SCHOOL LAWS OF IOWA

FROM THE CODE OF 1873,

AS AMENDED BY THE FIFTEENTH, SIXTEENTH, SEVENTEENTH, EIGHTEENTH, NINETEENTH, TWENTIETH, TWENTY-FIRST AND TWENTY-SECOND GENERAL ASSEMBLIES,

WITH

NOTES AND FORMS,

FOR

THE USE AND GOVERNMENT OF SCHOOL OFFICERS.

EDITION OF 1888.

HENRY SABIN,
SUPERINTENDENT OF PUBLIC INSTRUCTION.

DES MOINES:
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1888.

When any school officer is superseded by election or otherwise, he shall immediately deliver to his successor in office, all books, papers, and moneys pertaining to his office, taking a receipt therefor; 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 shall misapply any moneys entrusted to him by virtue of his office, shall be liable to the provisions of the general statutes for the punishment of such offense.—SECTION 1791, CODE.

PREFACE.

Section 1579, Code, as amended, authorizes the superintendent of public instruction to publish the school laws of the State, together with all amendments thereto, immediately upon the adjournment of every alternate general assembly.

As the use of former editions will only confuse and mislead, and since every school officer and member of a board is now entitled to receive a copy of this law, it is earnestly advised that all old laws be laid aside. A revision may not be published for many years, hence the necessity of preserving every copy of this edition.

The explanatory notes have been carefully revised and condensed, and at the same time extended to include a larger number of particulars. References are given as fully as brevity will allow. It is apparent that only the leading features of the law may be included in these notes. In special cases, the general authorities on the subject regarding which information is sought, must be examined.

In the notes, reference is often made to the reports of our supreme court. These may be consulted at the court house in each county seat. A reference to S. L. Decisions means the decisions in appeal cases, a copy of which is furnished for the secretary of every board. We have aimed to simplify and improve the forms, and make them of added value to every school officer. A table of contents, by subjects, will be found after the body of laws, just preceding the forms.

The complex forms of districts under our present law, with the conflicting enactments accompanying such an unsystematic organiza-

tion, make our school laws difficult of comprehension, and in many cases really contradictory.

Though this revision does not differ greatly from those preceding, it is believed that it will well repay careful study and frequent reference, and thereby assist in promoting harmony and efficiency in the administration of our system of free schools.

The work of arranging the law and revising the notes, as well as of compiling the decisions, has fallen very largely upon my deputy, Mr. Ira C. Kling. He has been ably assisted by my secretary, Mrs. A. B. Billington, and I desire to acknowledge in this connection the value of their services.

HENRY SABIN,

Superintendent of Public Instruction.

DES MOINES, IOWA, June 1, 1888.

SCHOOL LAWS OF IOWA.

FROM THE CODE AS AMENDED BY THE FIFTEENTH, SIXTEENTH, SEVENTEENTH, EIGHTEENTH, NINETEENTH, TWENTIETH, TWENTY-FIRST AND TWENTY-SECOND GENERAL ASSEMBLIES.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

SECTION 1577. The superintendent of public instruction shall be charged with the general supervision of all the county superintendents and all the common schools of the state. He may meet county superintendents in convention at such points in the state as he may deem most suitable for the purpose, and by explanation and discussion endeavor to secure a more uniform and efficient administration of the school laws. He shall attend teachers' institutes in the several counties of the state as far as may be consistent with the discharge of other duties imposed by law, and assist by lecture or otherwise in their instruction and management. He shall render a written opinion to any school officer asking it, touching the exposition or administration of any school law, and shall determine all cases appealed from the decision of county superintendents.

SEC. 1578. An office shall be provided for him at the seat of government, in which he shall file all papers, reports, and public documents transmitted to him by the county superintendents, each year separately, and hold the same in readiness to be exhibited to the governor, or to a committee of either house of the general assembly, at any time when required; and he shall keep a fair record of all matters pertaining to his office.

SEC. 1579. (As amended by Chap. 150, Laws of 1880, and Chap. 59, Laws of 1888.) After the adjournment of the eighteenth general assembly, and every four years thereafter, if deemed necessary, he may cause to be printed and bound in cloth the school laws and all

amendments thereto, with such notes, rulings, forms and decisions as may seem of value to aid school officers in the proper discharge of their duties. Appropriate reference shall be made to the previous law that has been amended or changed, so as clearly to indicate the effect of such amendments or changes. He shall send to each county superintendent a number of copies sufficient to supply each school district in his county with one copy of such school laws, with decisions. He shall also cause to be printed and bound in paper covers the school laws, with notes and with forms necessary to be used in carrying out the school laws; provided, that he shall furnish each of the members of the boards of directors with one copy of the laws bound in paper covers, which shall be turned over to their successors in office. After such sessions of the general assembly as the state superintendent shall not deem it necessary to publish the laws as provided for in this section, he shall cause to be published in pamphlet form all the amendments to the school laws passed by such general assembly, in sufficient numbers to supply each of the county superintendents and school officers of the state with one copy free of charge, which said amendments shall be sent to the several county superintendents for distribution.

SEC. 1580. (Repealed by Chap. 102, Laws of 1878.)

SEC. 1581. He may, if he deem it expedient, subscribe for a sufficient number of copies of the Iowa School Journal, or of such other educational journal published in the state as he may select, to furnish each county superintendent with one copy, and his certificate of having thus subscribed shall be authority for the auditor of state to issue his warrant for the amount of said subscriptions; provided he shall cause to be inserted in the journal he may so select, a correct copy of any decision he may deem it necessary to make for the efficient carrying out of the school law.

SEC. 1582. He shall annually, on the first day of January, report to the auditor of state the number of persons in each county between the ages of five and twenty-one years.

SEC. 1583. (As amended by Chap. 82, Laws of 1888.) He shall make to the governor a report which shall embrace, first, a statement of the condition of the common schools of the state; the number of district townships and subdistricts therein; the number of teachers; the number of schools; the number of school-houses, and the value thereof; the number of persons between five and twenty-one years of

age; the number of scholars in each county that have attended school the previous year, as returned by the several county superintendents; the number of books in the district libraries; and the value of all apparatus in the schools, and such other statistical information as he may deem important. Second, such plans as he may have matured for the more perfect organization and efficiency of common schools. He shall cause one thousand copies of his report to be printed, and shall present it to the general assembly on the second day of its session.

SEC. 1584. Whenever reasonable assurance shall be given by the county superintendent of any county to the superintendent of public instruction, that not less than twenty teachers desire to assemble for the purpose of holding a teachers' institute in said county, to remain in session not less than six working days, he shall appoint the time and place of said meeting and give due notice thereof to the county superintendent; and for the purpose of defraying the expenses of said institute, there is hereby appropriated, out of any moneys in the state treasury not otherwise appropriated, a sum not exceeding fifty dollars annually for one such institute in each county held as aforesaid, which the said superintendent shall immediately transmit to the county superintendent in whose county the institute shall be held, who shall therewith defray the necessary expenses of the institute, and, if any balance remains, he shall pay the same into the county treasury, and the same shall be credited to the teachers' fund.

STATE UNIVERSITY.

SECTION 1585. The objects of the state university, established by the constitution, at Iowa City, shall be to provide the best and most efficient means of imparting to young men and women on equal terms, a liberal education and thorough knowledge of the different branches of literature, the arts and sciences, with their varied applications. The university, so far as practicable, shall begin the courses of study in its collegiate and scientific departments, at the points where the same are completed in high schools; and no student shall be admitted who has not previously completed the elementary studies, in such branches as are taught in the common schools throughout the state.

SEC. 1586. The university shall never be under the exclusive control of any religious denomination whatever.

SEC. 1587. (As amended by Chap. 147, Laws of 1876 and Chap. 181, Laws of 1886.) The university shall be governed by a board of regents, consisting of the governor of the state, who shall be president of the board by virtue of his office, the superintendent of public instruction, who shall be a member by virtue of his office, together with one person from each congressional district of the state, who shall be elected by the general assembly.

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SEC. 1589. The university shall include a collegiate, scientific, normal, law, and such other departments, with such courses of instruction and elective studies as the board of regents may determine; and the board shall have authority to confer such degrees, and grant such diplomas and other marks of distinction as are usually conferred and granted by other universities.

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SEC. 1596. The board of regents shall enact laws for the government of the university, and shall appoint a president and the requisite number of professors and tutors, together with such other officers as they may deem expedient, and shall determine the salaries of such officers, the compensation of the secretary and treasurer, and the amount of fees to be paid for tuition. They shall remove any officer connected with the university, when, in their judgment, the good of the institution requires it.

SEC. 1597. The board of regents is authorized to expend such portion of the income of the university fund as it may deem expedient, in the purchase of apparatus, library, and a cabinet of natural history, in providing suitable means to keep and preserve the same, and in procuring all other necessary facilities for giving instruction.

SEC. 1598. All specimens of natural history and geological and mineralogical specimens, which are or hereafter may be collected by the state geologist of Iowa, or by any others appointed by the state to investigate its natural history and physical resources, shall belong to and be the property of the state university, and shall form a part of its cabinet of natural history, which shall be under the charge of the professor of that department.

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SEC. 1600. The president of the university shall make a report on the fifteenth day of September preceding the meeting of the general assembly, to the board of regents, which shall exhibit the condition and progress of the institution in its several departments, the differ-

ent courses of study pursued therein, the branches taught, the means and methods of instruction adopted, the number of students, with their names, classes, and residences, and such other matters as he may deem proper to communicate.

SEC. 1601. (As amended by Chap. 82, Laws of 1888) The board of regents shall, on the first day of October preceding each regular meeting of the general assembly, make a report to the superintendent of public instruction, which report, with that of the president of the university, shall be embodied in the said superintendent's report to the governor. The report of the board of regents shall contain the number of professors, tutors, and other officers, with the compensation of each, the condition of the university fund, and the income received therefrom, the amount of expenditures, and the items thereof, with such other information and recommendations as they may deem expedient to lay before the general assembly.

COUNTY HIGH SCHOOLS.

SECTION 1697. Each county having a population of two thousand inhabitants or over, as shown by the last state or federal census, may establish a high school on the conditions and in the manner hereinafter prescribed, for the purpose of affording better educational facilities for pupils more advanced than those attending district schools, and for persons desiring to fit themselves for the vocation of teaching.

SEC. 1698. When one-third of the electors of a county, as shown by the returns of the last preceding election, shall petition the board of supervisors requesting that a county high school be established in their county at the place in said petition named, then, or when said board in its discretion shall deem proper, said board shall give twenty days' notice previous to the next general election, or previous to a special election duly called for that purpose, that they will submit the question to the electors of said county whether such high school shall be established; at which election said electors shall vote by ballot, for or against establishing such county high school. The notice contemplated in this section shall be given through one or more newspapers published in said county, if any be published therein, and by at least one written or printed notice to be posted in each township.

SEC. 1699. After said election, the ballots on said question shall

be canvassed in the same manner as in the election for county officers; and if a majority of all the votes cast on said question shall be in favor of establishing said school, the board of supervisors shall immediately proceed to appoint six persons, who shall be residents of the county, but not more than two of whom shall be residents of the same township, who shall, with the county superintendent of common schools, constitute a board of trustees for said high school. Each of said trustees appointed as aforesaid shall hold his office until his successor is elected and qualified, and shall be required, within ten days after appointment, to qualify by taking the oath of office, and giving such bond as may be required by the said board of supervisors for the faithful discharge of his duties.

SEC. 1700. At the next general election after said appointment, there shall be elected in said county six high school trustees, who shall be divided into three classes of two each; each class to hold their office one, two, and three years, respectively, and their respective terms to be decided by lot. And each year thereafter there shall be two such trustees elected to succeed those whose term is about to expire. And said trustees shall qualify and enter upon the duties of their office in the same manner and at the same time as other county officers.

SEC. 1701. The county superintendent shall, by virtue of his office, be president of said board of trustees, and at the first meeting in each year they shall appoint from their own number a secretary and treasurer, who shall perform the usual duties devolving upon such officers for the term of one year, or until their successors are appointed to take their places.

SEC. 1702. At said meeting, or at some succeeding meeting called for such purpose, said trustees shall make an estimate of the amount of funds needed for building purposes, for payment of teachers' wages, and for contingent expenses, and they shall present to the board of supervisors a certified estimate of the rate of tax required to raise the amount desired for such purposes. But in no case shall the tax for such purposes exceed in one year the amount of five mills on the dollar on the taxable property of the county, and, when the tax is levied for the payment of teachers' wages and contingent expenses only, shall not exceed two mills on the dollar.

SEC. 1703. The said tax shall be levied and collected in the same manner as other county taxes, and when collected the county treasurer shall pay the same to the treasurer of the county high school, in

the same manner that school funds are paid to the district treasurers as required by law.

SEC. 1704. The said treasurer of the high school shall give such additional bond as the board of trustees may deem sufficient, and receive all moneys from the county treasurer, and from other parties, that belong to the funds of said school, and pay the same out only by direction of the board of trustees, upon orders duly executed by the president, countersigned by the secretary thereof, stating the purpose for which they were drawn. Both the secretary and treasurer shall keep an accurate account of all moneys received and expended for said school; and at the close of each year, and as much oftener as required by the board, they shall make a full statement of the financial affairs of the school.

SEC. 1705. The said board of trustees shall proceed as soon as practicable after their appointment as aforesaid, to select the best site, in accordance with the vote of the county, that can be obtained without expense to the same, and the title thereof shall be vested in said county. They shall then proceed to make such purchases of material, and to let such contracts for their necessary school buildings, as they may deem proper, but shall not make any purchase or contract in any year to exceed the amount on hand, and to be raised by the levy of tax that year.

SEC. 1706. When said board of trustees shall have furnished a suitable building for the school, they shall employ some competent teacher to take charge of the same, and furnish such assistant teachers as they deem necessary, and provide for the payment of their salaries. As far as practicable model schools shall be encouraged; and advanced students, and those preparing to become teachers, may be employed a portion of their time in teaching the younger pupils, in order that they may become familiar with the practice as well as theory of successful school teaching, and also avoid, as far as practicable, the expense of employing other assistant teachers.

SEC. 1707. Tuition shall be free to all pupils of such school residing in the county where the same is located. The board of trustees, however, shall make such general rules and regulations as they deem proper in regard to age and grade of attainments essential to entitle pupils to admission in the school. If there should be more applicants than can be accommodated at any time, each district shall be entitled to send its equal proportion of pupils, according to the number of pupils it may have, as shown by the last report to the county super-

intendent of common schools. And the boards of the respective school districts shall designate such pupils as may attend.

SEC. 1708. If, at any time, the school can accommodate more pupils than apply for admission from that county, the vacancies may be filled by applicants from other counties, upon the payment of such tuition as the board of trustees may prescribe; but at no time shall such pupils continue in said school to the exclusion of pupils belonging in the county in which such high school is situated.

SEC. 1709. The principal of any such high school, with the approval of the board of trustees, shall make such rules and regulations as he deems proper in regard to the studies, conduct and government of the pupils under his charge, and if any such pupils will not conform to and obey the rules of the school they may be suspended or expelled therefrom by the board of trustees.

SEC. 1710. The said board of trustees shall annually make a report to the board of supervisors of their county, which shall specify the number of students, both male and female, who have been in attendance at the county high school during the year, the branches of learning taught, the text-books used, the number of teachers employed, the amount of salary paid to them, the amount expended for library and apparatus, and for buildings and all other expenses; also, the amount of funds on hand, debts unpaid, and other information deemed important or expedient to report. Said report shall be printed in at least one newspaper in the county, if any is published therein, and a copy of the report shall be forwarded to the state superintendent of public instruction.

SEC. 1711. The board of supervisors shall have power to fill any vacancy that may occur in the board of trustees of that county, by appointment, until the next general election, and a majority of such board of trustees shall be a quorum for the transaction of business.

SEC. 1712. The board of supervisors may allow each member of the board of trustees the sum of two dollars per day for the time actually employed in the discharge of his official duties, and when such accounts are presented for payment they shall be audited and paid out of the county treasury, in the same manner as other accounts against the county, and said trustees shall not be entitled to any further remuneration for services or expenses.

SCHOOL DISTRICTS.

SECTION 1713. Each civil township now or hereafter organized, and each independent school district organized as such prior to the taking effect of this code, is hereby declared a school district for all the purposes of this chapter, subject to the provisions hereinafter made.

SEC. 1714. When an organized district has been left without officers, the township trustees shall give such notice for a special election of directors as is required in cases of regular district elections; and the persons elected shall continue in office until their successors are duly elected and qualified.

SEC. 1715. When changes in civil township boundaries are made, or any district shall be divided into two or more entire townships for civil purposes, the existing board of directors shall continue to act for both or all the new districts, or parts of districts, until the next regular district election thereafter, at which time the new district township shall organize by the election of directors. The respective boards of directors shall, immediately after such organization, make an equitable division of the then existing assets and liabilities between the old and new districts; and in case of a failure to agree,

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SEC. 1713. The design of the law is that civil and district township boundaries shall coincide. When new civil townships are formed, the corresponding changes in district township boundaries take effect at the next subdistrict election. Sections 1715 and 1796.

SEC. 1714. (*a*) In case the board is reduced below a quorum, by resignation or otherwise, the township trustees call a special election to fill the vacancies. The ballots in such election, in independent districts, should indicate in whose place the person voted for shall serve.

(*b*) In independent districts five notices shall be posted, as provided in sections 1742 and 1801; in district townships three notices are required in each subdistrict, as provided in section 1718. Note (*b*) to form 2.

SEC. 1715. (*a*) New district townships are not organized until the first Monday in March after the election of officers of the civil townships.

(*b*) When subdistricts are divided by changes in civil township boundaries, the boards should incorporate the several parts with other subdistricts, or otherwise provide for such territory, so that all electors may vote at the following subdistrict election; in the absence of such action the territory properly belongs to the subdistrict which it adjoins, and the electors are entitled to vote therein.

(*c*) The boundaries of subdistricts lying wholly within the old or new districts, are not affected by the division of civil townships.

the matter be may decided by arbitrators, chosen by the parties in interest. A similar division shall be made in case of the formation or changes of boundaries of independent districts.

SEC. 1716. Every school district which is now, or may hereafter be organized, is hereby made a body corporate by the name of the "district township," or "independent district" (as the case may be),

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(*d*) Five days before the time for the regular subdistrict election, first Monday in March, written notices should be posted in three public places in each subdistrict, in both the old and new townships, by the resident subdirector; where there is no subdirector, by the secretary. Form 2, and notes.

(*e*) Assets include school-houses, sites and all other property and moneys belonging to the district. Liabilities include all debts for which the district in its corporate capacity is liable. In determining the assets, school property should be estimated at its present cash value.

(*f*) Each fund should be divided separately between the districts, in proportion to the last assessed value of the property, real and personal. Any portion of the teachers' fund, however, derived from the semi-annual apportionment, should be divided in proportion to the number of persons between the ages of five and twenty-one years, according to the last enumeration.

(*g*) School-houses will usually become the property of the district in which they are situated. If their value exceeds the amount justly due the district, and there is not sufficient school-house fund on hand to equalize the division, the board should fix the amount each district should receive or pay.

(*h*) An equitable arrangement mutually satisfactory to the parties in interest will be in accordance with the intent of the law. Any agreement should be reduced to writing, and entered in the records of each district.

(*i*) The districts, after the division, which do not receive their just proportion of school-house property, have a claim against those that do obtain more than their due share. The last named are indebted to the first in the difference. 36 Iowa, 216.

(*j*) A simple and just method to dispose of unpaid and delinquent taxes, also of all funds in the hands of the county treasurer, and not available, section 1785, is to direct the payment of these funds in such manner that taxes derived from any part of the territory shall be paid to the district to which such territory will then belong.

(*k*) If money is received by one which belongs to another, the rule is a general one that the law implies a promise on the part of the receiver to pay it over. Based upon this promise an action may be maintained for its recovery. And this rule applies to corporations as to individuals. 11 Iowa, 506.

SEC. 1716. (*a*) In suits, contracts, and conveyances, the corporate name should be strictly observed.

(*b*) A subdistrict is not a corporation, and hence can neither hold property nor perform any corporate act.

of....., in the county of....., and in that name may hold property, become a party to suits and contracts, and do other corporate acts.

DISTRICT TOWNSHIP MEETING.

SECTION 1717. (As amended by Chap. 51, Laws of 1882.) Each district township shall hold an annual meeting on the second Monday in March, and the electors of the district, when legally assembled at such meeting, shall have the following powers:

1. To appoint a chairman and secretary in the absence of the regular officers;

2. To direct the sale or other disposition to be made of any school-house, or the site thereof, and of such other property, personal and real, as may belong to the district; to direct the manner in which the proceeds arising therefrom shall be applied; to determine what additional branches shall be taught in the schools of the district; or to delegate any of these powers to the board of directors; and to author-

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SEC. 1717. (*a*) District townships are authorized to hold only one meetting in each year, except as provided by section 1717½ The meeting cannot be adjourned to another day.

(*b*) Ten days' previous notice of this meeting should be given by the district township secretary, section 1742, but as the law fixes the day of the meeting of the electors of the district township, and also of the subdistrict, a failure to give full notice, or any notice at all, though a violation of law, will not invalidate the proceedings of the meeting, if one is held at the usual time and place. 10 Iowa, 212.

(*c*) The president and secretary are the regular officers of this meeting, and should act as such if present. Sections 1739 and 1741.

(*d*) School-houses cannot be sold without a previous vote of the electors, but their action in voting a tax for the erection of a new school-house on the old site gives the board authority to remove or dispose of the old house.

(*e*) The electors have no authority to instruct the board to loan money belonging to the district, nor to order money invested in government bonds.

(*f*) If the district township meeting direct that any additional branches shall be taught in one or all of the schools in the district township, their action is mandatory, and the board are bound to endeavor in good faith to fulfill the wishes of the electors.

(*g*) All school-house taxes must be voted by the electors of the subdistrict, or district township; this power cannot be delegated to the board.

(*h*) The specific sum of money deemed necessary, and not a certain number of mills on the dollar, should be voted, except when a district lies in

ize the board of directors to obtain at the expense of the district township, such highways as such board may deem necessary for proper access to the school-house in their districts;

3. To vote such tax, not exceeding ten mills on the dollar in any one year, on the taxable property of the district township, as the meeting shall deem sufficient for the purchase of grounds and the construction of the necessary school-houses, for the use of the district, and for the payment of any debts contracted for the erection of school-houses, and for procuring district libraries, and for obtaining highways for access to school-houses;

4. To instruct the board of directors to transfer any surplus in the school-house fund, not appropriated, to either the contingent or teachers' fund.

