improve teachers in service.

THE STATE TEACHERS' ASSOCIATION

With this background we can more readily appreciate the change in the working organization of teachers which came with statehood. Because of the fact that teachers' organizations had their origin in early territorial times, and in view of the further consideration that the State Teachers' Association was but a continuation of the earlier legal body, which went out of existence with the coming of statehood, and also because of the fact that teachers' organizations assumed a leading part in the history of education of Washington, the beginning will be given here, although it does not directly belong to the territorial period.

"In response to a call issued by the Thurston County Teachers' Association a large number of teachers of Western Washington and a few from Eastern Washington assembled at Olympia on Tuesday, April 3, 1889. One day and two evening sessions were held, and much interest was manifested and various subjects presented, a program having been prearranged. During this meeting the organization of the State Teachers' Association was effected. The officers of the Thurston County Teachers' Association were made the temporary officers. Officers elected for the ensuing year were as follows: President, J. H. Morgan of Ellenburg; Vice-Presidents, R. C. Kerr of Walla Walla, R. E. Bryan of Montesano, H.

²⁰ Report of Superintendent of Public Instruction, 1884-85, p. 13.

CONCLUSIONS

When the State of Washington was formed in 1889, there remained much to be done in looking toward the perfection of the school system. The formative period was over. The great struggle to establish the system was past. The form of the system was well molded; there was no longer a question as to the pattern. Yet the structure needed refinement and polish.

The history of the state educational system, which yet remains to be written, is not a history of pioneer struggles to establish schools, nor even a struggle for definitions of authority, but it is rather the history of state responsibility in fostering equal opportunity for each child in the State, and higher standards of teaching. The early system was characterized by a sort of autonomous organization. Districts managed their educational affairs with little thought of responsibility toward other districts. The struggle for uniform texts, the failure to make reports as required by law, and the county certification, are evidences of a struggle of centralization and equalization as opposed to autonomy.

This tendency parallels the evolution of society in the Northwest. At first every individual had to provide his own means of transportation, his own protection, and in truth, his own law. Later this isolation of individuals gave way to highly organized communities, which necessitated complex laws and numerous administrative bodies, all controlled by a common interest. School districts, first isolated, followed this general process of evolution, emerging as units of a complex system, controlled for the general welfare.

While this thesis does not deal with the history of the state period, the territorial period was part of the general rise of a school system which possesses certain characteristics today, and it may be recognized that many of these characteristics had their origin in the territorial era. In truth, some of the present day characteristics might be traced back into the pre-territorial time, to the Oregon period, and even further into the past.

Our state organization centers around a state superintendent, county superintendents, and boards of directors of three or five

persons, according to the class of the district. It is a district system, in which there are now many union and consolidated districts. Matters of local importance are in the hands of local boards; matters pertaining to law, certification, and teachers' training are in the hands of the State Superintendent, State Board of Education and other boards. Thus we have local autonomy combined with centralized control. The State levies taxes which, added to the interest on the permanent fund, is distributed to the districts as an aid and for purposes of equalization. The county also raises money by taxation; institutes are held in each county each year at which all teachers must attend. Three splendid normal schools train teachers for the elementary schools.

One has only to review the pages of this thesis to understand the origin of the office of State Superintendent and the struggle through which it went. The office was tried and abandoned once in Iowa, Oregon, and Washington. Its revival in the early 'seventies was due to the insistence of the governor of the territory.

The county superintendent has retained his function and power ever since the passage of the law of 1854. In fact the office had its inception during the Oregon time, when it was known as commissioner. Only once in Washington history has there been found any attempt to abandon the office, namely, at the Territorial Institute in 1876. On the other hand, the powers have been somewhat extended. The county superintendent remains the same political factor that he has been for nearly three-quarters of a century.

The district system may be traced through our law back to New England, although it was first incorporated in our territory by the law of 1849.

Union or consolidated districts had their origin in the law of 1877, as did the Territorial Board of Education, which later became the State Board of Education.

The permanent school fund had its beginning in 1849. Lands given by Congress were in safe keeping until such time as Washington became a State, when they were made effective.

County institutes originated in territorial days. Teachers' organizations or conventions for the betterment of themselves and the educational system, began with the formation of the Territory for the purpose of text book selection, and received an im-

petus of a more serious nature in 1868. They became powerful bodies about the end of the territorial period.

School law is the result of educational thought crystallized after study and deliberation. It is a result rather than a cause of action. If one should attempt to analyse the evolution of the enactment of school law, he would probably find that the growth is dependent in its greatest sense upon the progress of the thought of the leaders in the field of education. The entire history reveals that the initiative has been taken by educators themselves. Law makers pass laws based on their recommendations, commensurate with the conditions of the territory.

An attempt has been made to portray the thought that has given rise to our system rather than to record the evolution in the law itself. In taking such a course it has been necessary to sacrifice much that is needed to complete the evidence because of lack of records, while the easier path would have led to the law, all of which is easily accessible.

In the foregoing pages much material has been reviewed, some of which greatly in detail, possibly more than would be necessary in another type of work. This liberality in detail in certain portions is inserted because of its value in establishing a viewpoint. The salient contributions that evolve from the presented material are:

1. The common school system of this State retains the chief characteristics of the New England organization, which came through Oregon, especially through the framer of the law of 1849.
2. The first schools were church or private schools, which may be termed public-private schools.
3. The early administrators were clergymen.
4. Education as a profession did not come into existence until about the year 1868.
5. The greatest advance in the system came immediately after educators organized into working institutes. The law of 1877 was the direct result of educational consciousness.
6. Since about 1870 the molding of the educational system has been most substantially in the hands of the educators themselves. The school law reflects the best thought of the educational leaders.

7. The Territorial Teachers' Institute was the chief channel of expression for educators during the territorial period. Out of it rose the system of teacher training, which culminated in the establishment of the State normal schools.

TERRITORIAL COUNTY SUPERINTENDENTS

A revised list of territorial county superintendents will be found in the original thesis which is on file at the University of Washington library.¹

¹ Cf. Troth, (Dennis C.), History and Development of Common School Legislation in Washington, *University of Washington Publications in the Social Sciences*, Vol. 3, No. 2, pp. 184-191.

Tab 21

3
A Constitution Adapted to the Coming State.

Suggestions by Hon. W. Lair Hill.

Main Features Considered in the Light of Modern
Experience.

Outline and Comment Together.

Edited
by
Washington
Lawyer

The Effect of Constitutions on the Development of Civil and
Social Economics and Institutions.

Introductory.

A short time previous to the great conflagration which lately swept over the city of my residence, the editor of The Oregonian asked me to prepare, for publication in that paper, an article embodying my views of a constitution adapted to the conditions and prospects of Washington. Notwithstanding some misgivings as to whether, in the midst of professional engagements somewhat exacting, I should be able to devote to the subject time and attention commensurate with its importance, I was gratified that such an opportunity presented itself. Natural interest in the state which in all probability will be my home so long as I shall want a home, was reinforced by the result of no little study of state constitutions and their effect upon the development of civil and social economics and institutions; and while I could not expect to present anything new or valuable which might not be better presented by others, still I could be heard, and perchance might contribute a stone, however small, to help lay broad and deep

the foundation of a commonwealth for which nature has destined a splendid career.

Just when I had begun the preparation of the proposed article, came the great fire, by which the greater part of the business portion of Seattle was destroyed. Then all business was suspended, except that of relieving distress and devising ways and means for the restoration of the city; methodical work of every kind was at an end, and consecutive and persistent thought upon any subject was out of the question for weeks. So, at the last moment, and in the confusion of an hour when almost an entire city is transacting business in tents, and nothing appears stable but instability, I resume the task which I can not consent to relinquish, though sensible that it may be but ill-performed.

The people of Washington territory have chosen delegates who are to meet on the anniversary of the Nation's birth to frame a constitution, which is to be the charter of a new state in the republic. These delegates, it may be assumed - and I think it is a fact - are well equipped for the grave and momentous responsibility devolved upon them; so well equipped that they will gladly listen to any suggestions from any source, touching the needs and wishes of the people who have called them to high service in the post of honor.

W. Lair Hill.

ARTICLE VIII.

EDUCATION.

Section 1. The legislature shall provide for the establishment and maintenance of a thorough and efficient system of common schools, which shall be open to all the children of the state, and in which all the children of the state may receive a good common school education; and may establish such schools of higher grade as may be deemed expedient. All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence.