SEC. 1717½. (Chap. 84, Laws of 1880.) When a school district, by fire or otherwise, has been deprived of a school building, and the board of directors of such district by the use of the powers in them vested, are unable to provide for the continuance of the school therein; then such board of directors shall call a meeting of such district.

The manner of calling such meeting, and the powers of such meeting, shall be as follows:

1. The board of directors shall cause to be posted in three public places in such district, at least ten days prior to the designated time

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two counties. Chap. 67, Laws of 1874. The per centum necessary to raise this sum is determined by the board of supervisors. Sections 1777 and 1780.

(*i*) The electors may not vote, nor the board appropriate, money to purchase text-books for the use of scholars.

(*j*) Money may be paid for the purchase of a district library only when it has been voted for that purpose by the electors.

(*k*) Any other mingling of funds than provided for in subdivision four is a violation of law.

(*l*) The vote of the electors upon any of the questions mentioned in this section, may be taken by ballot, or *viva voce*, as the meeting shall direct. But pains should be taken to have the more important matters presented to the meeting when the attendance is largest.

(*m*) Failing to carry out instructions from this meeting, the board may be compelled by mandamus to show reason why they have not complied with the request of the electors.

(*n*) The electors frequently assume to do more than is granted them by law. They have only such powers as are specifically named in the law.

of holding such meeting, written notices of such meeting, in which shall be stated the time and place of such meeting, and the object or purpose for which the same is called.

2. The powers of such meeting shall be the same as is prescribed in section 1717 hereof, except those powers which are set forth in paragraph 2, after the word "applied" in the fourth line thereof, and in paragraph 3, after the word "district" in the fifth line thereof.

SUBDISTRICT MEETING.

SECTION 1718. The several subdistricts shall, annually, on the first Monday in March, hold a meeting for the election of a subdirector, five days' notice of which meeting shall be given by the then resident subdirector, or, if there is none, by the district secretary, posting a written notice in three public places therein, and such notice shall state the hour of meeting.

SEC. 1719. (As amended by Chap. 7, Laws of 1880.) At the meeting of the subdistrict a chairman and secretary shall be appointed, who shall act as judges of the election, and give a certificate of election to the subdirector elect. When there is a tie vote between two persons for the office of subdirector the secretary shall notify the secretary of the district township board of such tie vote, and shall notify said persons to appear at the regular meeting of the board on the

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SEC. 1718. (*a*) No district township or subdistrict meeting shall organize earlier than 9 A. M., nor adjourn before 12 M. Section 1789. The meeting should not be called later than 6 P. M. The law contemplates at least three hours for the election. Note (*c*) to section 1789.

(*b*) Any election by the people must be held on the day designated, and officers must be elected by a single ballot.

(*c*) If subdistrict boundaries are in controversy by way of appeal, the election for subdirectors should be made on the basis of the status of the subdistricts on the day of election.

SEC. 1719. (*a*) The chairman and secretary are not required to qualify.

(*b*) A person who acts as chairman at a school election is entitled to his vote as much as any other elector.

(*c*) The election must be by ballot. Constitution, article 2, section 6.

(*d*) No minor, non-resident nor alien can take part in a meeting of electors. To be entitled to the right of suffrage a person must be a male citizen of the United States, twenty-one years of age, a resident of the state six months next preceding the election, and of the county sixty days. Constitution, article 2, section 1. 69 Iowa, 368.

third Monday in March to determine the tie vote by lot before one or more members of the board elected, and the certificate of election shall be given accordingly. Should either party fail to appear, or take part in the lot, the secretary shall draw for him.

SEC. 1720. In all district townships comprising but one subdistrict the board of directors shall consist of three subdirectors; and in all district townships comprising but two subdistricts it shall consist of one subdirector chosen from each subdistrict and one from the district township at large, who shall in both cases be elected in the manner provided by law for the election of one subdirector from each subdistrict. The judges of the respective subdistrict elections shall canvass the votes for subdirector chosen from the district township at large, and shall issue a certificate of election to the person elected.

(*e*) The person receiving the greatest number of votes is elected, even though he has not received a majority of all the votes cast.

(*f*) This section clearly provides how a tie vote shall be decided.

(*g*) The electors of a subdistrict may, at their regular meeting in March, determine what amount is required for the erection of a school-house in said subdistrict. A sum, in the aggregate, may be voted, and the subdirector must certify the same to the next district township meeting held thereafter. Section 1778. Form 5.

(*h*) If the subdistrict does not wish to have a tax to build their house levied upon themselves, they should simply prefer a request for a sufficient amount to build a school-house in their subdistrict, not naming any fixed sum. Note (c) to form 3.

SEC. 1720. (*a*) Where there is but one subdistrict in a district township the subdistrict meeting should be held at some central point, on the first Monday in March, for the election of three subdirectors, five days' notice of which should be given by the district secretary, as directed by section 1718; and another meeting will be held on the second Monday in March, as provided by section 1717, the powers and duties of the two meetings being entirely separate and distinct, the first being a subdistrict, the second a district township meeting.

(*b*) The board of a district township cannot consist of less than three members. If there are two subdistricts, the subdirector from the township at large should be voted for at both meetings, and to avoid confusion, tickets should specify: For subdirector, A. B.; For subdirector at large, C. D.

(*c*) The failure or refusal of the proper officers to issue a certificate to a person duly elected, cannot operate to deprive such person of his rights. The certificate or commission is the best, but not the only evidence of an election, and if that be refused secondary evidence is admissible. McCrary on Elections, section 171.

BOARD OF DIRECTORS.

SECTION 1721. (As amended by Chap. 27, Laws of 1874.) The subdirectors of the several subdistricts shall constitute a board of directors for the district township, and shall enter upon their duties upon the day fixed for the regular meeting of the board in March, at which time they shall organize by electing from their own number a president, who shall simply be entitled to a vote as a member of the board; and from the district township at large, at their regular meeting on the third Monday of September in each year, a secretary and a treasurer, unless there are at least five subdirectors in the district township, in which case they may be selected from the board; and said secretary and treasurer thus elected shall qualify and enter upon the duties of their respective offices within ten days following the date of their election. If selected from the district township at large they shall have no vote in the proceedings of the board.

SEC. 1721. (*a*) The right or title to hold office cannot be determined by an appeal to the county superintendent. The proper remedy for any person aggrieved by the action of the board relating thereto is a petition to the district court, under sections 3345-3352, Code.

(*b*) Directors continue in office until the third Monday in March and until their successors are elected and qualified.

(*c*) It is quite customary for the outgoing board to meet on the third Monday in March and complete all their work, and for the new board to organize immediately thereafter. The legality or propriety of their doing so has never been questioned.

(*d*) Business done by the new board on the second Monday of March is void, because their term of office does not begin until the third Monday in March. All such business done, including the re-organization, should be re-enacted at a subsequent meeting to make it legal.

(*e*) A member or officer of the board must have the qualifications of an elector, if a male; but no person shall be deemed ineligible, by reason of sex, to any school office. Chapter 136, laws of 1876.

(*f*) A president whose term as director has expired may take no further part in the board, even though a new president has not been chosen.

(*g*) When the treasurer is chosen from the board, under section 1721, his ceasing to be a member of the board in March does not terminate his relation as treasurer of the district until September following.

(*h*) Where the law requires a certain duty to be performed by the board upon a fixed day, as for instance the election of a secretary and a treasurer, an adjournment of the meeting to another fixed date will allow the transaction of the business directed to be done on the day of the regular meeting.

SEC. 1722. (As amended by Chap. 176, Laws of 1880.) The board of directors shall hold their regular meetings on the third Monday in March and September of each year; and may hold such special meetings as occasion may require, at the call of the president, or by request of a majority of the board; provided that the board of directors of a district township may hold their meetings at any place within the civil or district township in which such district township is situated.

SEC. 1723. They shall make all contracts, purchases, payments, and sales necessary to carry out any vote of the district, but before

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(*i*) No person may hold two offices of the board at the same time.

(*j*) A person cannot remain an officer or member of the board and reside in another district, even though in the same civil township.

SEC. 1722. (*a*) Section 1738 provides that a majority of the board shall constitute a quorum.

(*b*) Any duty imposed upon the board as a body must be performed at a regular or special meeting, and made a matter of record.

(*c*). The consent of the board to any particular measure, obtained of individual members when not in session, is not the act of the board, and is not binding upon the district. 47 Iowa, 11.

(*d*) If a contract is made without authority from the board, the individuals making such contract are personally liable.

(*e*) Special meetings should be convened by a written call, signed either by the president or a majority of the members, and each member should be duly notified of the purpose of the meeting, as far as known.

(*f*) This section authorizes the board of a district township to hold meetings in an independent district within the same civil township.

SEC. 1723. (*a*) It is the duty of the board to make contracts for the erection of school-houses, when the means have been provided by the electors. Forms 6, 7 and 8.

(*b*) No member has authority to make a contract in behalf of the district, except under specific instructions of the board.

(*c*) If the subdirector is appointed a committee to contract, it should be with certain limitations, and the contract must be reported to the board for approval, as provided by section 1753.

(*d*) If members or officers of the board intentionally violate law they become personally liable. Iowa Reports, 14, 510; 17, 155; 24, 337, and 38, 47.

(*e*) If an agent makes a valid contract without authority, he is himself bound thereby. 37 Iowa, 314. But a contract made by the board does not bind the members personally when they do not put their official title to their signatures, but the district is bound. Iowa Reports, 7, 509; 11, 82.

erecting any school-house they shall consult with the county superintendent as to the most approved plan of such building. And all school-houses erected or repaired at a cost exceeding three hundred dollars, shall be so erected or repaired by contract, and no such contract for labor or materials shall be let until proposals for the same shall have been invited by advertisement for four weeks in some newspaper published in the county where the work is to be done, if there

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(*f*) Contracts made in violation of the terms of this section are illegal. Their fulfillment may be prevented by injunction.

(*g*) Before making a contract great pains should be taken to obtain the best possible plan for the building. On this point the law requires consultation with the county superintendent.

(*h*) Contracts for the erection or repair of school-houses, or for material for the same, exceeding $300, cannot be entered into until proposals have been published at least twenty-eight days. Repairs include furniture.

(*i*) After the contract is executed, it should be changed with caution, or the sureties may be released. 50 Iowa, 98.

(*j*) The board cannot be required to commence the construction of a house until means to a reasonable extent have been provided.

(*k*) Unappropriated school-house funds may be disposed of by the electors, under section 1717, for improvements, such as fencing school-house sites, providing wells, etc., or the same may be transferred to either the teachers' or contingent fund, and the board, under section 1723, are required to carry out the vote of the electors.

(*l*) The district may not form a partnership with any other party in the building of a school-house. This does not prevent the receiving of donations and granting privileges under notes (*g*) and (*i*) to section 1753.

(*m*) A board may bind a corporation by contracts entered into after the election of their successors and before their qualification. But they may not, unnecessarily make contracts to extend beyond their term. 87 Ill., 255.

(*n*) While instances may occur in which the interests of the district will be subserved by making contracts with teachers and others, which will not expire for months after a change of officers, courtesy as well as justice dictates the impropriety of making contracts the execution of which will embarrass successors in office. Ordinarily the new board should make contracts only for the year during which they serve.

(*o*) The force and effect of any motion adopted by the board does not terminate with a change of officers or members, but remains in force until repealed. 35 Iowa, 361.

(*p*) A board may ratify or adopt such acts of officers *de facto* as the law would permit officers *de jure* to perform.

be one published therein, if not, in the nearest newspaper in an adjoining county; and such contract shall be let to the lowest responsible bidder, and bonds with sufficient sureties for the faithful performance of the contract shall be required.

SEC. 1724. They shall fix the site for each school-house, taking into consideration the geographical position and convenience of the people of each portion of the subdistrict, and shall determine what

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(*q*) Boards should not involve the district in an indebtedness for the erection of school-houses, by contracts, or the issue of orders to exceed the amount voted by the electors.

(*r*) District townships have no authority to issue bonds or other evidences of indebtedness for the purpose of borrowing money.

(*s*) No district can become indebted in any manner, or for any purpose, to an amount, in the aggregate, exceeding five per cent on the value of its taxable property. Constitution, article 11, section 3.

(*t*) Any unappropriated school-house fund in the district treasury may be used for the erection or repair of school-houses, at the discretion of the board, without action of the electors.

(*u*) Chapter 146, laws of 1882, as amended, confers upon all boards the right to insure school property. This duty should not be neglected.

(*v*) District property is exempt from general taxation, section 797, Code; from execution, section 3048, Code; from garnishment, section 2976, Code; and mechanic's lien, 54 Iowa, 81.

(*w*) Sometimes a district desires to maintain a better or different fence than can be required of the party joining. In such cases it is quite customary for districts to build the whole fence.

(*x*) There is no provision of law for condemning land for a school road. The law authorizes the board to purchase land and to levy a tax for that purpose. If the land cannot be procured by contract, the road may be established in the same manner and by the proceedings provided for the establishment of highways, and when the damages have been assessed, the district may pay the same.

(*y*) The local board of health have undoubted right under chapter 151, section 16, laws of 1880, to condemn and close for use as a school-house a building believed by them to be unfit for such purpose.

(*z*) A lightning rod may be supplied as a part of a new house, and paid for from the school-house fund. 51 Iowa, 432.

SEC. 1724. (*a*) The power to locate sites for school-houses is vested, originally, exclusively in the board. This authority should be exercised with great care, and without prejudice. The wishes of the people, for whom the house is designed, should be consulted as far as practicable, taking into account the prospective as well as the present convenience of the subdistrict.

number of schools shall be taught in each subdistrict, and for what additional time beyond the period required by law they shall be continued during each year.

SEC. 1725. (As amended by Chap. 109, Laws of 1876, and Chap. 125, Laws of 1886.) They shall determine where pupils may attend school, and for this purpose may divide their district into such subdistricts as may by them be deemed necessary; provided that no such subdistrict shall be created for the accommodation of less than fifteen pupils, but the board of directors shall have power to rent a room and employ a teacher for the accommodation of any ten scholars; provided further that nothing in this chapter contained shall be construed to prohibit the construction of as many school-houses, out of

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(*b*) The power of the board to fix the site carries with it the power to relocate that site. 68 Iowa, 161. The exercise of this power is a proper and necessary adjunct of power to make alterations in subdistrict boundaries. An extension of settlements frequently changes the centers of population and necessitates a change of subdistrict boundaries, and the removal of school-houses to central localities in the new subdistricts. 23 Iowa, 408.

(*c*) A site near the center of the subdistrict should be chosen, unless controlling circumstances indicate a different selection. The site should contain not less than one acre of ground, ordinarily.

(*d*) Every new site, taken under section 1825, must be selected on some public highway, at least forty rods from any residence, the owner whereof objects to its being placed nearer, and not in any orchard, garden, or public park; except in incorporated towns or cities. Section 1826. Boards may rebuild on sites without consent of owners of residences within forty rods.

(*e*) The provisions of section 1825 do not apply in cases where the site is purchased. S. L. Decisions, 135.

(*f*) The case of Randall v. Dist. Twp. Lincoln, S. L. Decisions, 84, is understood to mean that the board would expect to be again reversed on appeal, if making a location without a better reason than existed when the former action was taken. 70 Iowa, 338, and S. L. Decisions, 139.

(*g*) Since a change of boundaries between subdistricts does not take effect until the subdistrict meeting in March, the board may not move the schoolhouse to accommodate the proposed new subdistrict until after that time.

(*h*) As regards the length of time during which schools are to be taught in each subdistrict, twenty-four weeks is the minimum. Section 1727. The maximum is unlimited, except as by section 1780, providing a limit to the amount of taxes for contingent and teachers' fund.

SEC. 1725. (*a*) All changes in subdistrict boundaries must be made in strict conformity with sections 1738 and 1796.

moneys derived from taxes levied previous to January 1, 1876, in any subdistrict where the subdistrict comprises the entire district township, as shall have been authorized and provided for at the annual meeting of the district township electors.

SEC. 1726. They may establish graded or union schools wherever they may be necessary, and may select a person who shall have the

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(*b*) The words pupils and scholars, as used in this section, mean persons between the ages of five and twenty-one years.

(*c*) All of a district township must be included in some subdistrict.

(*d*) A subdistrict is not a corporate body and has no financial claims, nor can it be held liable for debts, except as a part of the district township.

(*e*) The board may discontinue or abolish a subdistrict by a re-adjustment of boundaries, taking effect in March following. Section 1796.

(*f*) No change in boundaries may be made by the board which leaves any subdistrict with less than fifteen persons of school age.

(*g*) In an organized subdistrict, even though there are not fifteen persons of school age, a school must be held, unless the board are excused by the county superintendent. Section 1727.

(*h*) The board cannot provide an extra school for a less number than ten persons of school age.

(*i*) There is nothing in law to prevent the erection of more than one schoolhouse in a subdistrict. 69 Iowa, 533.

SEC. 1726. (*a*) A graded school, open to the older and more advanced scholars from every subdistrict, may be advantageously established at some central point in the district township.

(*b*) The law does not prescribe the branches that shall be taught in the public schools, further than to require all teachers to be qualified to teach certain branches enumerated in section 1766.

(*c*) In the absence of instruction by the electors, the board should decide what branches besides those in a teacher's examination, shall be taught.

(*d*) Boards are empowered by virtue of the authority to establish graded schools, and of the general supervisory and discretionary powers with which they are invested, to prescribe courses of study and branches to be taught in the schools of their district.

(*e*) It is very desirable that boards, county superintendent and teachers should work together in efforts to classify and harmonize the work to be done in the ungraded schools. Much may be accomplished by concert of action in carrying forward some uniform method of classification and instruction.

(*f*) A course of study should be prescribed by the board in every district, to which the electors may add additional branches, by section 1717.

general supervision of the schools in their district, subject to the rules and regulations of the board.

SEC. 1727. In each subdistrict there shall be taught one or more schools for the instruction of youth between the ages of five and twenty-one years, for at least twenty-four weeks, of five school days each, in each year, unless the county superintendent shall be satisfied that there is good and sufficient cause for failure so to do. Any person who was in the military service of the United States during his minority shall be admitted into the schools of the subdistrict in which he may reside on the same terms on which youths between the ages of five and twenty-one are admitted.

(*g*) It is not within the province of individual parties to demand instruction outside the branches usually taught.

(*h*) If it is understood that the principal of a school has charge of other rooms besides his own, he has the same power in managing the children that is by law given to other teachers.

SEC. 1727. (*a*) Unless the county superintendent finds it quite impracticable that a school should be held, and releases the board, they are required by the law to provide a school in every subdistrict.

(*b*) The board may establish more than one school in a subdistrict if necessary for the accommodation of the children, subject to the limitations contained in sections 1725 and 1780. 70 Iowa, 102.

(*c*) Under section 1724, the board have power to provide for a longer period of school than twenty-four weeks; this increase of time does not apply to the extra schools granted.

(*d*) When two school-houses are within the same district, or subdistrict, a school of three months in each, held at the same time, does not fulfill the requirements of the law that a school of at least twenty-four weeks shall be taught in each subdistrict.

(*e*) The school year for school purposes should be regarded as beginning on the third Monday in March, when a new board enter upon their duties.

(*f*) All the youth of the state from five to twenty-one years of age, irrespective of religion, race or nationality, are entitled to the same school facilities. While schools may be graded according to the proficiency of pupils, no discrimination, such for instance as requiring colored pupils to attend separate schools, can be enforced. 24 Iowa, 266.

(*g*) Persons over twenty-one years of age are not entitled to the benefits of the public schools, except as provided in the latter part of this section. If, however, the school is not full, they and non-residents may be admitted, in the discretion of the board, upon such terms as the board may prescribe.

(*h*) Children under five years of age will be more injured by the confinement than benefited by the instruction. They cannot claim the advantages of the school, and should not be admitted.

SEC. 1728. The board of directors of any district township or independent district shall not order, or direct, or make any change in the school-books or series of text-books used in any school under their superintendence, direction, or control, more than once in every period of three years, except by a vote of the electors of the district township or independent district.

SEC. 1729. They may use any unappropriated contingent fund in the treasury to purchase records, dictionaries, maps, charts, and apparatus for the use of the schools of their districts, but shall contract no debts for this purpose.

SEC. 1730. They shall appoint a temporary president and secretary in case of the absence of the regular officers, and shall fill any vacancy

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SEC. 1728. (*a*) This section only implies the power of the board to adopt text-books for their schools, but to avoid the great variety of text-books used in the schools and too frequent changes of the same, we think the board should exercise their authority by adopting text-books, having due regard to those in common use.

(*b*) The change of any one text-book in the school does not prevent the board from changing any or all other books at a subsequent time. Neither subdirector nor teacher has authority to change text-books.

(*c*) The electors may not vote, nor the board appropriate, money for the purchase of text-books for the use of the district.

(*d*) The board are not prohibited from buying text-books and selling them to scholars at cost, if choosing to do so on their own responsibility.

SEC. 1730. (*a*) A vacancy can be created only by death, removal, resignation, or failure to elect at the proper election, there being no incumbent to continue in office. Section 781, Code. A failure to elect or qualify does not create a vacancy, for the incumbent, whether elected or appointed, continues in office until his successor is elected and qualified. Section 784, Code. If the incumbent does not qualify in the time fixed by the board, a vacancy exists. Sections 690 and 686, Code.

(*b*) A change in the boundaries of subdistricts does not create a vacancy, for changes do not take effect until the next subdistrict election. Section 1796. If a subdistrict is divided, so as to form a new one, the subdirector will continue to act as though no change had been made, until the expiration of his official term.

(*c*) If a person without the requisite qualifications, is elected a member of the board and acts with the board, being a member *de facto*, his acts will be valid; but when his disqualification becomes known, the board should declare the place vacant and appoint his successor. 23 Iowa, 96.

(*d*) School directors may resign at any time. A verbal resignation may be tendered to the board when in session, or a written resignation may be

that may occur in the office of president, secretary, or treasurer, or in the board of directors.

SEC. 1731. They shall require the secretary and treasurer to give bonds to the district in such penalty and with such security as they may deem necessary to secure the district against loss, conditioned for the faithful performance of their official duties. The bonds shall be filed with the president, and in case of a breach of the conditions thereof he shall bring suit thereon in the name of the district township or independent district.

SEC. 1732. They shall, from time to time, examine the accounts of the treasurer and make settlement with him; and shall present, at

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handed to some member to be presented at a subsequent meeting, for acceptance by the board. No one can be compelled to serve against his wishes.

(*e*) When a director habitually neglects the duties of his office, he may be compelled by mandamus to perform them.

(*f*) Boards have no authority to remove any member or officer of the board. Such removal may be made only by the courts as provided by sections 746-750, Code.

(*g*) In case the board is reduced below a quorum by resignation, or otherwise, the township trustees must call a special election to fill the vacancies, as provided by section 1714.

SEC. 1731. (*a*) The law requires all official bonds to be secured by at least two sureties, who are freeholders, and whose aggregate property is double the amount of the bond; the oath of office to be subscribed on the back of the bond, or attached thereto, and the sureties to make affidavit that they are worth the amount named in the bond. Sections 249, 250, 675 and 679, Code. Form 10.

(*b*) As the bonds of the secretary and treasurer must be approved by the board, no member should become surety for these officers.

(*c*) Any officer whose duty it is to give bonds for the proper discharge of the duties of his office, and who neglects so to do, is guilty of a misdemeanor, and is liable to a fine. Section 684, Code.

(*d*) A board approving bonds which they know to be insufficient, do not discharge the duty incumbent upon them, and are liable under section 3965, Code, on a charge of misdemeanor. Iowa Reports, 14, 510; 18, 153.

SEC. 1732. (*a*) The interest and protection of the tax-payers require that such settlement should be made at least twice a year, and more frequently if deemed necessary, and the settlement at the end of the term requires that the funds and property shall be produced and fully accounted for, and that these facts should be indorsed upon the bond of the treasurer, if he is re-elected. Section 690, Code, quoted in note (*d*) to section 1751. 69 Iowa, 269.

each regular meeting of the electors of the district township, a full statement of the receipts and expenditures of the district township, and such other information as may be deemed important.

SEC. 1733. They shall audit and allow all just claims against the district, and fix the compensation of the secretary and treasurer, and no order shall be drawn on the treasury until the claim for which it is drawn has been audited and allowed.

SEC. 1734. They shall visit the schools in their district, and aid the teachers in establishing and enforcing the rules for the government of the schools, and see that they keep a correct list of the pupils, embracing the periods of time during which they have attended

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(*b*) This section contemplates that a full report of the affairs of the district shall be made by the board at each annual meeting of the electors. This work appropriately devolves upon the president, unless the board designate some other member. When practicable, the report should be published.

SEC. 1733. (*a*) All demands, whether by contract or otherwise, must be approved by the board when in session, before an order may be drawn on the treasury, and no officer should draw an order unless he is authorized to do so by a vote of the board, at a regular or special meeting.

(*b*) Only the secretary and treasurer may receive compensation for the discharge of duties required by law. Section 1738.

(*c*) It is the duty of the board to examine all contracts for the employment of teachers, and the construction of school-houses, or for any other purpose, and to see that the stipulations have been complied with, before they authorize the payment of money thereon.

(*d*) The board may authorize the president and secretary to draw warrants for the payment of teachers' salaries at the end of each school month, upon proper evidence that the service has been performed, but the order for wages for the last month should not be drawn until the report required by section 1760 is filed in the office of the secretary.

(*e*) School orders issued without a vote of the board or otherwise illegally issued, although they may be signed by the president and countersigned by the secretary, are not binding upon the district; neither can they acquire validity by being transferred to third parties. If illegal when issued, they are illegal forever. 19 Iowa, 199 and 248.

(*f*) An order is not a negotiable paper. It is subject to all equities and defenses to which it would have been subject in the hands of the payee. 29 Iowa, 339.

SEC. 1734. (*a*) Boards have entire control of the public schools of their district and the teachers employed therein. The board may establish such

school, the branches taught, and such other matters as may be required by the county superintendent. In case a teacher employed in any of the schools of the district township is found to be incompetent, or is guilty of partiality or dereliction in the discharge of his duties, or for any other sufficient cause shown, the board of directors may, after a full and fair investigation of the facts of the case, at a meeting convened for the purpose, at which the teacher shall be permitted to be present and make his defense, discharge him.

SEC. 1735. The majority of the board in independent districts shall have power, with the concurrence of the president of the board

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rules and regulations for the government of teachers and pupils, consistent with law, as the interests of the schools require. S. L. Decisions, 130.

(*b*) The teacher is the agent of the board, and rules made and enforced by the teacher with either the formal or tacit consent of the board, are in effect the rules of the board.

(*c*) It is the duty of the teacher, under the direction of the board, to determine what branches shall be pursued by each pupil.

(*d*) Without special mention in the teacher's contract, it is understood that only the common branches are expected to be taught.

(*e*) It is competent for boards to provide by rules that pupils may be suspended from the schools in case they shall be absent or tardy a certain number of times within a fixed period, except for sickness or other unavoidable cause. 31 Iowa, 562.

(*f*) The rules adopted by the board remain and continue in force until repealed. 35 Iowa, 361.

(*g*) The board of any district have the right to include music, drawing, or any other study, in the course of study for their schools. Section 1766.

(*h*) Boards may dismiss teachers only for good cause shown. In case the board pass an order to dismiss, the material reason therefor should be spread upon the record; for, while in case of contest, these reasons would not be conclusive against the teacher, the board would be estopped from presenting other reasons than those named in the record.

(*i*) When a teacher is unjustly dismissed, an appeal may be taken from the action of the board in dismissing him, but a suit at law must be brought, if he seeks to recover his pay upon the contract. The teacher should be paid only to the date of legal dismissal.

(*j*) In the trial of a teacher, when it is sought to dismiss him, all the provisions of section 1734 must be strictly complied with. The board may not prevent the teacher from making a full defense, and the teacher may appear by attorney, or otherwise, as he chooses. S. L. Decisions, 120.

SEC. 1735. (*a*) If the effects of acts done out of school hours reach within the school-room during school hours, and are detrimental to good

of directors, to dismiss or suspend any pupils from the school in their district for gross immorality or for a persistent violation of the regulations or rules of the school, and to re admit them if they deem proper so to do.

SEC. 1736. They shall at their regular meeting in March of each year; require the secretary to file with the county superintendent, county auditor and county treasurer, each, a certificate of the election, qualification and post-office address of the president, treasurer, and secretary of the district township, and to advise them from time to time of any changes made in said offices by appointment.

SEC. 1737. They shall make such rules and regulations as may be necessary for the direction and restriction of subdirectors in the discharge of their official duties, and not inconsistent with law.

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order and the best interests of the pupils, it is evident that such acts may be forbidden. 31 Iowa, 562.

(*b*) The board will be justified in refusing to permit the attendance of a pupil whose parent will not consent that he shall obey the rules of the school. 50 Iowa, 145; S. L. Decisions, 130.

(*c*) A board may not adopt a rule which will deprive a child of school privileges, except as a punishment for breach of discipline or an offense against good morals. 56 Iowa, 476.

(*d*) A careful investigation of the charges against the scholar should be made before he is dismissed. Section 1756, and notes.

(*e*) The board may exclude children coming from houses where there are contagious diseases; and may also enforce a rule that children not vaccinated shall be excluded.

SEC. 1736. It is very important that the secretary should file the certificate with the county officers named, immediately after the regular meetings of the board in March and September, otherwise funds belonging to the district may be paid to persons not authorized to receive them. Whenever a change is made the county officers should be notified. Form 11.

SEC. 1737. These rules should be carefully prepared, adopted by the board and recorded, and each subdirector should be furnished with a copy. They may properly provide all restrictions, not in conflict with law, which the board may see fit to adopt for the guidance of subdirectors. They may direct that a subdirector may not teach his own school; that no contracts shall be made by him which do not expire with the school year; and that he may not engage a near relative as teacher unless he has obtained the previous consent of a majority of the board, nor employ any teacher to whom a majority of the electors or patrons object in writing. Section 1753, and notes.

SEC. 1738. A majority of the board of directors shall be a quorum to transact business, but a less number may adjourn from time to time, and no tax shall be levied by the board after the third Monday in May; nor shall the boundaries of subdistricts be changed except by a vote of the majority of the board, nor shall the members of the board, except its secretary and treasurer, receive pay out of any school funds for services rendered under this chapter.

PRESIDENT.

SECTION 1739. (Amended by Chap. 46, Laws of 1882.) The president shall preside at all meetings of the board of directors of independent districts and of the district townships, shall draw all drafts on the county treasury for money apportioned to his district, sign all orders on the treasury, specifying in each order the fund on which it

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SEC. 1738. (*a*) As to the proper course to pursue when the board is reduced below a quorum, see note (*g*) to section 1730.

(*b*) In the absence of a direct provision of law, or of a by-law requiring a majority vote of all the board, or one providing that the highest vote will carry, or a rule imposing some other limitation upon the board, a majority of the votes cast, a quorum being present, will carry a measure.

(*c*) Our supreme court have held that the provision of this section, that no tax shall be levied by the board after the third Monday in May, is mandatory, and that a tax voted after that time is void. This decision renders it essential that boards act promptly, and see that all taxes are voted within the time required by the law. Section 1777.

(*d*) A change of subdistrict boundaries is illegal and void, unless made by a majority of the whole board.

(*e*) Any compensation paid to any other member of the board than the secretary and treasurer, for the performance of official duties, is in direct opposition to the law, and an open violation of the oath of office. For locating sites, or receiving buildings on the completion of contracts, they clearly cannot receive pay.

SEC. 1739. (*a*) The president of the board must take the oath of office according to article 11, section 5, of the Constitution of Iowa.

(*b*) The president has the right to vote on all questions coming before the board. If by such vote a tie is produced, the motion is lost. Sections 1721 and 1802, notes.

(*c*) The president may sign no order on the district treasury except by authority of the board. Section 1733 and notes, and section 1741, notes (*h*) and (*i*).

(*d*) The president may not act as secretary or treasurer of the board.

is drawn and the use for which the money is appropriated, and shall sign all contracts made by the board, and shall be empowered to administer the oath of office to the secretary, treasurer, and members of the board.

SEC. 1740. He shall appear in behalf of his district in all suits brought by or against the same, but when he is individually a party, this duty shall be performed by the secretary; and in all cases where suits may be instituted by or against any of the school officers to enforce any of the provisions herein contained, counsel may be employed by the board of directors.

SECRETARY.

SECTION 1741. The secretary shall record all the proceedings of the board and district meetings in separate books kept for that purpose; shall preserve copies of all reports made to the county superintendent; shall file all papers transmitted to him pertaining to the business of the district; shall countersign all drafts and orders drawn by the president, and shall keep a register of all orders drawn on the

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(*e*) In the absence of the president, or when he refuses to discharge the proper duties of his office, a temporary president may be appointed, who during the time he is acting as president, may sign orders and contracts, and do all other acts proper to be done by the president, but is not authorized to act except when the board is in session.

(*f*) To be valid, an order must express upon its face the fund upon which it is drawn, and the purpose for which it was issued.

(*g*) An order of the board cannot be considered as officially transmitted, unless signed by the president, as well as by the secretary.

(*h*) The failure of an officer to attach his official title to his signature, will not affect the instrument so far as the district is concerned, provided the writing was authorized, and made for the district, and this fact can be shown. Iowa Reports, 7, 509; 11, 82.

SEC. 1740. (*a*) The expenses in suits provided for by this section should be paid from the contingent fund.

(*b*) Appeals to the county superintendent or superintendent of public instruction, are not suits brought by or against the district, nor are they suits brought by or against any of the school officers, within the meaning of the law, and no charge can be made against the district for attorney fees. 36 Iowa, 411.

SEC. 1741. (*a*) It is essential that the record of the proceedings of the board and district meetings should be properly kept. Every transaction should be carefully noted, and the proceedings read and approved.

treasury, showing the number of the order, date, name of the person in whose favor drawn, the fund on which it is drawn, for what purpose and the amount; and shall, from time to time, furnish the treasurer with a transcript of the same.

SEC. 1742. He shall give ten days' previous notice of the district township meeting by posting a written notice in five conspicuous places therein, one of which shall be at or near the last place of meeting, and shall furnish a copy of the same to the teacher of each school in session, to be read in the presence of the pupils thereof, and such notice shall, in all cases, state the hour of meeting.

SEC. 1743. He shall keep an accurate account of all the expenses incurred by the district, and shall present the same to the board of directors, to be audited and paid as herein provided.

(*b*) The registry of orders is an important matter. Every order drawn should be promptly reported to the district treasurer, as he has no other means of determining the amount of outstanding orders, otherwise he cannot comply with the law requiring him to make partial payments. Section 1718 and form 16.

(*c*) The secretary is the custodian of the order book. He fills out the orders which the president afterward signs.

(*d*) The secretary may not act as president or treasurer.

(*e*) Since the secretary is the clerical officer of the board, and cares for the records of the district, we think he should act as librarian, unless the board select some other person.

(*f*) Public records are public property, and are open to inspection at proper times by any citizen. No public officer may refuse examination of the records; but he is their custodian, and being charged with their safe-keeping, he must keep them in his possession.

(*g*) The failure of the secretary to record all the proceedings of the board and of the district meetings in separate books, kept for that purpose, will not render the proceedings void. 8 Iowa, 298.

(*h*) The secretary, president, and treasurer must conform to the instructions of the board so far as those instructions are in accordance with law, but they should not obey the board when directed to do an illegal act.

(*i*) If the board appropriate money to pay their members, other than the secretary and treasurer, or for any other illegal purpose, the president and secretary should refuse to sign the order, and, if drawn, the treasurer should refuse to pay it.

SEC. 1742. See sections 1718 and 1719, and notes. Form 17.

SEC. 1743. The secretary is also required to keep an account current with the district treasurer, as provided by section 1782.

SEC. 1744. He shall notify the county superintendent when each school of the district begins, and its length of term.

SEC. 1745. (As amended by Chap. 12, Laws of 1876, and Chap. 23, Laws of 1882.) Between the fifteenth and twentieth days of September in each year, the secretary of each school district shall file with the county superintendent a report of the affairs of the district, which shall contain the following items:

1. The number of persons, male and female, each in his district, between the ages of five and twenty-one years;
2. The number of schools, and the branches taught;
3. The number of pupils, and the average attendance of the same in each school;
4. The number of teachers employed, and the average compensation paid per week, distinguishing males from females;
5. The length of school in days and the average cost of tuition per week for each pupil;
6. The text-books used, and the number of volumes in the district library, and the value of apparatus belonging to the district;
7. The number of school-houses, and their estimated value;
8. The name, age, and post-office address of each deaf and dumb, and each blind person within his district between the ages of five and twenty-one, including all who are deaf and dumb to such an extent as to be unable to obtain an education in the common schools; the number of trees set out and in thrifty condition on each school house grounds.

SEC. 1744. The name of the teacher should be given, and any other information which will aid the county superintendent in planning his work of visitation, provided for in section 1774.

SEC. 1745. (*a*) The blanks for the annual report of the secretary are furnished by the state, through county superintendents. The secretary should record the report, required by this section, in the district records. If a copy of the report is simply filed in his office, it is liable to be destroyed or mislaid, which may prove detrimental to the interests of the district. Form 18.

(*b*) In districts formed of parts of two or more counties, the secretary should make the annual report to the county superintendent of the county in which a majority of the children reside. This report should not embrace those children who reside in portions of the district lying in other counties. The remaining number of children should be reported by the secretary to the superintendents of their respective counties.

(*c*) In independent districts, it is the duty of the secretary to take the annual school enumeration required by the first clause of this section, unless the board assign the duty to another person; in which case, proper compensation should be given for the work required.

SEC. 1746. Should the secretary fail to file his report, as above directed, he shall forfeit the sum of twenty-five dollars and shall make good all losses resulting from such failure, and suit shall be brought in both cases by the district on his official bond.

TREASURER.

SECTION 1747. The treasurer shall hold all moneys belonging to the district, and pay out the same on the order of the president, countersigned by the secretary, and shall keep a correct account of all expenses and receipts in a book provided for that purpose.

SEC. 1746. In case subdirectors fail to make their annual reports, as required by section 1755, the secretary should at once collect the statistics necessary for a complete report. Boards should insist on promptness in sending this report, and then should give the secretary a suitable compensation for his labors. Section 1733.

SEC. 1747. (*a*) The language of this section is very explicit. It makes the treasurer the custodian of all moneys belonging to the district, which effectually precludes the idea of dividing the money belonging to any particular fund among the subdistricts. He may pay it out only on the order of the president, countersigned by the secretary, and the president may sign no order unless he is authorized to do so by the board. Section 1733, and notes to same, also section 1741, notes (*h*) and (*i*).

(*b*) In making payment, one order may not be given precedence before another. 40 Iowa, 620.

(*c*) Neither the electors nor the board may authorize the treasurer to loan money belonging to the district. Note (*e*) to section 1717.

(*d*) If any state, county, township, school or municipal officer, or officer of any state institution, or other public officer within the state, charged with the collection, safe-keeping, transfer, or disbursement of public money, fails or refuses to keep in any place of deposit that may be provided by law for keeping such money, until the same is withdrawn therefrom upon warrants issued by the proper officer, or deposits such money in any other place than in such safe, or unlawfully converts to his own use in any way whatever, or use by way of investment in any kind of property, or loan without the authority of law any portion of the public money entrusted to him for collection, safe-keeping, transfer, or disbursement, or converts to his own use any money that may come into his hands by virtue of his office, shall be guilty of embezzlement to the amouut of so much of said money as is thus taken, converted, invested, used, loaned, or unaccounted for, and upon conviction thereof he shall be imprisoned in the penitentiary not exceeding five years, and fined in a sum equal to the amount of money embezzled, and, moreover, is forever after disqualified from holding any office under the laws or constitution of this state. Section 3908, Code.

SEC. 1748. The money collected by district tax for the erection of school-houses and for the payment of debts contracted for the same, shall be called the school-house fund; that designed for rent, fuel, repairs, and all other contingent expenses necessary for keeping the schools in operation, the contingent fund; and that received for the payment of teachers, the teachers' fund; and the district treasurer shall keep with each fund a separate account, and shall pay no order which does not specify the fund on which it is drawn, and the specific use to which it is applied. If he have not sufficient funds in his hands to pay in full the warrants drawn on the funds specified, he shall make a partial payment thereon, paying as near as may be an equal proportion of each warrant.

SEC. 1749. He shall receive all moneys apportioned to the district township by the county auditor, and also all money collected by the county treasurer on the district school tax levied for his district.

SEC. 1748. (*a*) Minor improvements, such as the erection of ordinary outhouses, fences, etc., may be paid for from either the contingent or school-house fund. Ordinary repairs should be charged to the contingent fund; but when such repairs assume the magnitude of a rebuilding, or of an extensive addition, they should be charged to the school-house fund.

(*b*) The cost of seating new school-houses should be paid from the school-house fund. The law does not authorize the use of the contingent fund for the erection or completion of school-houses, but when a house needs reseating or other repairs, the cost may be defrayed either from the contingent fund, or from any unappropriated school house fund in the treasury. 25 Iowa, 436.

(*c*) Since the board receive no pay for their services, if they subscribe for any journal containing the official rulings and decisions of this department to aid them in their work, they have the right to pay for the same from the contingent fund.

(*d*) Boards have no authority to transfer money from one fund to another, even temporarily, unless they are authorized under section 1717, subsection 4, to transfer school-house fund to either of the other funds.

(*e*) The teachers'fund should not be divided among the subdistricts, neither equally nor according to the number of children, nor upon any other basis. This fund can be paid out only to teachers for services performed, upon orders authorized by the board.

(*f*) The board should grant a compensation to be paid teachers according to the circumstances and requirements of each subdistrict. Note (*d*) to section 1753.

SEC. 1750. He shall register all orders on the district treasury reported to him by the secretary, showing the number of the order, date, name of the person in whose favor drawn, the fund on which it is drawn, for what purpose, and the amount.

SEC. 1751. (As amended by Chap. 112, Laws of 1876.) He shall render a statement of the finances of the district from time to time, as may be required by the board of directors, and his books shall always be open for inspection. He shall make to the board, on the third Monday in September, a full and complete annual report, embracing:

1. The amount of teachers' fund held over, received, paid out, and on hand.

2. The amount of contingent fund held over, received, paid out, and on hand.

SEC. 1750. The register provided for in this section is indispensable to the treasurer, under the law requiring him to make partial payments on orders, when he has not funds sufficient to pay them in full. Section 1748. It is essential that he should know the exact amount of outstanding orders, and for this reason the secretary is required to report to him all orders drawn on the district treasury. Section 1741, note (*b*), and form 16.

SEC. 1751. (*a*) The blanks for the annual report of the treasurer are furnished by the state, through county superintendents. The reports should be made according to form 20.

(*b*) Treasurers should take pains to mail a copy of this report at once to the county superintendent, as only by timely attention on the part of treasurers, can the county superintendent compile and forward his annual report to the superintendent of public instruction, on the first Tuesday in October. Sections 1772 and 1773.

(*c*) The treasurer is responsible for all moneys coming into his hands by virtue of his office, even if stolen or destroyed by fire. The board have no authority to release him, unless he accounts in full for all moneys received by virtue of his office. Iowa Reports, 37, 550; 39, 9.

(*d*) When the incumbent of an office is re-elected, he shall qualify as above directed; but when the re-elected officer has had public funds or property in his control, under color of his office, his bond shall not be approved until he has produced and fully accounted for such funds and property to the proper person to whom he should account therefor; and the officer or board approving the bond shall indorse upon the bond, before its approval, the fact that the said officer has fully accounted for and produced all funds and property before that time under his control as such officer; and when it is ascertained that the incumbent holds over another term by reason of the non-election of a successor, or for the neglect or refusal of the successor to

3. The amount of school-house fund held over, received, paid out, and on hand.

He shall immediately file a copy of said report with the county superintendent, and for failure to file said report he shall forfeit the sum of twenty-five dollars, to be recovered by suit brought by the district, on his official bond.

SUBDIRECTOR.

SECTION 1752. Each subdirector shall, on or before the third Monday in March following his election, appear before some officer qualified to administer oaths, and take an oath to support the constitution of the United States, and that of the state of Iowa, and that he will faithfully discharge the duties of his office, and in case of failure to qualify, his office shall be deemed vacant.

SEC. 1753. The subdirector, under such rules and restrictions as the board of directors may prescribe, shall negotiate and make in his subdistrict all necessary contracts for providing fuel for schools,

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qualify he shall qualify anew within a time to be fixed by the officer who approves of the bonds of such officers. Section 690, Code.

(*e*) In making settlement, the board may submit a difference with the treasurer, to arbitration. 70 Iowa, 65.