This section is taken from the constitution of Illinois, modified only so far as it seems necessary to bring it into conformity to the provision on this subject in the act of congress providing for the admission of the state.

Section 2. The governor shall, until otherwise provided, be superintendent of public instruction, and his powers and duties in that capacity shall be such as may be prescribed by law; but the legislature may provide for the election of a superintendent, and prescribe his powers and duties, and the term of his office.

Section 3. The proceeds of all lands which have been, or may hereafter be, granted to this state for educational purposes (except the lands heretofore granted to aid in the establishment of a university), all the moneys and clear proceeds of all property which may accrue to the state by escheat or forfeiture; and all moneys which may be paid as exemption from military duty; the proceeds of all gifts, devises and bequests made, or that may be made, by any person to the state for

common school purposes; the proceeds of all property granted to the state when the purpose of such grant shall not be stated; and all other moneys or other property granted to the state for common school purposes, and not otherwise directed by the terms of the grant, shall be set apart as a separate, permanent and irreducible fund, to be called the school fund, the interest of which, together with all other revenues derived from the school lands mentioned in this section, shall be exclusively applied to the support and maintenance of common schools in each school district, and to the purchase of suitable libraries and apparatus therefor.

Section 4. Provisions shall be made by law for the distribution of the income of the school fund among the several counties and school districts of the state in proportion to the number of children resident therein between the ages of 5 and 20 years.

Section 5. The superintendent of public instruction, secretary of state, and state treasurer shall constitute a board of commissioners for the management and disposal of all property the proceeds of which is set apart for the irreducible school fund, and for the investment of the funds arising therefrom; and their powers and duties shall be such as may be prescribed by law.

Section 6. Provisions shall be made by the legislature for the education of the blind and deaf between the ages of 5 and 20 years; and reform schools may be established for the reformatory education of children who are without parental restraint, and are growing up in idleness and vice.

Tab 22

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BUILDING A STATE WASHINGTON

1889-1939

EDITORS

CHARLES MILES MAY—AUGUST, 1939
O. B. SPERLIN SEPTEMBER, 1939—SEPTEMBER, 1940

*Commemorative of the Golden
Jubilee Celebration*

*Washington State Historical
Society Publications*
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STATEHOOD.



11 August 1894
1894
1894

The past fifty years in the Pacific Northwest have witnessed an increasing readiness of all churches to unite on truly imperative religious truths. Old-time squabbles over denominational tenets have largely disappeared, giving place to Bible interpretations on factual and scientific agreements. Catholic, Lutheran, Calvinist, Armonian, all have vital points in agreement, and must come together on the more essential Bible evidences. In this compact of religious unity the churches in America are giving the nation its strongest support. Quakers prayed for the success of George Washington and his army, and every military campaign in the growing States has called upon all the churches for support and received it. Tolerance of other beliefs has come to stay and must dominate America, for freedom's sake and the rescue of imperiled nations.

One result of this more friendly compact has witnessed for the common good the allocation of new communities to such denominations as may best serve the expressed desires of the people. No state has responded more readily than our own. Rather than allow over-crowding, towns are allotted according to established rules, and the selected denomination broadens its membership regulations and ministers are to avoid controversial sermons and encourage a united fellowship. This course was emphasized during the World War and remains popular especially in growing areas, and awakens communities heretofore over-crowded by too many contending zealots. One valuable result has come in discovering more points of agreement than doctrinal differences, so binding the people in one united Christian compact.

The modern Church retains all Christian principles in its scientific quest for the real mind of Christ. This last half century has contributed greater sympathy toward all peoples, and should set itself for better days, numerically, socially, intellectually, with less sectarianism and more understanding. This mixture of many minds must solve moral and religious problems more acceptably than have past denominational contests. Western Indian families deserved more evident Christian consideration when over-ridden by white migrations. So they have welcomed Shakerism. Poverty-stricken Mormons have become prosperous citizens and many lesser cults in their integrity have grown into substantial factors in the welding of this commonwealth. Perhaps the day will dawn, let it be soon, when all followers of Christ will follow Him so closely none may misrepresent Him by selfish and bigoted "isms." So may better progress be realized in all the churches with this common motive of serving humanity in

peace and good will. Modern business and industry are alert and deserve sympathetic cooperation from all churches. Every church may double its efficiency and foresee greater spiritual developments as the State of Washington redoubles in ambitious citizens and vitalizing institutions.