SEC. 1752. (*a*) In case a subdirector elect fails to qualify by the third Monday in March, the incumbent holds over another year, and should renew his oath of office. As soon as it is ascertained that he holds over, he may be required to qualify within a time to be prescribed by the board. Section 690, Code, also note (*a*) to section 1730.

(*b*) Any school director or director elect is authorized to administer to a school director elect the official oath required by law, but the secretary cannot administer this oath unless he is a member of the board, a magistrate, or a notary public.

(*c*) If a person is elected as his own successor and fails to qualify by the third Monday in March, a vacancy exists, which is filled by appointment.

(*d*) A director may take the oath of qualification at any time between the day of election and the third Monday in March. 53 Iowa, 687.

SEC. 1753. (*a*) The subdirector is clothed with certain general powers by this section, but these are to be exercised under the direction of the board. The board may restrict him, for example, as to when he shall employ teachers, for how long a time, at what compensation, and even whom he shall not employ; the extent of repairs, and prices paid for same; and the amount and cost of fuel. Iowa Reports, 35, 361; 40, 369. Note to section 1737, and form 21.

employing teachers, repairing and furnishing school-houses, and for making all other provisions necessary for the convenience and prosperity of the schools within his subdistrict, and he shall have the control and management of the school-house unless otherwise ordered by a vote of the district township meeting. All contracts made in conformity with the provisions of this section shall be ap-

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(*b*) When a teacher or other person is about to enter into a contract with a subdirector, he knows that he is dealing with a public agent whose powers are subject to regulation and restriction by the board; he is bound to know what these rules and restrictions are, and should be governed accordingly. 35 Iowa, 361.

(*c*) The district township is bound by the contract of a subdirector, when made according to instructions by the board. 35 Iowa, 361.

(*d*) The board should fix the wages to be paid in each subdistrict at such a figure as will enable each subdirector to secure a teacher qualified to govern and instruct his school.

(*e*) Each subdirector has exclusive control of the school-house in his subdistrict, unless the district township meeting has otherwise ordered.

(*f*) Special powers delegated to the subdirector by the law, as, for instance, the control of the school-house in his own subdistrict, section 1753, and the right to determine whether scholars may attend from or in an adjoining subdistrict, section 1795, cannot be assumed by the board.

(*g*) It is proper to permit the use of school-houses for the purpose of public worship on Sunday, or for religious services, public lectures on moral or scientific subjects, or meetings on questions of public interest, on the evenings of the week, or at any time when such use will not interfere with the regular process of the school. 35 Iowa, 194.

(*h*) The subdirector in district townships, or the board in independent districts, should require from parties desiring to use the school-house, security for its proper use, and protection from other injury than natural wear.

(*i*) The use of a public school building for Sabbath-schools, religious meetings, debating clubs, temperance meetings, and the like, is proper. Especially is this so, where abundant provision is made for securing any damages which the tax-payer may suffer by reason of the use for the purposes named. The use of a school-house for such purposes, when so authorized, is not prohibited by section 3, article 1, of the constitution. 50 Iowa, 11.

(*j*) If any person willfully write, make marks, or draw characters on the walls or any other part of any church, college, academy, school-house, court-house, or other public building; or willfully injure, or deface the same, or any wall or fence inclosing the same, he shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not more than thirty days. Section 3986, Code.

proved by the president and reported to the board of directors, and said board, in their corporate capacity, shall be responsible for the performance of the same on the part of the district township.

SEC. 1754. He shall, between the first and tenth days of September of each year, prepare a list of the names of the heads of families in his subdistrict, together with the number of children between the ages of five and twenty one years, distinguishing males from females, and shall record the same in a book kept for that purpose.

SEC. 1755. He shall, between the tenth and fifteenth days of September of each year, report to the secretary of the district township, the number of persons in his subdistrict between the ages of five and twenty-one years, distinguishing males from females.

SEC. 1756. He shall have power, with the concurrence of the president of the board of directors, to dismiss any pupil from the schools in his subdistrict for gross immorality, or for persistent violation of the regulations of the schools, and to re-admit them, if he deems proper so to do; and shall visit the schools in his subdistrict at least twice during each term of said school.

(*k*) The president may be compelled by mandamus to give his approval of a contract made in accordance with a vote of the board. 56 Iowa, 573.

(*l*) The board may pass a resolution that teachers shall receive their pay monthly, upon the certificate of the subdirector, or of a committee of the board, that the required time has been taught.

SEC. 1755. (*a*) The failure of subdirectors to make their reports, as required by this section, will reduce the semi-annual apportionments for the year, since they are made upon the enumeration of persons of school age.

(*b*) Children at a state institution, or a private school, should not be enumerated, unless they actually reside in the district.

SEC. 1756. (*a*) The law does not provide that the board are compelled to give scholar or parents notice or chance for defense, before ordering suspension or expulsion of the scholar. The board have large discretionary powers. This is one of the matters which come wholly within their discretion. Notes to section 1735, and School Law Decisions, 130.

(*b*) A careful investigation of the charges against the scholar should be made before he is dismissed.

(*c*) The action of the subdirector and president in dismissing a scholar remains in force for the term only.

(*d*) The teacher has control over scholars during school hours, within reasonable limits, unless restricted by a rule of the board. He may require a scholar to remain in his seat during recess, as a punishment. However, it is not wise to deprive children, to any great extent, of the exercise necessary to their physical well-being.

TEACHERS.

SECTION 1757. (As amended by Chap. 60, Laws of 1888.) All contracts with teachers shall be in writing, specifying the length of time the school is to be taught, in weeks, the compensation per week, or per month of four weeks, and such other matters as may be agreed upon; and shall be signed by the subdirector or secretary and teacher, and be approved by and filed with the president be-

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SEC. 1757. (*a*) All contracts made by the subdirector, under section 1753, must be approved by the president and reported to the board.

(*b*) The teacher's certificate should be shown before signing contract.

(*c*) All matters agreed upon should be incorporated into the written contract. The tendency of our courts is to presume that the written contract embraces the entire agrement of the parties. 52 Iowa, 130.

(*d*) Without special mention in the teacher's contract, it is understood that only the common branches are expected to be taught.

(*e*) The board, for what seem to them good reasons, may order a short vacation. But they cannot shorten the term included in the contract, without the consent of both parties.

(*f*) It is lawful for a board to give teachers holidays and not deduct pay pay, and quite usual. The teacher, however, may not claim it as a right.

(*g*) It is the duty of the subdirector to file the teacher's contract at once with the president of the board, and secure his approval. A copy must also be filed with the secretary. Section 1757.

(*h*) If a subdirector is employed to teach the school in his own subdistrict he should contract with the board, or with a committee appointed for that purpose by the board.

(*i*) The approval of the teacher's contract by the president is a mandatory act, which he cannot refuse to perform, unless the contract is drawn at variance with instructions from the board, or otherwise violates law.

(*j*) The board may authorize the president and secretary to draw orders to pay teachers' salaries at the end of each school month, upon proper evidence that the service has been performed. Note (*l*) to section 1753.

(*k*) If a teacher is at the school-house at the proper time, and remains during school hours, he is entitled to pay therefor, according to his contract, whether scholars are present or not.

(*l*) If the school-house is destroyed, or the school is closed indefinitely by causes beyond the control of either party to the contract, the teacher being ready to comply with his part, can collect pay according to contract. If said teacher uses proper diligence to secure employment at something which he can do, and secures such employment, the district will pay him the difference between the amount received in his new work and the amount of

fore the teacher enters upon the discharge of his duties, and a copy of all such contracts shall also be filed with the secretary of the board by the subdirector, before the teacher enters upon the discharge of his duties.

SEC. 1758. No person shall be employed to teach a common school which is to receive its distributive share of the school fund unless he shall have a certificate of qualification signed by the county superintendent of the county in which the school is situated, or by some other officer duly authorized by law; and any teacher who commences teaching without such certificate shall forfeit all claim to compensation for the time during which he teaches without such certificate.

SEC. 1759. The teacher shall keep a correct daily register of the school, which shall exhibit the number or other designation thereof, township and county in which the school is kept; the day of the

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his wages under contract. In other words, his actual loss should be made good. Opinion of Attorney-General.

(*m*) Section 2976, Code, provides that a municipal or political corporation shall not be garnished. However, the corporation may waive exemption from this process. 25 Iowa, 315.

SEC. 1758. (*a*) The only legal certificates, besides those given by county superintendents, are the perpetual state certificates, issued by the educational board of examiners, prior to September, 1873, when said board was abolished, and state certificates and diplomas given, as provided by chapter 167, laws of 1882.

(*b*) The teacher must have a certificate during the whole term of school. He is not authorized to teach a single day beyond the period named in his certificate.

(*c*) In case of the temporary absence of a teacher, from sickness or other cause, the place should be supplied with some person duly authorized to teach, selected by the subdirector. The supply should be paid by the teacher whose place is filled.

(*d*) In case a person is employed or continued as a teacher in violation of law without a certificate, a resident of the district may sue out a writ of injunction restraining the person from teaching and the district from paying. Such a writ cannot be served at the instance of the county superintendent. 17 Iowa, 228. Boards employing and paying such teachers are liable to prosecution under the provisions of the general statutes for misapplication of funds. Sections 3965, 3966 and 3967, Code.

SEC. 1759. (*a*) The teacher may be held responsible for the efficient discharge of every duty properly attaching to his office, including the exercise of due diligence in the oversight and preservation of school buildings,

week, the month and year; the name, age, and attendance of each pupil, and the branches taught. When scholars reside in different districts a register shall be kept for each district.

SEC. 1760. The teacher shall, immediately after the close of his school, file in the office of the secretary of the board of directors, a certified copy of the register aforesaid.

GENERAL PROVISIONS.

SECTION 1761. A school month shall consist of four weeks of five school days each.

SEC. 1762. During the time of holding a teachers' institute in any county, any school that may be in session in such county shall be closed; and all teachers, and persons desiring a teacher's certificate, shall attend such institute, or present to the county superintendent satisfactory reasons for not so attending, before receiving such certificate.

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grounds, furniture, apparatus, and other school property, as well as the more prominent work of instruction and government.

(*b*) Making fires and sweeping the school-room are not, properly, a part of the teacher's duties. In rural districts teachers frequently perform this labor as a matter of convenience and economy. Those unwilling to perform this work, or who expect to receive pay for it, should so stipulate with the subdirector when entering into the contract to teach. Note (*c*) to section 1757. S. L. Decisions, 106.

(*c*) Parties doing damage to school property are responsible for the same. The teacher is bound to exercise reasonable care to protect and preserve school property, and failing to do so may be held liable for damages.

SEC. 1760. The secretary of the district should refuse to give an order for the last month of the teacher's wages until the register is filed in his office as required by this section. Without this register he cannot make the report required by section 1745. Form 24.

SEC. 1761. (*a*) There are no holidays during which teachers are exempt from teaching, unless excused by the board. A legal contract requires twenty days of actual service for a month.

(*b*) There is no provision of law giving teachers time to visit other schools. Boards may, however, grant holidays for that purpose.

(*c*) Custom fixes the maximum length of the school day at six hours. The board may shorten this time somewhat, if thought best.

SEC. 1762. It may be questioned whether the provisions of this section apply to the present normal institutes, held under section 1769.

SEC. 1763. The electors of any school district at any legally called school meeting, may, by a vote of a majority of the electors present, direct the German or other language to be taught as a branch in one or more of the schools of said district, to the scholars attending the same whose parents or guardians may so desire; and thereupon such board of directors shall provide that the same be done; provided that all other branches taught in said school or schools shall be taught in the English language; provided further that the person employed in teaching the said branches shall satisfy the county superintendent of his ability and qualifications, and receive from him a certificate to that effect.

SEC. 1764. The Bible shall not be excluded from any school or institution in this state, nor shall any pupil be required to read it contrary to the wishes of his parent or guardian.

SEC. 1763. A teacher who instructs in any of the languages referred to in addition to other work as teacher, must have the certificate required by this section, additional to the one demanded by the first part of section 1766; but a teacher who teaches only one or more of the languages referred to above, or any other special branch may be required to have a certificate for such branch, as provided by the last part of section 1766, and need not have the other certificate, unless desired.

SEC. 1764. (*a*) Our common schools are maintained at public expense, and the law contemplates that they shall be equally free to persons of every faith. A very suitable devotional exercise consists in reading a portion of Scripture without comment, and the repetition of the Lord's Prayer.

(*b*) While moral instruction should be given in every school, neither this section nor the spirit of our constitution and laws, will permit a teacher or board to enforce a regulation in regard to religious exercises, which will wound the conscience of any, and no scholar can be required to conform to any particular mode of worship. 64 Iowa, 367.

(*c*) The diversion of the school fund in any form or to any extent for the support of sectarian or private schools is inadmissible and clearly in violation of our laws.

(*d*) Public money shall not be appropriated, given, or loaned by the corporate authorities, supervisors, or trustees of any county, township, city or town, or municipal organization of this state, to, or in favor of, any institution, school, association, or object, which is under ecclesiastical or sectarian management or control. Section 552, Code.

COUNTY SUPERINTENDENT.

SECTION 1765. The county superintendent shall not hold any office in, or be a member of the board of directors of a district township or independent district, or of the board of supervisors during the time of his incumbency.

SEC. 1766. (As amended by Chap. 143, Laws of 1878.) On the last Saturday of each month, the county superintendent shall meet all persons desirous of passing an examination, and for the transaction of other business within his jurisdiction, in some suitable room provided for that purpose by the board of supervisors at the county seat, at which time he shall examine all such applicants for examination as to their competency and ability to teach orthography, reading, writing, arithmetic, geography, English grammar, physiology and history of the United States; and in making such examination, he may, at his option, call to his aid one or more assistants. Teachers exclusively teaching music, drawing, penmanship, book-keeping, German or other language, shall not be required to be examined except in reference to such special branch, and in such cases it shall not be lawful to employ them to teach any branch except such as they shall be examined upon and which shall be stated in the certificate.

SEC. 1766. (*a*) This is a most important and difficult labor. Written examinations afford a good test of scholarship, and furnish the basis of a permanent record. The examination should be thorough, to determine the attainments of the applicant in the branches he is expected to teach.

(*b*) Applications made at other times should be rejected, unless good reasons are given for not attending the regular examinations. The interests of the schools do not require frequent or individual examinations, and the time of the superintendent can be more profitably employed in the performance of other duties. 49 Iowa, 245.

(*c*) We think the ability to teach the different branches may be best determined by actual observation of the teacher's work in his school. A searching and skillfully conducted oral examination in methods will test the applicant's ability to instruct.

(*d*) If it is desired that branches additional to those included in every teacher's certificate shall be taught, such fact should be mentioned as a part of the contract, and the teacher is required to have the certificate for such additional branch or branches, before beginning to teach. Section 1763.

(*e*) It is the intention of the law that the study of physiology and hygiene with special reference to the effects of alcoholic drinks, stimulants and narcotics, shall have equal rank and be considered of the same imporance as other branches of study.

SEC. 1767. If the examination is satisfactory, and the superintendent is satisfied that the respective applicants possess a good moral character, and the essential qualifications for governing and instructing children and youth, he shall give them a certificate to that effect, for a term not exceeding one year.

SEC. 1768. Any school officer or other person shall be permitted to be present at the examination; and the superintendent shall make a record of the name, residence, age, and date of examination of all persons so examined, distinguishing between those to whom he issued certificates and those rejected.

SEC. 1767. (*a*) County superintendents should remember that they are to inquire, not only into the literary qualifications of the applicant, but they must also certify that they are satisfied that the applicant possesses a good moral character, and the essential qualifications for governing and instructing children and youth. Form 25.

(*b*) Scholarship, good moral character, ability to govern, aptness to teach,—our law requires all these qualifications in those to whom are intrusted the highest interests of the state, the education of its youth.

(*c*) Applicants may be required to present such evidences of good moral character as the county superintendent shall demand. The superintendent should be fully satisfied in every particular mentioned in the law, before issuing the certificate.

(*d*) The county superintendent is sole judge of the manner and extent of the examination. 52 Iowa, 111.

(*e*) After ascertaining the general attainments of teachers, inspection of their school work should determine largely the grade of certificate.

(*f*) The law fixes only the maximum time for which a certificate may be given. The minimum is left to the discretion of the county superintendent, but it is desirable in the case of advanced teachers, to make the time as near one year as possible.

(*g*) For many years, county superintendents have been limited as to the minimum age of those receiving certificates. The restriction has given almost universal satisfaction. It is believed that in general, boys under nineteen, and girls under seventeen years of age, may not be expected to possess that maturity of mind and strength of character needed to manage a school successfully, and to determine wisely the many important questions daily demanding an answer from the teacher.

SEC. 1768. (*a*) The record required by this section, should be carefully made, as the items form a part of the county superintendent's annual report to the superintendent of public instruction.

(*b*) The renewal or indorsement of certificates is not provided for by law.

(*c*) By the next section, the county superintendent is made responsible to the institute fund for one dollar from every applicant.

SEC. 1769. (As amended by Chap. 57, Laws of 1874, and Chap. 54, LAWS of 1878.) The county superintendent shall hold, annually, a normal institute for the instruction of teachers and those who may desire to teach, and with the concurrence of the superintendent of public instruction, procure such assistance as may be necessary to conduct the same, at such time as the schools in the county are generally closed. To defray the expenses of said institute, he shall require the payment of a registration fee of one dollar from each person attending the normal institute, and shall also require the payment, in all cases, of one dollar from every applicant for a certificate. He shall, monthly, and at the close of each institute, transmit to the county treasurer, all moneys so received, including the state appropriation for institutes, to be designated the institute fund; together with a report of the name of each person so contributing, and the

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SEC. 1769. (*a*) The normal institute must be held at a time when the public schools are generally closed.

(*b*) County superintendents will determine the time and place, and suggest names of conductor and instructors for approval, making application to the superintendent of public instruction according to form 28, at least thirty days before the institute is to commence. This application and the appointment are necessary to secure the state appropriation.

(*c*) The length of time during which the normal institute shall remain in session is left to the discretion of the county superintendent. This will depend largely upon the amount of the institute fund. It cannot remain in session less than one week of six days. Section 1584.

(*d*) Young and inexperienced teachers will not expect to receive certificates, unless of the lowest grade, without regularly attending the normal institute. By means of the large fund and the length of time this institute may remain in session, it can, if the proper means are employed, be rendered invaluable to teachers. The benefits which they will receive should secure their voluntary and general attendance.

(*e*) A conductor of successful experience in institute work, able to give plain, practical instruction in methods of school organization, government and teaching, should be secured early. The other instructors should be superior teachers of recent experience, and, where practicable, one or more lady teachers should be employed.

(*f*) Poor conductors and instructors have sometimes been engaged, and the teachers of some counties have reason to complain. County superintendents should have sufficient evidence of the abilities of their instructors, before employing them. In all cases where strangers are employed, references should be required, and inquiries made at the state department will frequently secure the proper knowledge.

amount. The board of supervisors may appropriate such additional sum as may by them be deemed necessary for the further support of such institute. All disbursements of the institute fund shall be upon the order of the county superintendent; and no order shall be drawn except for bills presented to the county superintendent, and approved by him, for services rendered or expenses incurred in connection with the normal institute.

SEC. 1770. If, for any cause, the county superintendent is unable to attend to his official duties he shall appoint a deputy to perform them in his stead, except visiting schools and trying appeals.

SEC. 1771. The superintendent may revoke the certificate of any teacher in the county which was given by the superintendent thereof, for any reason which would have justified the withholding thereof when the same was given, after an investigation of the facts in the case, of which investigation the teacher shall have personal notice, and he shall be permitted to be present and make his defense.

(*g*) The superintendent should be director, assuming the general oversight and direction of the institute, but should not act as conductor. He is entitled to his *per diem* for any service in connection with the institute, as for other official duties, but receives no part of the institute fund.

(*h*) These normal institutes are short training schools, their object is to reach and correct the greatest defects found in the schools. The superintendent in visiting schools should seek to discover the most prominent defects and wants in the methods of instruction. The normal institute will afford effective means of reaching and correcting these faults. The great object is to instruct teachers how to teach children.

(*i*) The reports and payments to the county treasurer, required by this section, should be made on the first day of each month. Forms 26, 27, 29 and 30.

(*j*) It is the duty of the board of supervisors, at the close of his term of office, to settle with the county superintendent, as with other county officers, according to the provisions of the law.

SEC. 1771. (*a*) Though an appeal will lie in such cases, the discretion of a county superintendent in refusing or revoking a teacher's certificate will not be interfered with by the superintendent of public instruction, unless it is clearly shown that in such act the county superintendent violated law or abused his discretion. S. L. Decisions, 29.

(*b*) The notice should contain an explicit statement of the charges against which the teacher is expected to make his defense. Form 32.

SEC. 1772. On the first Tuesday of October of each year he shall make a report to the superintendent of public instruction, containing a full abstract of the reports made to him by the respective district secretaries, and such other matters as he shall be directed to report by said superintendent, and as he himself may deem essential in exhibiting the true condition of the schools under his charge; and he shall, at the same time, file with the county auditor a statement of the number of persons between the ages of five and twenty-one years in each school district in his county.

SEC. 1773. Should he fail to make either of the reports required in the last section he shall forfeit to the school fund of his county the sum of fifty dollars, and shall, besides, be liable for all damages caused by such neglect.

SEC. 1774. (As amended by Chap. 161, Laws of 1882.) He shall at all times conform to the instructions of the superintendent of public instruction, as to matters within the jurisdiction of the said

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SEC. 1772. (*a*) The blanks for the annual report of the county superintendent are furnished by the superintendent of public instruction.

(*b*) The superintendent may test the accuracy of the treasurers' reports by consulting the books of the county treasurer. The amount of the several funds reported as received from the district tax, also the amount received from the semi-annual apportionment, must agree with the county treasurer's receipts for the same.

(*c*) All errors should be corrected. The amounts reported on hand in the last report from the district treasurer should always be reported as the amounts on hand at last report the following year.

(*d*) The abstract of the enumeration of children in each district should be made with special care, and should be complete and accurate, otherwise the county will not obtain its just proportion of the income of the permanent school fund.

(*e*) Should the district secretaries or treasurers fail to make their reports in time, the superintendent should take prompt measures to secure them, going after them if necessary.

(*f*) When district townships are divided, or independent districts organized, the superintendent should immediately file with the county auditor a statement, based upon the last report of the secretaries, showing the number of persons of school age in each of the districts, the boundaries of which have been thus changed.

SEC. 1774. (*a*) The county attorney is the legal adviser of the different county officers. Section 3, chapter 73, laws of 1886. He should be freely consulted on questions of law upon which the superintendent is in doubt.

superintendent. He shall serve as the organ of communication between the superintendent and township or district authorities. He shall transmit to the townships, districts, or teachers, all blanks, circulars, and other communications which are to them directed. He may, at his discretion, visit the different schools in his county, and shall, at the request of a majority of the directors of a district, visit the school in said district at least once during each term.

SEC. 1775. He shall report on the first Tuesday of October of each year to the superintendent of the Iowa college for the blind, the name, age, residence, and post-office address of every person blind to such an extent as to be unable to acquire an education in the common schools and who resides in the county in which he is superintendent, and also to the superintendent of the Iowa institution for the deaf and dumb, the name, age, and post-office address of every deaf and dumb person between the ages of five and twenty-one who resides within his county, including all such persons as may be deaf to such an extent as to be unable to acquire an education in the common schools.

(*b*) The superintendent in his visits should seek to aid, instruct, and inspire teachers to the employment of the best methods of teaching, governing, and conducting their schools, should try to secure the proper classification of scholars, the arrangement of courses of study, and the care and protection of school property. He should study to awaken among parents and children a deeper interest in the public schools, so as to secure improved attendance, deportment and scholarship, and more frequent visits of parents and school officers. A judicious visit from the superintendent may often serve to infuse new life into the school.

(*c*) The county superintendent should carefully observe the condition of the school-house and surroundings, note all defects, and notify the subdirector or board of the same.

SEC. 1775. (*a*) The blanks for these reports are furnished by the superintendents of the respective institutions.

(*b*) It shall be the duty of the county superintendent to report to the superintendent of the institution for feeble-minded children, on the first day of October of each year, the name, age, and post-office address of every person in his county between the ages of five and twenty-one, who, by reason of feeble mental and physical condition is deprived of a reasonable degree of benefit from the common schools. He shall also state in said report whether or not such person has ever attended school, and how long, if at all; and he shall also give the post-office address of the parent, guardian, or nearest friend of such person. Section 6, chapter 40, laws of 1882.

SEC. 1776. (As amended by Chap. 161, Laws of 1882.) The county superintendent shall receive from the county treasurer the sum of four dollars per day for every day necessarily engaged in the performance of official duties, and also the necessary stationery and postage for the use of his office, and he shall be entitled to such additional compensation as the board of supervisors may allow; provided, that he shall first file a sworn statement of the time he has been employed in his official duties, with the county auditor.

TAXES.

SECTION 1777. The board of directors shall, at their regular meeting in March of each year, or at a special meeting convened for that purpose, between the time designated for such regular meeting and the third Monday in May, estimate the amount required for the contingent fund, and also such sum as may be required for the teachers' fund, in addition to the amount received from the semi-annual apportionment, as shown by the notice from the county auditor, to support the schools of the district for the time required by law for the current year; and shall cause the secretary to certify the same, together with the amount voted for school-house purposes, within five days thereafter to the board of supervisors, who shall at the time of levying taxes for county purposes, subject to the provisions of section

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SEC. 1776. (*a*) The board of supervisors shall furnish the county superintendent with an office at the county seat, together with fuel, lights, blanks, books, and stationery necessary and proper to enable him promptly and properly to discharge the duties of his office; but in no case shall such officer be permitted to occupy an office also occupied by a practicing attorney. Section 3844, Code.

(*b*) The board of supervisors may not limit the county superintendent as to the number of days he shall give to his work, in order to comply with his oath of office. Having filed his sworn statement in the form prescribed by the board, he is entitled to his *per diem* for time actually employed. Their remedy, if they suspect he has filed a false statement, is to proceed against him for maladministration in office, as provided for in section 746, Code.

SEC. 1777. (*a*) This section requires boards to certify the specific sums necessary to be raised for teachers' and contingent fund to the board of supervisors, whose duty it is to estimate and levy the per centum necessary to raise the amounts so certified. Forms 33 and 34.

(*b*) Our supreme court have held in *Standard Coal Co. v. Ind. Dist. of Angus*, that a tax voted after the third Monday in May is void. The decision will be found in 73 Iowa, not printed at this date, June 1, 1888. This

seventeen hundred and eighty of this chapter, levy the per centum necessary to raise the sum thus certified upon the property of the district township, which shall be collected and paid over as are other district taxes.

SEC. 1778. They shall apportion any tax voted by the district township meeting for school-house fund, among the several subdistricts in such a manner as justice and equity may require, taking as the basis of such apportionment the respective amounts previously levied upon said subdistricts for the use of such fund; provided, that if the electors of one or more subdistricts at their last annual meeting shall have voted to raise a sum for school-house purposes greater than that granted by the electors at the last annual meeting of the district township, they shall estimate the amount of such excess on

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renders it essential that boards act promptly, and certify taxes within the required time.

(*c*) School-house funds must be voted by the electors. Only exception, section 1823.

(*d*) It is wholly within the discretion of the board of directors to determine the amounts required for the contingent and teachers' funds. 41 Iowa, 153. Any vote of the electors touching these amounts is only suggestive, and is not at all binding.

(*e*) Section 1780 limits the amount which may be levied in a district township for any one year, to fifteen dollars per scholar for teachers' fund and five dollars per scholar for contingent fund, but authorizes the levy of seventy five dollars for contingent, and two hundred and seventy dollars for teachers' fund for each subdistrict, even if the levy thereby exceeds five and fifteen dollars per scholar, for these funds.

(*f*) If the amount of school-house tax voted and certified by the board of directors in any year exceeds the limit which the board of supervisors are allowed to levy, under the provisions of section 1780, it is the duty of the board of directors to certify the amount of the deficiency from year to year until the whole amount is levied.

(*g*) The teachers' and contingent funds are not to be apportioned among the subdistricts, but levied uniformly on the taxable property of the district township.

(*h*) Chapter 67, laws of 1874, authorizes districts formed from territory lying in adjoining counties, to vote and certify to the respective boards of supervisors the number of mills on the dollar required to raise the necessary school taxes.

SEC. 1778. (*a*) All school-house taxes must be voted either by the district or by the subdistrict electors. Sections 1717 and 1807. When voted they must in all cases be certified to the board of supervisors S L. Decisions,

such subdistrict or subdistricts, and cause the secretary to certify the same within five days thereafter to the board of supervisors, who shall, at the time of levying taxes for county purposes, levy the per centum of such excess on the taxable property of the subdistrict asking the same, provided that not more than fifteen mills on the dollar shall be levied on the taxable property of any subdistrict for any one year for school-house purposes.

BOARD OF SUPERVISORS.

SECTION 1779. The board of supervisors of each county shall, at the time of levying the taxes for county purposes, levy a tax for the support of schools within the county, of not less than one mill, nor more than three mills on the dollar, on the assessed value of all the real and personal property within the county, which shall be collected by the county treasurer at the time and in the same manner as state and county taxes are collected, except that it shall be receivable only in cash.

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129. All taxes voted by the district township meeting must be apportioned among the subdistricts of the township. The basis of this apportionment is the aggregate number of mills previously levied upon the subdistricts of the township for school-house purposes. The apportionment should be made so as gradually to equalize these rates, in order that the school-house tax may, ultimately, be uniform throughout the district.

(*b*) The township electors may vote a tax for the erection of a school-house in any subdistrict, without previous action of the subdistrict electors. If the subdistrict electors vote to raise a sum for school-house purposes, it is the duty of the subdirector to certify the same to the district township meeting. If this duty is neglected, the board of directors are not authorized to certify the tax voted. Form 35.

(*c*) Whatever portion of the sum properly certified the district meeting neglects or refuses to grant must be certified and levied direct'y upon the subdistrict making the request, in addition to the equitable portion of the whole amount voted by the district township meeting. If the meeting refuses to vote any amount, the whole must be certified and levied upon the subdistrict. 69 Iowa, 533.

(*d*) The tendency of the action of the subdistrict electors in voting school-house taxes is to produce unequal rates of taxation for school-house purposes, and otherwise greatly to complicate the raising of school-house funds; hence, unless the necessities of the case absolutely require, such action should not be encouraged. All necessary school-house taxes should, as a rule, be voted by the district township meeting. Note (*c*) to form 3.

SEC. 1780. They shall also levy at the same time the district school tax certified to them from time to time by the respective district secretaries; provided that the amount levied for school-house fund shall not exceed ten mills on the dollar, on the property of any district, and the amount levied for contingent fund shall not exceed five dollars per pupil, and the amount raised for teachers' fund, including the amount received from the semi-annual apportionment, shall not exceed fifteen dollars per pupil for each pupil residing in the district, as shown by the last report of the county superintendent. And if the amount certified to the board of supervisors exceeds this limit, they shall levy only to the amount limited; provided that they may levy seventy-five dollars for contingent fund, and two hundred and seventy dollars, including the amount received from the semi-annual apportionment, for the teachers' fund for each subdistrict.

COUNTY AUDITOR.

SECTION 1781. The county auditor shall, on the first Monday in April and the fourth Monday in September of each year, apportion the county school tax, together with the interest of the permanent school fund to which his county is entitled, and all other money in the hands of the county treasurer belonging in common to the schools of his county, and not included in any previous apportionment among the several subdistricts therein, in proportion to the number of persons between five and twenty-one years of age, as shown by the report of the county superintendent, filed with him for the year immediately preceding.

SEC. 1780. (*a*) The first proviso does not apply where a larger tax is required to meet the interest on valid outstanding bonds. 69 Iowa, 612.

(*b*) The second proviso in this section was added for the relief of sparsely settled townships, in which five dollars per scholar for contingent fund and fifteen dollars per scholar for teachers' fund, is not adequate to maintain schools for the time required by law. In such districts these limits may be exceeded, providing that not more than $75 contingent fund, and $270, including the semi-annual apportionment, for teachers' fund, is levied for each subdistrict in the township.

SEC. 1781. (*a*) For the basis of the apportionment to new districts, see note (*f*) to section 1772.

(*b*) The word subdistricts in the seventh line of this section, evidently means the present *district*.

SEC. 1782. He shall immediately notify the president of each school district of the sum to which his district is entitled by said apportionment, and shall issue his warrant for the same to accompany said notice, which warrant shall be also signed by the president and countersigned by the secretary of the district in whose favor the same is drawn; and shall authorize the district treasurer to draw the amount due said district from the county treasurer; and the secretary shall charge the treasurer of the district with all warrants drawn in his favor, and credit him with all warrants drawn on the funds in his hands, keeping separate accounts with each fund.

SEC 1783. He shall forward to the superintendent of public instruction, a certificate of the election or appointment and qualification of the county superintendent; and shall, also, on the second Monday in February and August of each year, make out and transmit to the auditor of state, in accordance with such form as said auditor may prescribe, a report of the interest of the school fund then in the hands of the county treasurer, and not included in any previous apportionment, and also the amount of said interest remaining unpaid.

COUNTY TREASURER.

SECTION 1784. The county treasurer shall, on the first Monday in April of each year, pay over to the treasurer of the district, the amount of all school district tax which shall have been collected, and shall render him a statement of the amount uncollected, and shall pay over the amount in his hands quarterly, thereafter. He shall also keep the amount of tax levied for school-house purposes, separate in each subdistrict, where such levy has been made directly upon the property of the subdistrict making the application, and shall pay over the same, quarterly, to the township treasurer for the benefit of such subdistrict. He shall, in all counties wherein independent districts are

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SEC. 1783. It is important that the certificate referred to, should be promptly forwarded to the superintendent of public instruction; otherwise, the interests of the county may suffer by the transaction of business with persons not duly authorized to act. The certificate should in all cases certify to the qualification, as well as the election or appointment of the county superintendent; for, although he may be properly elected or appointed, yet he cannot be recognized until it is known that he has taken the necessary oath of office, and filed the required bond. Whenever any change is made by resignation or otherwise, a certificate of the appointment and qualification of a successor should be immediately forwarded. Forms 37 and 38.

organized, keep a separate account with said independent districts, in which the receipts shall be daily entered, which books shall at all times be open to the inspection and examination of the district board of directors, and shall pay over to the said independent districts the amount of school taxes in his possession on the order of the board, on the first day of each and every month.

SEC. 1785. On the first day of each quarter, the county treasurer shall give notice to the president of the school board of each township, in his county, of the amount collected for each fund; and the president of each board shall draw his warrant, countersigned by the secretary, upon the county treasurer, for such amount, who shall pay the amount of such taxes to the treasurers of the several school boards, only on such warrants.

MISCELLANEOUS.

SECTION 1786. (As amended by Chap. 73, Laws of 1886.) All fines and penalties collected from a school district officer by virtue of any of the provisions of this chapter, shall inure to the benefit of that particular district. Those collected from any member of the board of directors, shall belong to the district township, and those collected from county officers, to the county. In the two former cases, suit shall be brought in the name of the district township; in the latter, in the name of the county and by the county attorney. The amount in each case shall be added to the fund next to be applied by the recipient, for the use of common schools.

SEC. 1787. When a judgment has been obtained against a school district, the board of directors shall pay off and satisfy the same from the proper fund, by an order on the treasurer; and the district

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SEC. 1785. (*a*) The three funds, school-house, teachers', and contingent, must be kept separate by the county treasurer, as directed in this section, to enable school officers to comply with the law in the discharge of their official duties. Sections 1739, 1741, 1745, 1748, 1750, and 1782.

(*b*) The division of funds made by the county treasurer should be respected by the board, unless the electors direct school-house funds unappropriated transferred to other funds. This is the only transfer provided for by law.

SEC. 1786. The sureties on an official bond cannot be held after the lapse of three years. Section 2529, Code.

SEC. 1787. An order drawn under this section is not entitled to payment to the exclusion of other orders on the school-house fund. 40 Iowa, 620.

meeting, at the time for voting a tax for the payment of other liabilities of the district, shall provide for the payment of such order or orders.

SEC. 1788. In case a school district has borrowed money of the school fund, the board of supervisors shall levy such tax, not exceeding five mills on the dollar in any one year, on the taxable property of the district as constituted at the time of making such loan, as may be necessary to pay the annual interest on said loan, and the principal, when the same falls due, unless the board of supervisors shall see proper to extend the time of said loan.

SEC. 1789. (As amended by Chap. 51, Laws of 1888.) No district township or subdistrict meeting shall organize earlier than nine o'clock A. M., nor adjourn before twelve o'clock M.; and in all independent districts having a population of three hundred and upward, the polls shall remain open from twelve o'clock M to seven o'clock P. M.

SEC. 1790. Any school director, or director elect, is authorized to administer to any school director elect, the official oath required by

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SEC. 1789. (*a*) The object of this section is to prevent a few designing persons from meeting at an unusual hour, dispatching the business with unseemly haste, and adjourning before many of the electors arrive. The meeting should be conducted with entire fairness, and an opportunity given for an expression of the real sentiment of the district.

(*b*) In district townships, subdistricts, and in independent districts containing less than three hundred inhabitants, the meeting may be organized at any time after 9 o'clock A. M., and before 6 o'clock P. M., and may continue as much more than three hours as the circumstances may require.

(*c*) The law contemplates at least three hours for the election in any case. Iowa Reports, 37, 131; 39, 381.

(*d*) Chapter 169, laws of 1888, legalizes all meetings held in compliance with the former law, through failure to receive notice of the amendment.

(*e*) Independent districts of 15,000 and upwards are not governed by this section. Chapter 8, laws of 1880.

SEC. 1790. (*a*) When an election is contested, the person elected shall have twenty days in which to qualify, after the date of the decision. Section 687, Code.

(*b*) The secretary, unless he is a member of the board, a notary public, or other civil officer qualified to administer oaths, cannot administer the oath to subdirectors. A subdirector, whether holding over or elected, can administer the oath of qualification.

law, and said official oath may be taken, on or before the third Monday in March following the election of directors.

SEC. 1791. 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, taking a receipt therefor; 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 shall misapply any moneys entrusted to him by virtue of his office, shall be liable to the provisions of the general statutes for the punishment of such offense.

SEC. 1792. Nothing in this chapter shall be so construed as to give the board of directors of a district township jurisdiction over any territory included within the limits of any independent district.

ATTENDANCE.

SECTION 1793. (As amended by Chap. 64, Laws of 1876, and Chap. 41, Laws of 1878.) Children residing in one district may attend school in another in the same or adjoining county or township, on such terms as may be agreed upon by the respective boards of directors; but in case no such agreement is made, they may attend school in any such adjoining district, with the consent of the county superintendent of the county where said pupils reside and the board of directors of said adjoining district, when they reside nearer the school in said district, and one and a half miles or more, by the nearest traveled highway, from any school in their own. The board of

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(c) The decision of a tie vote, as made by chapter 7, laws of 1880, may make it impossible for the person chosen to qualify on the third Monday in March. In such case, the board should fix a reasonable time within which the person must qualify. The provisions of section 687, Code, may perhaps apply. See note (*a*) above.

SEC. 1791. The language of this section includes copies of the school laws, school journals, reports, and all other publications which may be received by virtue of being a school officer. Sections 3908, 3917, 3918, and 3929, Code.

SEC. 1793. (*a*) If scholars reside more than one and one-half miles from a school in their own district and nearer to a school in an adjoining district, which they desire to attend, application should first be made to both boards of directors; if the boards refuse to enter into an agreement, they may attend school in such adjoining district with the consent of the board of the district where they desire to attend and of the county superintendent of the county in which the children reside.

directors of the township in which such children reside, shall be notified in writing, and the district in which they reside shall pay to the district in which they attend school, the average tuition of said children per week, and an average proportion of the contingent expenses of said district where they attend school; and in case of refusal so to do, the secretary shall file the account for said tuition and contingent expenses, certified to by the president of his board, with the county auditor of the county in which said children reside, and the said county auditor shall, at the time of making the next semi-annual apportionment thereafter, deduct the amount so certified from the sum apportioned to the district in which said children reside and cause it to be paid over to the district in which they have attended school.

(*b*) The notice referred to cannot be said to be officially transmitted unless signed by both the president and secretary. Payment for attendance can be collected from the district where the children reside, only from the date of such notice. Form 40.

(*c*) This notice holds only for the term, or such time as the county superintendent and board name in their written concurrent agreement.

(*d*) Depositing a letter in a post-office without further proof that such letter reached the party addressed, is not a legal notice as required by section 1793 to secure payment of tuition on the part of an adjoining district.

(*e*) The average proportion of tuition and contingent expenses for any number of scholars is found by dividing the amount expended for these purposes in the subdistrict where they have attended, by the total attendance in days, and multiplying the quotient by the number of days said scholars have attended.

(*f*) When scholars attend a graded school, the average tuition should be computed on the basis of the expense of each pupil in the grade or room in which such scholars are placed; the average expense of contingent fund may be computed as a part of the whole contingent expense of such school.

(*g*) If scholars reside nearer to a school in their own district, or within one and one-half miles of one, they can attend school in an adjoining district at the expense of their own district, only by an agreement of both boards.

(*h*) In no case may scholars attend school in a district in which they do not reside, without the consent of the board thereof. The distance should, in all cases, be computed by the nearest public road.

(*i*) This section applies also to all independent districts, whether in the same or in adjoining civil townships.

(*j*) Any other action than compliance with the absolute and explicit terms of the law, will render the collection of tuition impossible. S. L. Decisions, 107.

SEC. 1794. Pupils who are actual residents of a district shall be permitted to attend school in the same, regardless of the time when they acquired such residence, whether before or after the enumeration, or of the residence of their parents or guardians; but pupils who are sojourning temporarily in one district, while their actual residence is in another, and to whom the last preceding section is not applicable, may attend school upon such terms as the board of directors may deem just and equitable.

SEC. 1795. Pupils may attend school in any subdistrict of the district township in which they reside, with the consent of the subdirector of such subdistrict, and of the subdirector of the subdistrict in which such pupils reside.

BOUNDARIES.

SEC. 1796. The board of directors shall, at their regular meeting in September, or at any special meeting called thereafter for that

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SEC. 1794. (*a*) The residence of the scholar, and not of the parent, determines his right to attend school. The parent may reside in one district, and the child in another. If the parent sends him into another district to remain for a limited period, he may attend school only on such terms as are prescribed by the board. S. L. Decisions, 113.

(*b*) If parties aver that their residence is in the district, the board may not refuse to admit them free of tuition, or refusing, the board may be compelled by mandamus to permit attendance and equal advantages with others.

(*c*) When there is a question of doubt whether parties are entitled by their residence to school privileges, since the fact of residence depends upon the intention of the parties themselves, their affidavits are the best guide to determine the matter.

SEC. 1795. (*a*) In order that scholars may attend in another subdistrict in their own district township, it is necessary to have the consent of both subdirectors. Since this matter is placed in the hands of the subdirectors, the board have no control, and the only remedy is such a redistricting, under section 1796, as will better accommodate all parties.

(*b*) Special powers delegated to the subdirector by the law, as, for instance, the control of the school-house in his own subdistrict, and the right to determine whether scholars may attend from or in a neighboring subdistrict cannot be assumed by the board. Sections 1753 and 1795.

SEC. 1796. (*a*) While this section provides that boards may change subdistrict boundaries at the regular meeting in September, or at a special meeting called for that purpose, it must be understood that such change cannot be made so late as to prevent the notices for election from being given at least five days previous to the election, as required by section 1718.

purpose, divide their township into subdistricts, such as justice, equity, and the interests of the people require; and may make such alterations of the boundaries of subdistricts heretofore formed, as may be deemed necessary; and shall designate such subdistricts, and all subsequent alterations, in a distinct and legible manner, upon a plat of the district provided for that purpose; and shall cause a written description of the same to be recorded in the district records, a copy of which shall be delivered by the secretary to the county treasurer, and also to the county auditor, who shall record the same in his office; provided that the boundaries of subdistricts shall conform to the lines of congressional divisions of land; and that the formation and alteration of subdistricts as contemplated in this section shall not take effect until the next subdistrict election thereafter, at which election a subdirector shall be elected for the new subdistrict.

SEC. 1797. In cases where, by reason of streams or other natural obstacles, any portion of the inhabitants of any school district cannot, in the opinion of the county superintendent, with reasonable facility, enjoy the advantages of any school in their township, the said county superintendent, with the consent of the board of directors of such district as may be affected thereby, may attach such part of said township to an adjoining township, and the order therefor shall be transmitted to the secretary of each district, and be by

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(*b*) It requires a vote of a majority of all the members of the board to make any change in the boundaries of subdistricts. Section 1738.