EDUCATION

FREDERICK E. BOLTON



Dean Bolton was born in Wisconsin in 1866. He received his B. S. degree from the University of Wisconsin in 1893, and M. S. from the same institution in 1896. He studied at Leipzig during 1896-7. Having returned to America on a fellowship at Clark University, he received the Ph. D. there in 1898. He was the head of the Department of Education at the University of Iowa, 1901-12. He came to the University of Washington as Professor of Education in 1912. From 1913 to 1923 he was Dean of the School of Education. Since 1923 he has been emeritus dean. He is the author of *Principles of Education*, *History of Education in Washington*, and many other books in the field of education.

TERRITORIAL FOUNDATIONS

When statehood was attained, Washington was fortunate in the solid foundations of education previously laid. Thanks to a generous Federal government, provisions had been made possible for the establishment of the common school system, a state university, a state college of agriculture and mechanic arts, and normal schools.

Under the Ordinance of 1787, sections 16 and 36 in every township in new states or territories admitted were allotted by the Federal Government for the support of common schools, and two townships for the support of a state university. In 1862, President Lincoln signed the bill sponsored by Senator Morrill which provided for very generous grants of land for supporting colleges of agriculture in every state and territory in the Union. In 1889, in the enabling act creating the State of Washington, 100,000 acres of land were allotted by the Federal Government for maintaining normal schools.

Washington was also fortunate in 1854, when separating from Oregon and becoming a territory, in enacting a school law almost identical with the one in Oregon. The first governor, Isaac I. Stevens, with remarkable foresight gave expression to the following stimulating prophetic words in his message to the first session of the Legislature in 1854: "Let

every youth, however limited his opportunities, find his place in the school, the college, the university, if God has given him the necessary gifts. Congress has made liberal appropriations for the schools and I will recommend that Congress be memorialized to appropriate land for a university."

The people of the Territory moved rapidly and surely in laying solid foundations for a complete state system of public education. The common schools were launched by the Legislature of 1854; the State University was located in 1855; and the initial steps were taken for providing a College of Agriculture and Mechanic Arts, when the Legislature in 1864 accepted the provisions made by the Federal Government. The College was not opened until 1892. A constitutional provision was voted in 1889 for establishing normal schools. The first two, Cheney and Ellensburg, were established by the Legislature in 1890 and the third at Bellingham in 1893.

THE PUBLIC SCHOOL SYSTEM

The foresight of the Federal Government. The State of Washington has steadfastly believed that the education of the common people is necessary for the development and preservation of a democracy. The classic preamble of the Ordinance of 1787, "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged," has motivated many of the educational leaders in Washington.

From the earliest days of statehood the common schools have been one of the most vital concerns of the people. In the pioneer pre-territorial days families were assessed in proportion to the number of children the respective families sent to school. Settlers having no children in school were not assessed. The Legislature in 1854 levied a tax of two mills on all the taxable property of the county, and districts were required to raise an amount equal to the amount allotted to the respective districts by the county. Various modifications were made in the rates during the next thirty years, but the fundamental plan remained the same—the county to provide a certain amount and the local district the rest. The initial Legislature of the State in 1889 strengthened the education laws and gave districts the right to levy up to ten mills on each dollar of assessable property.

The Barefoot Schoolboy Laws. The general plan of raising and distributing revenues for school purposes remained the same as in territorial days until 1895. In that year a new

principle of providing school revenues was initiated in Washington. Through the sponsorship of John Rogers, later Governor of the State, a law was enacted providing that from state funds each district should receive \$6.00 for each child of school age in the respective districts. In 1899 the Legislature increased the amount to be allotted from state funds to \$8.00 per census child. In 1901 that amount was increased to \$10.00 and in 1920 to \$20.00. In 1909 a law was enacted requiring the county to pay to each district \$10.00 per census child.

In these various laws a new principle of common school support was established. It was a declaration that the State itself should guarantee to each and every boy and girl in the commonwealth the minimum essentials of a common school education. No matter what the financial status of the parents or the community, no matter where their domicile, the State itself expresses in this material way its concern for the education of its future citizens.