(*c*) It is especially important that the county auditor and treasurer be officially notified by the district secretary, whenever any changes are made in district boundaries, by the formation of independent districts or otherwise, to enable these officers to perform their duties in the levy of taxes, and the apportionment and disbursement of school funds.

(*d*) By congressional divisions of land is meant those divisions authorized by congress in government surveys, of which the smallest is, in general, one-sixteenth of a section, or a tract of forty acres in a square form. Government lines, however, sometimes meander along streams and other bodies of water, and divisions of land are thus formed of less than forty acres. School Law Decisions, 111.

SEC. 1797. (*a*) This section contains the only provision of law under which a subdistrict can be formed from parts of two or more civil townships. The law should be strictly complied with, or the proceedings will be invalid. Subdistricts cannot be formed from portions of two counties.

(*b*) Streams well bridged, and distance, are not natural obstacles in the contemplation of the law.

him recorded in his records, and the proper entry made on his plat of the district.

SEC. 1798. (As amended by Chap. 160, Laws of 1882.) In all cases where territory has been, or may be, set into an adjoining county or township, or attached to any independent school district in any adjoining county or township, for school purposes, such territory may be restored by the concurrence of the respective boards of directors; but on the written application of two thirds of the electors residing upon the territory wherein such township or independent district in which the school-house is not situated, the said boards shall restore the territory to the district to which it geographically belongs; provided however that no such restoration shall be made unless there are fifteen or more pupils between the ages of five and twenty-one years, actually residing upon said territory sought to be restored, and not until there has been a suitable school-house erected and completed, within the limits of said territory, suitable for school purposes.

SEC. 1799. The boundary lines of a civil township shall not be changed by the board of supervisors of any county, so as to divide any school district by changing the boundary lines thereof, except when a majority of the voters of such district shall petition therefor; provided however that this shall not prevent the change of the boundary lines of any civil township, when such change is made by adopting the lines of congressional townships.

(c) Such subdistricts can be formed only by concurrent action of the board of the district from which the territory is taken and the county superintendent. As the county superintendent has original concurrent jurisdiction, no appeal can be taken from the board's refusal to give consent.

SEC. 1798. When the boundaries of districts are changed, the territory transferred carries with it a just proportion of all assets and liabilities of the district from which it is taken. 53 Iowa, 77.

SEC. 1799. (*a*) District township boundaries must conform to the boundaries of civil townships under the provisions of section 1713. The boundaries of independent districts are not affected by the change of civil township boundaries.

(*b*) The words school district in this section mean also subdistrict. Section 379, Code.

FORMATION OF INDEPENDENT DISTRICTS.

SECTION 1800. (As amended by Chap. 139, Laws of 1880.) Any city, town or village containing not less than two hundred inhabitants within its limits, may be constituted a separate school district; and territory contiguous to such city, town or village, may be included with it as a part of said separate district, in the manner hereinafter provided. The village herein mentioned shall be understood to be a collection of inhabitants residing within the limits of a town plat, and not organized into a city or incorporated town.

SEC. 1801. At the written request of any ten legal voters residing in such city or town, the board of directors of the district township shall establish the boundaries of the contemplated school district, including such contiguous territory as may best subserve the convenience of the people for school purposes, and shall give at least ten days' previous notice of the time and place of meeting of the electors

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SEC. 1800. (*a*) The two hundred inhabitants must be contained within the limits of the town or village. 70 Iowa, 434. Additional territory should be given by the board in forming the new independent district. Usually, territory equivalent to about four government sections, will constitute a proper district.

(*b*) An independent district cannot be formed from a city, town or village situated within an *independent* district, because no *district township* board can establish the boundaries, as provided by sections 1801 and 1805.

SEC. 1801. (*a*) The contemplated independent district must include all of the city, town or village, and may include as much contiguous territory as the board think proper. It is not limited by subdistrict lines, but may, if necessary, include a part or all of two or more subdistricts. When the boundaries extend beyond the limits of a town or city; they must conform to lines of congressional divisions of land. Note (*a*) to section 1800.

(*b*) The board of the district township in which a majority of the voters of the contemplated independent district reside, may establish the boundaries of said district without the concurrence of any other board, even when said territory is taken from two or more civil townships in the same or adjoining counties. Section 1805.

(*c*) The notices of the election to determine the question of a separate organization should state clearly the boundaries of the proposed district.

(*d*) The president and secretary of the district township should act as chairman and secretary of this meeting, and as judges of election; in their absence a chairman and secretary should be chosen by the electors.

(*e*) All of the electors residing within the proposed limits must be permitted to vote on the question of separate organization. 17 Iowa, 85.

residing in said district, by posting written notices in at least five conspicuous places therein; at which meeting the said electors shall vote by ballot, for or against, a separate organization.

SEC. 1802. (As amended by Chap. 27, Laws of 1874, and Chap. 143, Laws of 1880.) Should a majority of votes be cast in favor of such separate organization, the board of directors of the district township, shall give similar notice of a meeting of the electors for the election of six directors. Two of these directors shall hold their office until the first annual meeting after their election, and until their successors are elected and qualified; two until the second, and two until the third annual meeting thereafter; their respective terms of office to be determined by lot. The six directors shall constitute a board of directors for the district, and they shall, at their first regular meeting in each year, elect a president from their own number; and at their meeting on the third Monday of September in each year, a secretary and treasurer to be chosen outside of the board; provided that in all independent districts having a population of less than five hundred, there shall be three directors elected, who shall organize by electing a president from their own number, also a secretary, who may or may not be a member of the board, and a treasurer, who shall

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(*f*) At the meeting to determine the question of separate organi zation the polls must remain open from 9 o'clock A. M. until 4 o'clock P. M. 34 Iowa, 306.

SEC. 1802. (*a*) The first board will enter upon the discharge of official duties as soon as qualified, and organize by electing a president, a secretary and a treasurer; the term of office of the president will expire on the third Monday in March following his election; of the secretary and treasurer on the third Monday in September after their election.

(*b*) The secretary should immediately file with the county superintendent, auditor and treasurer, each, a certificate, showing the officers of the board, and their post-office address, and should notify them of all subsequent changes made in the officers of the board. Section 1736.

(*c*) In all independent districts, the president is chosen by the board, from their own number, on the third Monday in March. He has the right to vote on all questions coming before the board. Note (b) to section 1739.

(*d*) The secretary and treasurer are elected on the third Monday in September. In districts containing over five hundred inhabitants, they must be chosen outside of the board. In districts containing less, the secretary may or may not be chosen from the board, but the treasurer must be chosen outside the board. Chosen from the board, of course the secretary has a vote.

(*e*) The secretary and the treasurer have ten days in which to qualify. Section 1721.

not be a member of the board; and provided further that in all independent districts already organized, the terms of office of such directors as may have been chosen previous to the taking effect of this section for two or three years, shall not be interfered with by its passage.

SEC. 1803. Said meeting for the first election of directors shall organize by appointing a president and secretary, who shall act as judges of the election, and issue a certificate of election to the persons elected.

SEC. 1804. The organization of such independent district shall be completed, on or before the first day of August of the year in which said organization is attempted, and when such organization is thus completed, all taxes levied by the board of directors of the district township of which the independent district formed a part, in that year, shall be void so far as the property within the limits of the independent district is concerned; and the board of directors of such independent district shall levy all necessary taxes for school purposes, as provided by law, for that year, at a meeting called for that purpose, at any time before the third Monday of August of that year, which shall be certified to the board of supervisors, on or before the first Monday of September, and said board of supervisors shall levy said tax at the time, and in the manner, that school taxes are requireed to be levied in other districts.

(*f*) The last official census will, as a general rule, be sufficiently accurate to determine questions relating to the population; but in case of doubt, the actual existing facts govern; which may be ascertained by any reliable means.

(*g*) In case the board fail to elect an officer on the day fixed by law, or at an adjourned meeting the day of which was fixed at adjournment, the incumbent holds over, and should qualify anew. Section 690, Code.

(*h*) If the treasurer continues in office by reason of failure to elect a successor, his bond should be renewed and he should produce and account for the funds in his hands, and the statement of such settlement should be indorsed on his new bond. Note (*d*) to section 1751.

(*i*) All proceedings connected with the organization of the district should be recorded by the secretaries in the records of the districts, so that the facts concerning its formation and organization may be readily obtained, in case the validity of the proceedings should ever be questioned.

SEC. 1804. (*a*) This section is construed to mean that the organization contemplated must be made between January first and the first of August.

(*b*) When a new independent district is organized, as provided by this section, the board have authority to determine and certify all necessary taxes, for school purposes, for that year, including school-house taxes.

SEC. 1805. In case such district is formed of parts of two or more civil townships in the same or adjoining counties, the duty of giving the notice shall devolve upon the board of directors of the township in which a majority of the legal voters of the contemplated district reside.

SEC. 1806. Said district may have as many schools, and be divided into such wards and other subdivisions for school purposes, as the board of directors may deem proper; and shall be governed by the laws enacted for the regulation of district townships, so far as the same may be applicable.

INDEPENDENT DISTRICT ELECTION.

SECTION 1807. (As amended by Chap. 131, Laws of 1886.) It shall be lawful for the electors of any independent district, at the annual meeting of such district, to vote a tax, not exceeding ten mills on the dollar, in any one year, on the taxable property of such district, as the meeting may deem sufficient for the purchase of grounds and the construction of the necessary school-houses for the use of such independent district, and for the payment of any debts contracted for the erection of such school-houses, and for procuring a library and apparatus for the use of the schools of such independent district. And said electors may direct the sale or other disposition to be made of any school-house or the site thereof, or any part of such site, and of such other property, real and personal, as may belong to the independent district, and direct the manner in which the proceeds arising therefrom shall be applied.

SEC. 1805. An independent district composed of territory from two counties, belongs, for school purposes, to the county wherein a majority of the scholars reside. A certificate to teach should be issued by the superintendent of the county to which it thus belongs, which certificate is valid for any school in the district.

SEC. 1807. (*a*) The power to vote school-house taxes belongs exclusively to the electors. The amount deemed necessary, and not a certain number of mills, should be voted. The sums necessary for the teachers' and contingent funds are determined by the board of directors. 41 Iowa, 180.

(*b*) The electors frequently assume powers not granted to them by the law. They have only such powers as are specifically named in the law.

(*c*) Independent districts of 15,000 and upwards are governed by chapter 8, laws of 1880.

SEC. 1808. (As amended by Chap. 7, Laws of 1880.) The annual meeting of all independent districts shall be held on the second Monday in March, for the transaction of the business of the district, and for the election by ballot of two directors, as the successors of the two whose term expires, who shall continue in office for three years; and the president, secretary, and one of the directors then in office, shall act as judges of the election, and shall issue certificates of election to the persons elected for the ensuing term; provided, that in all independent districts, having a population of less than five hundred, there shall be elected, annually, one director, who shall continue in office for three years. In cases of a tie vote in the election of director, or directors, the secretary shall notify them to appear at the regular meeting of the board on the third Monday in March, to determine their election by lot before one or more members of the board elected, and the certificate of election shall be given accordingly. Should either party fail to appear or take part in the lot, the secretary shall draw for him.

CHANGES IN FORM OF DISTRICT.

SECTION 1809. When an independent district has been formed out of a civil township, or townships, as herein contemplated, the remainder of such township, or of each of such townships, as the case may be, shall constitute a district township as provided in section seventeen hundred and thirteen of this chapter, and the boundaries between

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SEC. 1808. (*a*) All vacancies which have occurred in the board, during the year, should also be filled by election, and the ballot should designate the vacancy to be filled; the persons so elected hold for the residue of the unexpired term; all persons appointed to fill vacancies in office hold until the next regular election. Constitution of Iowa, article 11, section 6; also, section 785, Code.

(*b*) Members elect enter upon their duties at the time of the regular meeting of the board, on the third Monday in March. For time and manner of choosing officers of the board, see sections 1721, 1790, 1802, 1806, and notes.

(*c*) In independent districts, a director holding over and qualifying anew is only entitled to hold the office until it can be filled at the next election. 54 Iowa, 487.

SEC. 1809 (*a*) The change of boundaries authorized by this section may be made at any time of year.

(*b*) If the boundary between an independent district and district township is the line of the civil township, it cannot be changed; but if the inde-

such district township and independent district may be changed, or the independent district abandoned, at any time, with the concurrence of the respective boards of directors.

SEC. 1810.[c] In case an independent district embraces a part or the whole of a civil township which has no separate district township organization, upon the written application of two-thirds of the electors residing upon the territory of such independent district, and within such civil township, to the board of directors, they shall set off such territory, whether provided with school-houses or not, to be organized as a district township in the manner provided for such organization when a new civil township is formed.

SEC. 1811. (As amended by Chap. 63, Laws of 1888.) Independent districts located contiguous to each other, may unite and form one and the same independent district, in the manner following: At the written request of any ten legal voters residing in each of said independent districts, or, should there not be ten legal voters in one of such districts, then at the written request of the majority of such voters, their respective boards of directors shall require their secretaries to give at least ten days' notice of the time and place for a meeting of the electors residing in such districts, by posting written notices in at least five public places in each of said districts, at which

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pendent district includes a portion of a civil township, the remainder of which constitutes a district township, the boundaries may be changed.

(*c*) Chapter 62, laws of 1888, provides for change of boundaries between adjoining independent districts in the same civil township.

(*d*) Where a change of boundaries between districts is desired, and one of the boards acts favorably to the change, a petition may be presented to the other board to concur in that action, although they formerly may have refused to grant a similar petition. From the action of the latter board upon this petition, an appeal may be taken.

(*e*) No appeal can be taken from an action of the board taking the initiatory step, while it requires the concurrence of another board to complete the action. The concurrence or non-concurrence of the second board is the order from which an appeal may be taken. S. L. Decisions, 24 and 58.

(*f*) When an appeal is taken from the proper board, the county superintendent must affirm the action of one board or the other, but cannot himself modify the action of the board acting first.

(*g*) Territory transferred from one district to another carries with it an equitable proportion of the assets and liabilities of the district from which it is taken; the district accepting it becoming responsible for such liabilities.

meetings the said electors shall vote by ballot for or against a consolidated organization of said independent districts; and if a majority of the votes cast at the election in each district, shall be in favor of uniting said districts, then the secretaries shall give similar notice of a meeting of the electors as provided for, by the law, for the organization of independent districts. The independent district thus consolidated shall be completed, and its directors governed by the same provisions of the law which apply to other independent districts. Where from the courses of Iowa rivers, and the contour of the adjoining territory, theproper school facilities cannot be given to the school children of each territory by forming school districts from the territory in any one county, independent school districts may be formed from the contiguous territory in adjoining counties. Any independent school district heretofore formed under this section, where there were less than ten legal voters residing therein at the time of the consolidation, is hereby legalized and made valid provided that two-thirds of the legal voters then residing in such independent district petition for such consolidation.

SEC. 1812. Where, under the school laws of the state heretofore in force, for the convenience and accommodation of the people, school districts were formed of portions of two counties of territory lying contiguous to each other, at the written request of five legal voters residing in portions of said territory in each county, the board of directors of the district township to which such territory belongs, having a majority of the legal voters, shall fix the boundaries of an independent school district composed of such sections of land, or portions thereof, as may be described in the petition therefor, and shall give at least ten days' notice of the submission of the question of the formation of said independent district, at a special election for said purpose, specifying the boundaries of the district, the time and place of meeting of the electors for such election, at which meeting the electors in the contemplated district shall vote by ballot for or against the separate organization. Should a majority of the votes be cast in favor of such separate organization, the said board of directors shall proceed by ballot to elect officers in the manner provided by law, and organize such independent district.

SEC. 1812. The language of the last clause is construed to mean that the board shall proceed to call an election in the independent district for the election of directors, as provided by section 1802.

SEC. 1813. The boards of directors of the several independent school districts are hereby required to publish, two weeks before the annual school election in such district, by publication in one or more newspapers, if any are published in such district, or by posting up in writing, in not less than three conspicuous places in such independent district, a detailed and specific statement of the receipts and disbursements of all funds expended for school and building purposes, for the year preceding such annual election. And the said boards of directors shall also, at the same time, publish in detail, an estimate of the several amounts which, in the judgment of such board, are necessary to maintain the schools in such district, for the next succeeding school year; and failure to comply with the provisions of this section, shall make each director liable to a penalty of ten dollars.

SEC. 1814. Township districts may be consolidated and organized as independent districts, in the following manner: Whenever the board of directors of any existing district township shall deem the same advisable, and also whenever requested to do so by a petition signed by one-third of the voters of the district township, the board shall submit to the voters of said district township, at a regular election, or one called for the purpose, the question of consolidation, at which election the voters of the district township shall vote for, or against consolidation. If a majority of votes shall be in favor of such consolidated organization, such district township shall organize on the second Monday of March following, as an independent district; provided that in townships which have been divided into independent districts, the duties in this section devolving on the board of di-

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SEC. 1813. (*a*) This statement should show the total receipts and expenditures for each fund, followed by an estimate of the amount required for each fund, to maintain the schools for the ensuing year. The detailed and specific statement of the receipts and disbursements of all funds expended, should be sufficiently itemized to show the amount received from each separate source, also the amount expended for each particular purpose.

(*b*) This statement is for the information of the electors, but they should not vote upon the amount of taxes to be levied for contingent and teachers' fund, since these matters are determined by the board. Section 1777.

SEC. 1814. (*a*) Any district township may organize into a single independent district, embracing the whole township. The vote may be ordered at any regular or special meeting of the board, and submitted to the electors at any time of the year, but if carried in the affirmative, does not take effect until the second Monday in March following, when the directors are elected.

rectors, shall be performed by the trustees of the township, to whom the petition shall in such cases be addressed; and provided further that nothing in this section shall be construed to affect independent districts composed wholly or mainly of cities or incorporated towns. Independent districts may, in like manner, change their boundaries so as to form any number of districts less than the number of districts existing at the time such change is asked for, and such changes shall be specified in the notices for a vote thereon.

SEC. 1815. (As amended by Chap. 155, Laws of 1876.) The independent districts of a civil township may be constituted a district township in the manner hereinafter provided.

SEC. 1816. (As amended by Chap. 155, Laws of 1876.) At the written request of one-third of the legal voters residing in any civil township, which is divided into independent districts, the township trustees shall call a meeting of the qualified electors of such civil

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(*b*) By adopting the independent district system, there will be but six directors in any case, and but three where the township contains less than five hundred inhabitants. At the first election the whole number is elected, and divided by lot into three classes; after which, one or two directors only will be elected annually.

(*c*) When independent districts have been formed from the subdistricts of a township, they may also, under the provisions of this section, unite into one independent district. In this case the petition of one-third of the electors in the township should be presented to the township trustees, whose duty it is to call the meeting to vote on the question of consolidation.

(*d*) The plan of making each civil township an independent district, governed by a board chosen from the township at large, is, in many respects, the best system yet devised. It reduces the number of school officers, provides for gradual changes in the board, secures uniform taxation for the support of schools throughout the township, encourages the establishment of graded schools for advanced scholars, and tends to the selection of teachers according to the qualifications and work required in each single case.

SEC. 1815. (*a*) The electors of any civil township which has adopted the independent district organization, may vote upon the question of returning to the district township organization, under sections 1815-1820, as amended. This operates as a repeal of these sections as found in the Code of 1873.

(*b*) A single independent district, embracing the whole of the civil township, may be formed by section 1814; a system possessing many advantages over any other, in simplicity of organization, permanency of officers, uniformity of taxation, and economy of management. Note (*d*) to section 1814.

SEC. 1816. (*a*) The petition provided for in this section may be presented to the trustees and the vote ordered at any time of the year.

township, at the usual place of holding the township election, by giving at least ten days' notice thereof, by posting three written notices in each independent district in the township, and by publication in a newspaper, if one be published in such township, at which meeting the said electors shall vote by ballot for or against a district township organization.

SEC. 1817. (As amended by Chap. 155, Laws of 1876.) If a majority of the votes cast at such election be in favor of such district township organization, each independent district shall become a subdistrict of the district township, and shall organize as such subdistrict on the first Monday in March following, by the election of a subdirector.

SEC. 1818. (As amended by Chap. 155, Laws of 1876.) Each subdistrict so formed shall hold a meeting on the first Monday in March, for the election of a subdirector; five days' notice of which meeting shall be given by the secretary of the old independent district, by posting written notices in three public places in each district, which notices shall state the hour and place of meeting.

SEC. 1819. (As amended by Chap. 155, Laws of 1876.) District townships organized under the provisions of the preceding four sections, shall be governed and treated in all respects as other district townships; provided that nothing in this act shall be construed to

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(*b*) The meeting held to determine the question of district township organization, is a township meeting; if the vote is in the affirmative, each and every independent district in the township, except those composed of cities or towns, becomes a subdistrict of the district township.

(*c*) The township trustees may act as judges of this election; in their absence the electors assembled may choose a chairman and one or two secretaries to act as judges. The polls should be kept open from 9 A. M. to 4 P. M. Note (*f*) to section 1801.

SEC. 1817. The board of each independent district will continue to act until the third Monday in March following the election, at which time a full statement of all assets and liabilities of the district should be reported to the board of the district township when organized.

SEC. 1818. For powers and duties of this meeting, see sections 1718 and 1719 and notes.

SEC. 1819. (*a*) Upon the organization of the district township, the secretary should file with the county auditor and treasurer a certified plat of the district, and report to the county superintendent, auditor and treasurer the name and address of each officer of the board.

affect independent districts composed, wholly or mainly, of cities or incorporated towns.

SEC. 1820. (As amended by Chap. 155, Laws of 1876.) When any district township is organized under the provisions of the preceding five sections, the subdirectors shall organize as a board of directors, on the third Monday in March, and make an equitable settlement of the then existing assets and liabilities of the several independent districts.

BONDS.

SECTION 1821. (As amended by Chap. 121, Laws of 1876.) Independent school districts shall have the power and authority to borrow money, for the purpose of redeeming outstanding bonds, and erecting and completing school-houses, by issuing negotiable bonds of the independent district, to run any period not exceeding ten years, drawing a rate of interest not to exceed ten per centum per annum, which interest may be paid semi-annually; which said indebtedness shall be binding and obligatory on the independent district for the use of which said loan shall be made; but no district shall permit a greater

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(*b*) The district township meeting should be held on the second Monday in March, for the purpose of voting the necessary school-house taxes, as provided in section 1717.

SEC. 1820. (*a*) Between the time of the election provided for in section 1816, and the third Monday in March following, the boards of the several independent districts have authority to perform all necessary acts relating to the affairs of their districts, but they cannot incur any indebtedness, nor make any contracts, except such as may be necessary to maintain the usual schools of their districts.

(*b*) The district township receives all the assets and assumes all the liabilities of the several independent districts. In case an independent district has issued bonds, or otherwise incurred an indebtedness, for the erection of a school-house, the board of the district township have authority to apportion school-house taxes for the payment of such indebtedness, from time to time, as justice and equity may require.

SEC. 1821. (*a*) Bonds voted under the provisions of this section may be issued and sold as the necessities of the independent district require, but cannot be made available for the purchase of school-house sites.

(*b*) Chapter 132, laws of 1878, and chapter 51, laws of 1880, provide for the issue of bonds by the board to fund judgment indebtedness.

outstanding indebtedness than an amount equal to five per centum of the last assessed value of the property of the district.

SEC. 1822. (As amended by Chap. 59, Laws of 1880.) The directors of any independent district, may submit to the voters of their district, at the annual or a special meeting, the question of issuing bonds as contemplated by the preceding section, giving the same notice of such meeting as is now required by law to be given for the election of officers of such districts, and the amount proposed to be raised by the sale of such bonds, which question shall be voted upon by the electors, and if a majority of all the votes cast on that question be in favor of such loan, then said board shall issue bonds to the amount voted, in denominations of not less than twenty-five dollars, nor exceeding one thousand dollars, due not more than ten years after date, and payable at the pleasure of the district at any time before due, which said bonds shall be given in the name of the independent district issuing them, and shall be signed by the president of the board, and attested by the secretary, and delivered to the treasurer, taking his receipt therefor, who shall negotiate said bonds at not less than their par value, and countersign the same when negotiated. The treasurer shall stand charged upon his official bond with all bonds that may be delivered to him; but any bond or bonds not negotiated may be returned by him to the board.

SEC. 1823. If the electors of an independent school district which has issued bonds, shall, at the annual meeting in March for any year, fail to vote sufficient school-house tax to raise a sum equal to the interest on the outstanding bonds which will accrue during the then coming year, and such portion of the principal as will liquidate and pay off said bonds at maturity, then it shall be lawful for the board of such district, to vote a sufficient rate on the taxable property of the district, to pay such interest, and such proportionate portion of the principal as will pay said bonds in full, by the time of their maturity, and shall cause the same to be certified and collected, the same as other school taxes.

(c) Chapter 132, laws of 1880, as amended, provides for the refunding of bonded and judgment indebtedness, by a two-thirds vote of the board, without a vote of the electors, but the interest upon bonds so issued is limited to seven per cent, and the bonds must run at least five years.

SEC. 1824. All school orders shall draw lawful interest, after having been presented to the treasurer of the district, and not paid for want of funds, which fact shall be indorsed upon the order by the treasurer.

SCHOOL HOUSE SITES.

SECTION 1825. It shall be lawful for any district township or independent district, to take and hold, under the provisions contained in this chapter, so much real estate as may be necessary for the location and construction of a school-house, and convenient use of the school; provided that the real estate so taken, otherwise than by the consent of the owner or owners, shall not exceed one acre.

SEC. 1826. The site so taken must be on some public highway, at least forty rods from any residence, the owner whereof objects to its being placed nearer, and not in any orchard, garden or public park. But this section shall not apply to any incorporated town.

SEC. 1824. The board may not authorize the payment of interest to exceed six per cent. If no rate is specified in the order it will draw six per cent. Interest can be paid on an order only from the date of its presentation, whether the rate is specified in the order or not. 51 Iowa, 102.

SEC. 1825. (*a*) A site of less than one acre may be enlarged to an acre.

(*b*) The acre contemplated in this section means exclusive of highway.

(*c*) Property encumbered, occupied as a homestead, or belonging to minor heirs, may be taken under the provisions of this section.

(*d*) If the district cannot establish its claim to the school-house site, owing to the loss of the deed, or for other reason, and the owner refuses to grant the site, the district may avail itself of the provisions of this and the following sections and secure a site not to exceed one acre.

SEC. 1826. (*a*) All sites taken under these sections, must be located on a public road, and at least forty rods from any residence, the owner whereof objects to its being placed nearer, except in incorporated towns.

(*b*) When a site is sought to be condemned, the distance of forty rods mentioned in this section, is measured from the nearest part of the residence to the nearest part of the site, in a straight line.

(*c*) Under the Iowa statute of limitations, ten years' use of a highway by the public, under a claim of right, will bar the owner of the soil. 19 Iowa, 123.

(*d*) If the public, with the knowledge of the owner of land, has claimed and continuously exercised the right of using the same for a public highway, for a period equal to that fixed by the statute for the limitation of real actions, a complete right to the highway thereby becomes established against the owner, unless it appears that such use was by favor, leave or mistake. 22 Iowa, 457.

SEC. 1827. (As amended by Chap. 134, Laws of 1886.) If the owner of any such real estate refuse or neglect to grant the site on his premises, or if such owner cannot be found, the county superintendent of the county in which said real estate may be situated, shall, upon application of either party, appoint three disinterested persons of said county, unless a smaller number is agreed upon by the parties, who shall, after taking an oath to faithfully and impartially discharge the duties imposed on them by this chapter, inspect said real estate, and assess the damages which said owner will sustain, by appropriation of his land for the use of said house and school, said county superintendent giving to the owner of such real estate, the same notice as is required for the commencement of a suit at law, in the district court, of the time of such assessment of damage, and make a report in writing, to the county superintendent of said county, giving the amount of damages, description of land, and exact location, who shall file and preserve the same in his office. If said board shall, at any time before they enter upon said land, for the purpose of building said house, deposit with the county treasurer, for the use of said owner, the sum so assessed as aforesaid, they shall be thereby authorized to build such house, and maintain the right to said premises; provided that either party may have the right to appeal from said assessment of damages, to the district court of the county where such real estate is situated, within twenty days after receiving notice that such assessment is made, which appeal shall be final; but such appeal shall not delay the prosecution of work upon said house, if said board shall pay, or deposit with the county

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SEC. 1827. (*a*) If personal service cannot be made, as provided by sections 2601–2610, Code, the notice must be published, four consecutive weeks, previous to the appraisement, in a newspaper. Sections 2618–2620, Code. Forms 41, 42, 43, 44 and 45.

(*b*) The appraisers are entitled to two dollars for each day's service, and ten cents per mile from their residence to the location of the property appraised. Sections 3811–3813, Code.

(*c*) When the owner of land taken under section 1827 is unknown, or cannot be found, it is not necessary to print the report of appraisement, or to attempt other notice to said owner, than the printed notice required by this section. It is sufficient for the county superintendent to send a certified copy to the board.

(*d*) If the board have deposited with the county treasurer the amount assessed by the appraisers in accordance with this section, we think the courts would hold that the district had come into possession of the site.

treasurer, the amount so assessed by such appraisers, and in no case shall said board be liable for costs on appeal, unless the owner of said real estate shall be adjudged a greater amount of damages than was awarded by said appraisers. The board shall in all cases pay costs of the first assessment.

SEC. 1828. The title acquired by said school districts in and to said real property shall be for school purposes only, and in case the same should cease to be used for said purpose, for the space of two years, then the title shall revert to the owner of the fee, upon the repayment by him of the principal amount paid for said land, by said districts, without interest, together with the value of any improvements thereon erected by said districts; provided that during the time said site is used for school purposes, the owners of the fee shall not injure or remove the timber standing and growing thereon.

APPEALS.

SECTION 1829. Any person aggrieved by any decision or order of the district board of directors, in matter of law or of fact, may, within thirty days after the rendition of such decision, or the making of such

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(*e*) The money deposited with the county treasurer should be held for the benefit of the owner of the fee, and not for the mortgagee.

(*f*) Since the receipt of the treasurer for the money deposited with him for the owner of the land, may be the only evidence of title, such a receipt should have a full description of the property, containing the proviso of note (*b*) of form 15, and should be recorded by the county recorder.

SEC. 1828. (*a*) No deed or other instrument from the owner is required to authorize the district to occupy the land for school purposes. The proceedings should be recorded in full by the district secretary.

(*b*) In case the land desired for a school site is under mortgage, the district may receive from the owner the lease of a portion not to exceed one acre, to be held by the district as long as used for school purposes, and when no longer so used, to revert to the owner, as provided by this section.

SEC. 1829. (*a*) The right of appeal is limited to persons aggrieved or injuriously affected by the decision or order complained of.

(*b*) After the expiration of thirty days, the county superintendent cannot entertain an appeal.

(*c*) All the decisions or orders of the board of directors are subject to revision on appeal. When the act complained of is of a discretionary character, the action of the board should be sustained, unless it is clearly shown that the board violated law, abused its discretion, or acted with manifest injustice. S. L. Decisions, 35.

order, appeal therefrom to the county superintendent of the proper county.

SEC. 1830. The basis of the proceeding shall be an affidavit, filed by the party aggrieved with the county superintendent, within the time for taking the appeal.

SEC. 1831. The affidavit shall set forth the errors complained of in a plain and concise manner.

SEC. 1832. The county superintendent shall, within five days after the filing of such affidavit in his office, notify the secretary 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

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(*d*) To correct an illegal action of the board, certiorari, and not appeal, is the remedy. 55 Iowa, 215.

(*e*) No appeal can be taken from the action of the board taking the initiatory step, while it requires the concurrence of another board to complete the action. The concurrence or non-concurrence of the second board is the order from which an appeal may be taken. S. L. Decisions, 24 and 58, also notes (*d*), (*e*) and (*f*) to section 1809.

SEC. 1830. An affidavit is a written declaration under oath, made without notice to the adverse party. Section 3689, Code. It must be sworn to before some officer authorized to administer oaths. A county superintendent can have no jurisdiction of an appeal case until such affidavit has been filed. A notice of intention to file an affidavit, a verbal complaint, or a petition, is not sufficient to give the county superintendent jurisdiction in appeal cases. Form 46.

SEC. 1831. (*a*) The affidavit should contain, first, a statement of the decision complained of and its date; second, a statement of facts showing that the appellant has an interest in the decision, and is injuriously affected by it; third, the assignment of errors. Form 46.

(*b*) This affidavit being the first paper filed, care should be taken that the case is properly entitled, and this title should be preserved throughout the further progress of the appeal. The date of filing should be indorsed upon the affidavit by the superintendent.

SEC. 1832. (*a*) The notice should describe the decision or order appealed from, so that it may be identified, and should require the district secretary to file the transcript with the superintendent within the time specified. The notice may be served personally or sent by mail. Form 47.

(*b*) The secretary shall make and forward a transcript or copy of the record of all actions of the board relating to the decision or order appealed from, also of all petitions, remonstrances, plats, and papers pertaining thereto. The original papers must be preserved with the district records. Form 48.

proceedings relating to the decision complained of, which transcript shall be certified to be correct by the secretary.

SEC. 1833. After the filing of the transcript aforesaid in his office, he shall notify in writing all persons adversely interested of the time and place where the matter of the appeal will be heard by him.

SEC. 1834. 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 equi-

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(c) During the pendency of an appeal all matters must remain in *statu quo*, and this can be enforced by writ of injunction. Note (c) to section 1718. Also, during such time no opinion relating to the case will be given to interested parties by this department.

SEC. 1833. Notice of the time and place of hearing should be given to the appellant, to the secretary of the board, and to all other persons known to be interested. The notices may be served personally or sent by mail. Form 49.

SEC. 1834. (*a*) While the superintendent is not a court, in the strict sense of the term, he is required to administer oaths, to hear testimony on both sides, to receive depositions, and to render a just and equitable decision. See preface to S. L. Decisions, 1883. And while mere technicalities should not be permitted to prevent the attainment of justice, it is not inappropriate that the superintendent should be governed by many of the rules as to evidence and practice which ordinarily obtain in courts.

(*b*) In case of disturbance or interruption during the trial of an appeal before a county superintendent, since he is not invested with judicial power, he has only the ordinary remedy of complaint to the proper authorities, as provided for in section 4069, Code.

(*c*) The docket or minutes of the superintendent should commence by noting the filing of the affidavit. He will afterward, as the acts transpire, record the sending of the notice of appeal to the district secretary, the filing of the transcript, the sending of notices of the hearing, and any adjournment of the case that may be granted. At the trial he will carefully note down the names of all parties appearing, and their post-office address, and whether they appear for or against the appeal; also, the filing of all papers and names of witnesses, and in whose behalf such papers or witnesses are introduced. The decision of the superintendent will form an appropriate close of his minutes. Forms 47, 48, 49 and 50.

(*d*) All testimony must be given under oath and the substance reduced to writing, at the time, by the county superintendent. It is recommended that a summary of what each witness testifies be made, read to the witness, and signed by him. It is of the first importance that the record of the testimony be full and accurate, as the decision of the county superintendent, also of the superintendent of public instruction, in case the appeal is car-

table, which shall be final, unless appealed from as hereinafter provided.

SEC. 1835. An appeal may be taken from the decision of the county superintendent to the superintendent of public instruction, in the same manner as provided in this chapter for taking appeals from the district board to the county superintendent, as nearly as applicable, except that he shall give thirty days' notice of the appeal to the county superintendent, and the like notice shall be given the adverse party. And the decision, when made, shall be final.

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ried up, must be based upon the record of evidence introduced. This testimony should be preserved with the other papers of the case.

SEC. 1835. (*a*) Appeals to the superintendent of public instruction are conducted in the same manner and governed by the same rules, so far as applicable, as appeals to county superintendents. The basis of the appeal must be an affidavit filed in the office of the superintendent of public instruction, within thirty days from the date of the decision appealed from. For form and contents of the affidavit see notes to sections 1830-31. Upon the filing of such an affidavit the superintendent of public instruction will notify the county superintendent to forward a transcript of the papers in the case within thirty days. The original papers must be preserved on file in the county superintendent's office. Upon the filing of the transcript, thirty days' notice or the time set for hearing will be given to all parties interested. This time may be diminished on the written agreement of both parties. Form 50.

(*b*) At the hearing, parties interested may appear personally or by attorney, and argue their cases orally, if they desire, or they may send written arguments. The records of the case in the county superintendent's office will furnish the data required for these arguments. The records of cases in the offices of county superintendents, which are public records, and should be open as such, to examination, by all parties interested, will furnish all needed data, where access to the transcript sent up is inconvenient. The superintendent of public instruction will not hear original testimony in the cases submitted to him.

(*c*) Any person aggrieved by an action of the county superintendent in refusing to grant a certificate or in revoking the same, may apply to him for a rehearing; the proceedings to correspond as nearly as possible to the proceedings in the case of an appeal from a board of directors. If any party is aggrieved by the result of this investigation, an appeal may be taken therefrom to the superintendent of public instruction.

(*d*) A party, in whose favor an appeal is decided, has the remedy of a writ of mandamus from a court of law to enforce the decision of appeal. 69 Iowa, 533.

SEC. 1836. Nothing in this chapter shall be so construed as to authorize either the county or state superintendent to render a judgment for money, neither shall they be allowed any other compensation than is now allowed by law. All necessary postage must first be paid by the party aggrieved.

SEC. 1836. Payment for postage in advance will be required with the affidavit. It is impossible to tell what amount of postage will be needed in each case, and one dollar will be required, to cover all needed postage.

SESSION LAWS.

CHAPTER 64, LAWS OF 1874.

INDUSTRIAL EXPOSITIONS IN SCHOOLS.

SECTION 1. It shall be the duty of the board of directors of independent school districts, and the subdirector of each subdistrict, if they should deem it expedient, under the direction of the county superintendent, to introduce and maintain an industrial exposition in connection with each school under their control within this state.

SEC. 2. These expositions shall consist of useful articles made by the pupils, such as samples of sewing, and cooking of all kinds, knitting, crocheting, and drawing, iron and wood-work of all kinds, from a plain box or horse-shoe to a house or steam-engine in miniature; also, all other useful articles known to the industrial world, or that may be invented by the pupils, in connection with farm and garden products in their season, that are the results of their own toil.

SEC. 3. The pupils shall be required to explain the use and method of their work, and kind and process of culture of farm and garden products.

SEC. 4. The parents and friends of pupils shall be allowed and requested to be present at said expositions.

SEC. 5. Ornamental work shall be encouraged when accompanied by something useful made by the same pupil.

SEC. 6. These expositions shall be held in the school room upon a school day as often as once a term, and not oftener than once a month.

CHAPTER 67, LAWS OF 1874.

VOTING ON SCHOOL TAXES.

SECTION 1. All school districts lying in two adjoining counties shall have the right to vote mills, instead of specific sums, for school purposes.

CHAPTER 129, LAWS OF 1876.

(As amended by Chap. 142, Laws of 1878, and Chap. 64, Laws of 1888.)

STATE NORMAL AND TRAINING SCHOOL.

SECTION 1. A school for the special instruction and training of teachers for the common schools of this state is hereby established at Cedar Falls, in Black Hawk county.

SEC. 2. The school shall be under the management and control of a board of directors consisting of six members, no two of whom shall be from the same county, and the superintendent of public instruction shall be ex-officio a member of said board and president thereof. The board of directors shall be elected by the general assembly, two for two years, two for four years, and two for six years, and the general assembly shall elect two members of said board every two years, for the full term of six years as the terms of office of the respective classes expire. Their term of office shall commence on the first day of June following their election. No member of the board shall be a teacher in the school, or receive other compensation for his services, than a re imbursement of his actual expenses, to be certified to by him and paid out of the state treasury. Any vacancy occurring in the board shall be filled by the appointment of the governor.

SEC. 3. The board shall convene, at the call of the superintendent of public instruction, on or before June 15, 1876, and having each qualified, according to law, shall organize by the election of a vice-president from their number, and a secretary and a treasurer, who

shall be persons not members of the board. The secretary shall receive such compensation as may be fixed by the board not to exceed the sum of one hundred dollars and actual traveling expenses. The treasurer shall receive no compensation but shall receive re-imbursement of actual expenditures.

SEC. 4. The board shall require a bond, in the sum of twenty thousand dollars, of the treasurer with proper and sufficient sureties, conditional for the safe keeping of funds coming into his hands. He shall receive and disburse all moneys hereby appropriated, and any other funds as the board may provide. The board may require of any officer or employe, who may be authorized to receive or pay out money, a like bond.

SEC. 5. It shall be the duty of the board, in every necessary manner with the means at their disposal, to provide for and carry out the object for which the school is established. For that purpose they shall employ competent and suitable teachers and other employes. They shall direct, use, and control all the property of the state coming into their hands for that purpose. They shall control and direct the expenditures of all moneys. They shall make all necessary rules for the management of the school and the government thereof, and shall provide for the admission of pupils from the several counties of the state in proportion to their respective population, and upon the appointment of respective boards of supervisors, or as the board may direct. They shall establish and publish uniform rules for the admission of pupils thereto, and such rules shall provide for equal rights in said school, to all the teachers in the state, but they shall require in all cases satisfactory evidence of the good character of the pupil. They shall also further require all pupils upon their admission to the school, to sign a statement of their intention in good faith to follow the business of teaching in the schools of the state. It shall also be the duty of the board to make all possible and necessary arrangements with the means at their disposal, for the boarding and lodging of pupils, but the pupils shall pay the cost of the same. They shall require each pupil to pay a fee for contingent expenses amounting to not more than one dollar per month. The school shall be open during such part of the year as the board shall determine but the session shall continue at least twenty-six weeks. The board of directors may in their discretion charge the pupils with a tuition fee not exceeding six dollars per term, if such charge shall be

necessary in order to the proper support of the school as provided by law.

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SEC. 9. The said board shall make, at the end of each school year, to the governor a detailed report of their proceedings during the year. Their report shall also contain the number of teachers employed in the school, with the compensation of each; the number of pupils, classified; the amount of receipts and expenditures, and the items thereof, with such other information and recommendations as they may deem expedient, which report shall be embodied in the superintendent's report to the general assembly.

CHAPTER 136, LAWS OF 1876.

WOMEN ELIGIBLE TO SCHOOL OFFICES.

SECTION 1. No person shall be deemed ineligible, by reason of sex, to any school office in the state of Iowa.

SEC. 2. No person who may have been or shall be elected or appointed to the office of county superintendent of common schools or school director in the state of Iowa, shall be deprived of office by reason of sex.

CHAPTER 132, LAWS OF 1878.

ISSUANCE OF BONDS TO FUND JUDGMENT INDEBTEDNESS.

SECTION 1. Any school district against which judgments have been rendered prior to the passage of this act, and which judgments remain unsatisfied, may, for the purpose of paying off such judgments and funding such judgment indebtedness, issue upon the resolution of the board of directors of the district, the negotiable bonds of such district, running not more than ten years, and bearing a rate of interest not exceeding ten per centum per annum, payable semi-annually, which bonds shall be signed by the president of the district, and countersigned by the secretary, and shall not be disposed of

for less than their par value, nor for any other purpose than that provided for by this act, and such bonds shall be binding and obligatory upon the district.

SEC. 2. It shall be the duty of the board of directors of any district which shall issue bonds under this act, to provide for the payment of the same by the levy of tax therefor, in addition to the other taxes provided by law, and they are hereby required to levy such an amount each year as shall be sufficient to meet the interest on such bonds promptly as it accrues.

SEC. 3. The bonds issued under this act shall be in the name of the district and in substantially the same form as is by law provided for county bonds; shall be payable at the pleasure of the district; shall be registered in the office of the county auditor; shall be numbered consecutively and redeemed in the order of their issuance.

CHAPTER 133, LAWS OF 1878.

(As amended by Chapter 131, Laws of 1880.)

SUBDIVISION OF INDEPENDENT DISTRICTS.

SECTION 1. Any independent school district, organized under any of the laws of this state, may subdivide, for the purpose of forming two or more independent school districts, or have territory detached to be annexed with other territory, in the formation of an independent district or districts, and it shall be the duty of the board of directors of said independent district to establish the boundaries of the districts so formed, the districts so formed not to contain less than four government sections of land, each; this limitation shall not apply when, by reason of a river or other obstacle, a considerable number of pupils will be accommodated by the formation of a district containing less

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CHAPTER 133, LAWS OF 1878.

SECTION 1. (*a*) The provisions of this section, as amended, apply to all independent districts organized under the laws of this state.

(*b*) The amount of territory cannot be less than an equivalent of four government sections, unless the provisions of the latter part of this section apply.

than four sections, or where there is a city, town or village within said territory, of not less than one hundred inhabitants, and in such cases, the independent district so formed shall not contain less than two government sections of land, such subdivision to be effected in the manner provided for in sections 2, 3 and 4 of this chapter; provided that where either of the districts so proposed to be formed contains less than four government sections, it shall require a majority of the votes, of each of the proposed districts, to authorize such subdivision.