The principle was new, and new not only in Washington. This State was a pioneer in the announcement and development of this plan throughout the United States. The wealthier communities everywhere object because they have to pay to the State for other communities larger amounts than they receive in return. But the people of the commonwealth as a whole regard it as a measure of insurance for better citizenship, and the will of the people has been very definitely expressed in favor of these equalizing measures. Even the foregoing plan was found inadequate. The Public-School Administration Commission, authorized by the Legislature in 1920, urged increased state aid. Dean Cubberley of Stanford was brought in as a consultant. In 1922 there



GOVERNOR JOHN R. ROGERS
(1897-1901)

Previous to his election as governor John R. Rogers successfully advocated the "Barefoot Schoolboy" law, introducing a principle of equalization of educational opportunities which has since spread to practically every state in the Union.

Tab 23

A Survey of the
Common School System
of Washington

With Suggested First Steps Toward its Progressive
Development and Improvement

BY

THE WASHINGTON STATE PLANNING COUNCIL



THE SCHOOLS OF TOMORROW
A Study in Educational Planning

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I

Introduction

"The greatest resource of our State is its young men and women, and one of our most pressing problems is how our schools may better fit them to fill useful places in a changing society."

—Governor Clarence D. Martin of Washington

Few people were in Washington when Phoebe Judson and her husband moved to the Puget Sound country three quarters of a century ago—so few, in fact, that anyone living within a twenty-mile radius was considered a neighbor. In those trying days, the term "neighbor" carried with it an implication of love and sympathy. News traveled slowly, for mail came by way of the Isthmus of Panama and later over the mountains by Ben Holliday's pony express. Life was hard. Says Mrs. Judson, "It was not riches, splendor, fame, or glory we were seeking; but peace and contentment while each was bearing the privations incident to a pioneer life and doing his part to develop a new country."[Ⓞ]

The children of the Judsons' day attended a school organized through the volunteer efforts of the families in the community. Largely influenced by the idea of the school district system carried westward by the pioneers, Washington enacted its basic school law in 1854. Early legislation not only made school districts legal self-governing units with the power to levy and collect taxes, but also created the offices of county and territorial superintendent to provide necessary administration and supervision of the schools. So eager were statesmen of the past to preserve and to protect the cultural heritage of all men, that a special article, proclaiming the ample support of education to be the paramount duty of the State, was included in the State constitution.

Our State, then, believes in education, adequately financed and open to all, regardless of race, creed, politics, or social status. Furthermore, the constant desire for improved educational methods is ever apparent. Thus, today, in this vast empire of the Pacific Northwest, with its wealth of natural resources and scenic beauty, a major cultural enterprise stands as a monument to the willing sacrifice and courageous spirit of the citizens of our State. Because of the wisdom and far-sighted leadership of its citizens, this State is the possessor of one of the great systems of public education.

The magnitude of today's school system and its rapid growth is an amazing story. But this tremendous increase in enrollment, particularly in the high schools and in the institutions of higher

[Ⓞ]Judson, Mrs. Phoebe—"A Pioneer's Search for the Ideal Home."

education, has brought grave problems not only in financing the program, but also in providing effectively for the variety of individual interests and abilities of the large school population of the present day.

Not only has school attendance greatly increased, but pupils remain in school much longer. As late as 1900, only a third of the pupils who had entered the first grade eight years before were still in school, and only one in twenty of those beginners was found in the senior class of the high schools in 1904. But of those who entered the first grade in 1924, four out of five were in the eighth grade in 1932; and two out of three of this beginning class of 1924 were in the senior class in high school in 1936.

High school education was for the few in 1900; now, it is for the many. As a result of this steady pressure of ever-expanding numbers, we now have 340,000 students and 11,000 teachers in our common schools. We have been almost overwhelmed by the engrossing problems incident to this swift and spectacular growth. It is apparent, however, that the number in attendance in our common schools, for a time at least, has reached its peak, if, indeed, a declining birth-rate does not more than counterbalance the large migration of new families into the State. Thus relieved of the worst of the pressure to expand our school facilities, we have an opportunity to look about us—to survey our progress, to examine the other problems, many of them of importance, that have grown up while we were dealing as best we could with our "growing pains."

If our report appears lengthy, we can only say that when we consider the huge volumes of data and the complexity and number of the questions raised, we are rather distressed over the pages we have had to omit.[Ⓞ] With deliberate intent to confine ourselves to issues that appear most pressing, our study and report have been limited to the following problems:

Perhaps our most exigent problem is the injustice and hardship resulting from the gross inequalities in taxable wealth and in educational opportunity, thrust upon us by the haphazard and grotesque boundaries of so many of our school districts. These inequalities, including a lack of health services, vocational education opportunities, services for handicapped children, and the like have aroused grave discontent, and call urgently for relief. Our study has convinced the Council, as we believe it must convince any thoughtful student of the school district structure, that financial aid to unsound school districts never will equalize educational opportunity. Hence, our recommendation for a redistricting program.

[Ⓞ]A list of supporting documents prepared by the Council during the progress of this study appears on p. 123 of this report. A limited number of copies of these appendices are available for distribution.

injurious to them. In any event, the advantages they once enjoyed are steadily being taken from them by the various equalization measures, resulting in the transfer of an ever-greater share of the cost of education to the State, while the avoidable wastes resulting from the present misshapen district boundaries continue to burden all of us. Thus, what the districts appear to be saving by their isolation is lost again, in one way or another, through new taxes levied by the State for equalization.

6. The traditions of 150 years of local autonomy in primary education are so cherished and so intrinsically valuable to us as a people, that this Council, in framing a plan for study and adjustment of district boundaries, has been, first of all, eager to respect this local initiative. Yet, local district autonomy, so precious to our people, depends directly upon equitable boundaries and wise adjustment of local burdens. The longer these haphazard and unwise boundaries remain unchanged, and the more we lean upon State revenues to correct the inequalities resulting therefrom, the more surely will control over district affairs drift toward the State. We must not perpetuate these abuses; for the longer they remain, the more difficult they will be of cure, and the more they will plague our children and our children's children.

7. How may the State provide for a democratic method of planning a logical and effective school district organization? The plan recommended by the Council, carefully worked out after consultation with many groups, is one which truly embraces the democratic process. School districts will be planned locally to fit community needs, make possible more effective use of school funds, reduce the disparities in economic resources, and secure effective educational organization to meet local requirements. This would be a fundamental step toward true equalization.

Recommendations

On the basis of its findings, the Council recommends:

- I. That the school districts of the State, when reorganized, be divided into two classes only:
 - A. First-class districts—all districts having a population of 10,000 or over.
 - B. Second-class districts—all other districts.
- II. That the State set up the following plan for securing school district reorganization as a step toward further equalization of educational opportunity.
 - A. Local Committee in Each County for Equalization of Educational Opportunity
A local county committee on the equalization of educational opportunity in each county should be appointed by

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a special committee composed of the county superintendent of schools, the presiding superior court judge of the county, and a member of the school budget review committee of the county—the latter to be selected by the State Tax Commission. Each local county committee on equalization should be composed of fifteen members, including the county superintendent of schools, a representative of the county planning commission, one representative from the board of directors of each of the three basic classes of school districts within the county, a representative of the State Highway Department from the highway district or districts in which the county is located, and one representative from each of the county commissioner districts within the county. Additional representatives should be selected at large from the county.

B. A State Commission for the Equalization of Educational Opportunity

A temporary State Commission of five members to be known as the Washington Commission for the Equalization of Educational Opportunity should be appointed, without regard to political affiliation, by the Governor for a period of three years. The Commission should appoint, to assist it in the performance of its duties, a director and such employees and assistants as it may deem necessary. It should assist the local county committees on equalization herein provided for by furnishing them the aid of its staff and by supplying forms, statistical materials, maps, and other services.

C. Powers and Duties of Local Committees; Preparation of Plan

1. To make an examination of existing school district boundaries within the county to determine what boundaries stand in the way of providing satisfactorily for the support and operation of common schools and the education of the children. If a committee finds boundaries which, in its judgment, do so interfere, it should prepare a plan for the revision or elimination of these boundaries and the adjustment of those of all contiguous districts so that the boundaries of all school districts, including those which are not altered, shall fit together and form a comprehensive school district plan. The committee should give due attention to the convenience of children attending school; the educational necessities, including the welfare of teachers and school of-

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