SEC. 2. At the written request of one-third of the legal voters residing in any independent school district, the board of directors of said independent district shall call a meeting of the qualified electors of the independent district, at the usual place of holding their meeting, by giving at least ten days' notice thereof, by posting three notices in the independent district sought to be divided, and by publication in a newspaper, if one be published in the independent district, at which meeting the electors shall vote by ballot for or against such subdivision.

SEC. 3. Should a majority of the votes be cast in favor of such subdivision, the board or boards of directors shall call a meeting in each independent district so subdivided or formed as aforesaid, for the purpose of electing by ballot three directors, who shall hold their offices, one, two, and three years, respectively; the length of their respective terms to be determined by lot; and but one director shall be chosen annually thereafter, who shall hold his office for three years.

SEC. 4. At the meeting of the electors of each independent school district, as provided in the last section, they shall also determine by ballot the name to be given to their district, and each independent district, when so organized, shall be a body corporate, and the name so chosen shall be its corporate name; provided that the board of directors of any district, organized under the provisions of this act, may change its name if any other district in the township shall have chosen the same name.

(c) An independent district containing territory amounting to less than eight government sections, may be divided into two independent districts, if an unbridged stream or other obstable prevents a considerable number of scholars from attending school, or if one portion contains a village of not less than one hundred inhabitants. The district so formed must contain territory amounting to not less than two government sections, and a ma-

SEC. 5. Independent districts, organized under the provisions of this act, shall be governed by the laws relating to independent districts.

CHAPTER 166, LAWS OF 1878.

TUITION OF PAUPER CHILDREN.

SECTION 1. Section 1381 of the Code is hereby amended by adding at the end of the section: The expense of the poor-house shall include such an amount of tuition for the instruction of the pauper children, as the whole number of days' attendance of such pauper children, is to the total number of days' attendance in the school at which pauper children attend, and such amount shall be paid into the treasury of the district where said children attend.

CHAPTER 8, LAWS OF 1880.

SEPARATE POLLING PLACES.

SECTION 1. Independent school districts having a population of not less than fifteen thousand inhabitants, shall be divided into not less than three, nor more than six election precincts, in each of which a poll shall be held at a convenient place, to be appointed by the board of directors, for the reception of the ballots of the electors residing in such precinct at said election.

SEC. 2. The board of directors shall provide for the submission of all questions relating to the powers reserved to the electors under section 1807 of the Code, which questions shall be decided by ballot, returns to be made on questions submitted as hereinafter provided.

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jority of the votes cast, in each contemplated district, must be cast for the division.

SEC. 2. When the required number of electors petition for such division, the board are compelled to call the election, but the organization cannot be completed between August and January.

SEC. 5. When the division has been completed, a settlement of assets and liabilities must be made, in conformity with section 1715.

SEC. 3. A register of the electors residing in each precinct shall be prepared by the board of directors from the register of the electors of any city, town or township which is in whole or in part included within such independent school district; and for that purpose a copy of such register of electors shall be furnished by the clerk of each such city, town or township to the board of directors. Said board shall, in each year before the annual election for directors, revise and correct such school election registers by comparison thereof with the last register of elections for such cities, towns and townships. And the register provided for by this section shall have the same force and effect at elections held under this act, and in respect to the reception of votes at said elections, as the register of elections has by law at general elections.

SEC. 4. Notice of every election under this act shall be given in each district in which the same is to be held, by the secretary thereof, by posting up the same in three public places in such district, and by publication in a newspaper published therein for two weeks preceding such election; such notice shall also state the respective election precincts, and the polling place in each precinct.

SEC. 5. The board of directors shall appoint one of their own number and another elector of the district to act as judges of election, and a clerk for each polling place, who shall be sworn as provided by section 609 of the Code in case of general elections. The polls shall be open from 9 o'clock A. M. to 6 o'clock P. M. If either of the judges, or clerk, fail to attend, his place may be filled by the others by appointing an elector attending in his place, and if all fail to attend in time, or refuse to serve or be sworn, the electors present shall choose two judges and a clerk from the electors attending. A ballot-box and the necessary poll-book shall be provided by the board of directors for each precinct, and the election shall be conducted in the same manner, and under the same rules and regulations, so far as applicable, as are provided by chapter 3 of title 5 of the Code, for general elections.

SEC. 6. The judges of election and clerk in each precinct shall canvass the vote therein, and shall, as soon as possible, make out, sign and return to the secretary of the district a certificate showing the whole number of votes cast in such precinct, and the number of votes in favor of each person voted for, and questions submitted. The board of directors shall meet on the next Monday after the election and canvass the returns, and ascertain the result of the election.

The whole number of votes cast, and the number in favor of each person voted for, shall be entered in their record, and the persons respectively receiving the highest two numbers of votes shall be declared elected, and all questions submitted receiving a majority of votes cast shall be recorded as carried. The secretary shall issue to each person so elected a certificate of his election.

SEC. 7. All acts and parts of acts inconsistent with this act are hereby repealed.

CHAPTER 51, LAWS OF 1880.

ENABLING DISTRICTS TO ISSUE BONDS TO FUND JUDGMENT INDEBTEDNESS.

SECTION 1. Any school district or district township against which judgments have been rendered, prior to the passage of this act, and which such judgments remain unsatisfied, may, for the purpose of paying off such judgment indebtedness, issue negotiable bonds, of such district township, upon a resolution of the board of directors of the district township, running not more than ten years, and bearing a rate of interest not exceeding eight per cent per annum, payable semi-annually, which bonds shall be signed by the president of the district and countersigned by the secretary, and shall not be disposed of for less than their par value, nor for any other purpose than that provided by this act, and such bonds shall be binding and obligatory upon the district township.

SEC. 2. It shall be the duty of the board of directors of any district township which issues bonds under this act, to provide for the payment of the same by the levy of tax therefor, in addition to the other taxes provided by law; and they are hereby required to levy such an amount each year as shall be sufficient to meet the interest on such bonds promptly as it accrues.

SEC. 3. The bonds issued under this act shall be in the name of the district township and in substantially the same form as is by law provided for county bonds; shall be payable at the pleasure of the district township; shall be registered in the office of the county auditor; shall be numbered consecutively and redeemed in the order of their issuance.

CHAPTER 132, LAWS OF 1880.

(As amended by Chap. 95, Laws of 1886.)

AUTHORIZING DISTRICTS TO FUND BONDED OR JUDGMENT INDEBTEDNESS.

SECTION 1. Any independent school district, or district township, now or hereafter having a bonded or judgment indebtedness outstanding, is hereby authorized to issue negotiable bonds at any rate of interest not exceeding seven per cent per annum, payable semi-annually, for the purpose of funding said indebtedness; said bonds to be issued upon a resolution of the board of directors of said district; provided that said resolution shall not be valid unless adopted by a two-thirds vote of said directors.

SEC. 2. The treasurer of such district is hereby authorized to sell the bonds provided for in this act, at not less than their par value, and apply the proceeds thereof to the payment of the outstanding bonded or judgment indebtedness of the district, or he may exchange such bonds for outstanding bonds, par for par; but the bonds hereby authorized shall be issued for no other purpose than the funding of outstanding bonded or judgment indebtedness. The actual cost of the engraving and printing of such bonds, shall be paid for out of the contingent fund of such district.

SEC. 3. Said bonds shall run not more than ten years, and be payable at the pleasure of the district after five years from the date of their issue; provided that in order to stop interest on them the treasurer shall give the owner of said bonds ninety days' written notice of the readiness of the district to pay, and the amount it desires to pay; said notice to be directed to the post-office address of the owner of the bonds; provided further that the treasurer shall keep a record of the parties to whom he sell the bonds, and their post-office address, and notice sent to the address, as shown by said record, shall be sufficient.

SEC. 4. Said bonds to be in denominations of not less than one hundred dollars and not more than one thousand dollars; and said bonds shall be given in the name of the independent district, or district township, and signed by the president, and countersigned by the

secretary thereof; and the principal and interest may be made payable wherever the board of directors may by resolution determine.

SEC. 5. When said bonds are delivered to the treasurer to be negotiated, the president shall take his receipt therefor, and the treasurer shall stand charged on his official bond with the amount of the bonds so delivered to him.

SEC. 6. The tax, for the payment of the principal and interest of said bonds, shall be raised as provided in section 1823, chapter 9, title 12 of the Code, provided that if the district shall fail or neglect to so levy said tax the board of supervisors of the county in which said district is located, shall, upon the application of the owner of said bonds, levy said tax.

SEC. 7. All acts and parts of acts in conflict with this act are hereby repealed.

CHAPTER 23, LAWS OF 1882.

REQUIRING BOARDS TO SET TREES ON SCHOOL GROUNDS.

SECTION 1. The board of directors of each district township and independent district, shall cause to be set out and properly protected, twelve or more shade-trees on each school-house site belonging to the district, where such number of trees are not now growing, and such expense shall be paid from the contingent fund.

SEC. 2. It shall be the duty of the county superintendent in visiting the several schools in his county, to call the attention of any board of directors neglecting to comply with the requirements of this statute, and the required number of shade-trees shall be planted as soon thereafter as the season will admit.

SEC. 3. That section 1745, of the Code, be amended by adding an additional item at the end of said section, as follows: 12. The number of trees set out and in thrifty condition on each school-house grounds.

CHAPTER 118, LAWS OF 1882.

INCLUDING ALL OF CITY, WITHIN INDEPENDENT DISTRICT.

SECTION 1. All the territory of an incorporated city or town, whether included within the original incorporation, or afterwards attached thereto, in accordance with the provisions of law, shall be or become a part of the independent district, or districts, of said city or town.

SEC. 2. When boundaries are changed by the taking effect of this act, the respective boards of directors shall make an equitable settlement of the then existing assets and liabilities of their districts, as provided for by section 1715 of the Code.

CHAPTER 149, LAWS OF 1882.

(As amended by Chap. 107, Laws of 1886.)

ENABLING BOARDS TO INSURE SCHOOL PROPERTY.

SECTION 1. The board of directors of all school districts, organized under any of the laws of this state, may use unappropriated contingent funds for the purpose of effecting an insurance on the school property of their district; but they may contract no debts for this purpose.

CHAPTER 167, LAWS OF 1882.

CREATING A STATE BOARD OF EXAMINERS.

SECTION 1. The superintendent of public instruction, the president of the state university, the principal of the state normal school, and two persons, to be appointed by the executive council, one of whom shall be a woman, for terms of four years; provided that of the two first appointed, one shall be for two years; and provided further that no one shall be his own successor in said appointments; are hereby constituted a state board of examiners, with the superintendent of public instruction as *ex officio*, its president.

SEC. 2. The board shall meet at such times and places as its president shall direct, for transaction of business, and shall hold annually, at least two public examinations of teachers, at each of which examinations one member of the board shall preside, assisted by such well qualified teachers, not to exceed two in number, as the board of examiners may elect. Said board may adopt such rules, not inconsistent herewith, and with the statutes of Iowa, as they may deem proper; and said board shall keep a full record of their proceedings, and a complete register of all persons to whom certificates and diplomas are issued.

SEC. 3. Said board shall have power to issue state certificates and state diplomas to such teachers as are found, upon examination, to possess good moral character, thorough scholarship, clear and comprehensive knowledge of didactics, and successful experience in teaching.

SEC. 4. Candidates for state certificates shall be examined upon the following branches: Orthography, reading, writing, arithmetic, geography, English grammar, bookkeeping, physiology, history of the United States, algebra, botany, natural philosophy, drawing, civil government, constitution and laws of Iowa, and didactics; and candidates for state diplomas shall pass examination upon all branches required by candidates for state certificates, and in addition thereto in geometry, trigonometry, chemistry, zoology, geology, astronomy, political economy, rhetoric, English literature and gen-

eral history, and such other branches as the board of examiners may require.

SEC. 5. A state certificate shall authorize the person, to whom it is issued, to teach in any public school of the state for the term of five years from the date of its issue, and a state diploma shall be valid for the life of the person to whom it is issued; provided that any state certificate, and any state diploma, may be revoked by the board of examiners for any cause of disqualification, on well-founded complaint entered by any county superintendent of schools.

SEC. 6. The fee for each state certificate shall be three dollars, and for each state diploma five dollars, which fee shall be paid before examination to such person as the board of examiners may designate from their own number, and the same shall be paid into the state treasury when so collected; provided that if such applicant shall fail in said examination, one-half of the fee shall be returned.

SEC. 7. Every holder of a state certificate, or of a state diploma, shall have the same registered, by the county superintendent of schools of the county in which he wishes to teach, before entering upon his work, and each county superintendent of schools is required to include in his annual report to the superintendent of public instruction, a full account of the registration of state certificates and diplomas.

SEC. 8. Each member of the state educational board of examiners, and each person appointed by said board to assist in conducting examinations, as provided for in section 2 of this act, shall be entitled to receive, for the time actually employed in such service, his necessary expenses. And provided further that each member of said board, not a salaried officer, shall, in addition to his necessary expenses, receive the sum of three dollars per day, he or she is actually employed in said examination, which amounts shall be certified by the superintendent of public instruction; and the auditor of state is hereby authorized to audit and draw his warrant for the same upon the treasurer of state, provided the aggregate amount for any one year shall not exceed three hundred dollars.

CHAPTER 167, LAWS OF 1882.

SECTION 7. (*a*) No fee is required for the registration referred to, but it is essential that such record be made before the person commences to teach.

(*b*) Holders of state certificates or diplomas are not exempt from reporting to the county superintendent, or complying in every respect with requirements made of other teachers, except as to examination for certificates.

CHAPTER 103, LAWS OF 1884.

PROHIBITING BARB WIRE AROUND SCHOOL-HOUSES.

SECTION 1. It is hereby made the duty of the board of directors of every independent district and of every district township, to remove before the first day of September, A. D. 1884, any barb wire fence enclosing in whole or part any public school grounds in such district, and it is also made the duty of any person owning or controlling any barbed wire fence within ten feet of any public school grounds to remove the same within the time herein above named.

SEC. 2. Hereafter barb wire shall not be used in enclosing in whole or in part any public school building or the grounds upon which the same may stand; and no barbed wire shall be used for a fence or other purpose within ten feet of any public school ground.

SEC. 3. For a failure or neglect on the part of any board of directors of any independent district, or of any district township to carry out the provisions of this act, any member of such board shall be fined, on conviction, not exceeding twenty-five dollars, any person violating the provisions of this act shall, on conviction thereof, be fined not exceeding twenty-five dollars.

CHAPTER 1, LAWS OF 1886.

TEACHING AND STUDY OF EFFECTS OF ALCOHOL AND STIMULANTS UPON THE HUMAN SYSTEM.

SECTION 1. Physiology and hygiene, which must in each division of the subject thereof include special reference to the effects of alcoholic drinks, stimulants and narcotics upon the human system, shall be included in the branches of study now and hereafter required to

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CHAPTER 1, LAWS OF 1886.

SECTION 1. (*a*) The words regularly taught are construed to mean, as other branches are taught.

be regularly taught to and studied by all pupils in common schools and in all normal institutes, and normal and industrial schools, and the schools at the soldiers' orphans' home and home for indigent children.

SEC. 2. It shall be the duty of all boards of directors of schools and of boards of trustees, and of county superintendents in the case of normal institutes, to see to the observance of this statute and make provision therefor and it is especially enjoined on the county superintendent of each county that he include in his report to the superintendent of public instruction the manner and extent to which the requirements of section one of this act are complied with in the schools and institutes under his charge, and the secretary of school boards in cities and towns is especially charged with the duty of reporting to the superintendent of public instruction as to the observance of said section one hereof, in their respective town and city schools, and only such schools and educational institutions reporting compliance, as above required, shall receive the proportion of school funds or allowance of public money to which they would be otherwise entitled.

SEC. 3. The county superintendent shall not after the 1st day of July, 1887, issue a certificate to any person who has not passed a sat-

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(*b*) This study must begin in the lowest primary class. In what grade or class it shall be completed, is to be determined by the board.

(*c*) Primary classes must be instructed orally, as the children are not old enough to use or comprehend a book. But this oral instruction must be outlined as a course, and adopted by each board.

(*d*) The portion assigned to each grade or class should be thoroughly mastered before more advanced work is entered upon.

(*e*) Teachers should be careful to give instruction in accordance with the spirit of the law. Total abstinence should be taught as the only sure way to escape the evils arising from the use of alcoholic drinks and tobacco.

SEC. 2. (*a*) Boards cannot shift the responsibility by simply providing that teachers shall give instruction in this branch. They must see to it that the work is actually done by the teachers, as the law requires.

(*b*) In normal institutes, efficient and earnest instructors should be employed. Charts and other appliances should be amply provided. Physicians and scientists may be invited to lecture, and teachers should be exhorted to be sincere, fearless, and faithful in the discharge of their duty.

(*c*) Blanks will be furnished to school officers, from time to time, to enable them to make the reports required by this chapter.

isfactory examination in physiology and hygiene with especial reference to the effects of alcoholic drinks, stimulants and narcotics upon the human system, and it shall be the duty of the county superintendent as provided by section 1771, to revoke the certificate of any teacher required by law to have a certificate of qualification from the county superintendent, if the said teacher shall fail or neglect to comply with section one of this act, and said teacher shall be disqualified for teaching in any public school for one year after such revocation, and shall not be permitted to teach without compliance.

CHAPTER 75, LAWS OF 1886.

USE OF PUBLIC SQUARES FOR SCHOOL PURPOSES.

SECTION 1. It shall be lawful for the people of any incorporated town located wholly within an independent school district in which is situated a public square or plat of ground, deeded or dedicated to the said town or the public, by the proprietor of the town, or of any addition thereof, to transfer or re-dedicate such plat or square, to the purpose of a public school-house lot, to be used either for the erection thereon of a public school-house, or as school grounds, in connection with such school-house.

SEC. 2. The manner of procedure to effect the change or transfer of the purpose for which such lot or square shall be used, as is authorized in section 1, of this act, shall be as follows: When a plat or lot of the character described in section 1, of this act, is located in such incorporated town, and one-half of the resident voters of such town, according to the last census thereof, national or state, shall petition the mayor and town council of such town, asking said city authorities to submit to the voters of the town at a general or special election the question whether or not such public square, lot or plat shall be transferred, dedicated and used for the purposes of a public school-house lot, for the use of the independent district, in which the same is situated said mayor and town council shall submit the question to the voters of the town, in accordance with the prayer of said petitioners after giving ten days' notice thereof, by written or printed notices, in which the proposition submitted, shall be clearly set forth, and signed by said mayor, three of which notices shall be posted in

public and conspicuous places in the town, and one shall be published in the last two issues, preceding such election in a weekly newspaper published in the town, or if there be no such newspaper published in the town then in the weekly newspaper published elsewhere in the county, having the largest circulation in said town. Such notice shall state the manner of voting, which shall be by ballot, and substantially as follows: The ballot shall contain in print, ink or pencil the words "For transferring lot or block or square (as the case may be, describing it) to the purposes of a public school-house lot," or "Against transferring lot or block or square (as the case may be, describing it) to the purposes of a school-house lot." And such election shall be held as per notice given and be conducted as ordinary town elections are, under the supervision of the town authorities, who shall canvass the vote as by law provided in other cases. If it shall appear that two-thirds or more, of all the legal votes cast at such election, for and against the proposition submitted, have been cast in favor of the transfer of such lot or block or square, to the purposes of a public school-house lot, then such transfer shall be held to have been completed, and the lot or block or square may be appropriated and used for the purposes so indicated, by said vote and shall be no longer held for any other purpose. If less than two-thirds of the votes cast at such election are found to be in favor of the transfer then it shall be held that the proposition failed and no transfer shall be effected.

CHAPTER 61, LAWS OF 1888.

FORMATION OF INDEPENDENT DISTRICTS.

SECTION 1. The subdistricts of a district township may be constituted independent districts in the manner hereinafter provided.

SEC. 2. At the written request of one-third of the legal voters in each subdistrict of any district township, the board of directors shall call a meeting of the qualified electors of each subdistrict by giving at least thirty days' notice thereof by posting three written notices in each subdistrict in the township, at which meeting the electors shall vote by ballot for or against independent district organization.

SEC. 3. If a majority of the votes cast in each subdistrict shall be favorable to such independent organization then each subdistrict shall become an independent district.

SEC. 4. The board of directors of the old district township so voting shall then call a meeting in each independent district for the election of three or more directors, as may be required by law, and the organization of the said independent district shall be completed and governed in the same manner as other and similar independent districts.

CHAPTER 62, LAWS OF 1888.

BOUNDARIES OF INDEPENDENT DISTRICTS.

SECTION 1. The boundary lines of contiguous independent districts within the same civil township, may be changed by concurrent action of the respective boards of directors at their regular meeting in September, or at special meetings thereafter called for that purpose; provided that the district so formed, from which territory has been detached, shall not contain less than four government sections of land; and provided further that the boundary lines of said districts shall conform to the lines of congressional divisions of land.

CHAPTER 61, LAWS OF 1888.

SECTION 3. The vote upon the change of form may be taken at any time of year, but the organization cannot be completed between August and January. Section 1804.

SEC. 4. When the new boards are organized, they should meet as soon as possible, and make settlement of assets and liabilities, as directed by section 1715.

TABLE OF CONTENTS.

	PAGE
APPEALS	77
ATTENDANCE	58
BOARD OF DIRECTORS	19
BOARD OF SUPERVISORS	53
BONDS	73
BOUNDARIES	60
CHANGES IN FORM OF DISTRICTS	67
COUNTY AUDITOR	54
COUNTY HIGH SCHOOLS	9
COUNTY SUPERINTENDENT	45
COUNTY TREASURER	55
DISTRICT TOWNSHIP MEETING	15
FORMATION OF INDEPENDENT DISTRICTS	63
GENERAL PROVISIONS	43
INDEPENDENT DISTRICT ELECTION	66
MISCELLANEOUS	56
PRESIDENT	31
SCHOOL DISTRICTS	13
SCHOOL-HOUSE SITES	75
SECRETARY	32
SESSION LAWS	82
STATE UNIVERSITY	7
SUBDIRECTOR	38
SUBDISTRICT MEETING	17
SUPERINTENDENT OF PUBLIC INSTRUCTION	5
TAXES	51
TEACHERS	41
TREASURER	35

BLANK FORMS.

NUMBER 1.

Form for Proceedings of District Township Meeting.

[Section 1717.]

March....., 188..

The electors of the district township of....., in the county of..... and state of Iowa, assembled at.....pursuant to previous notice. The meeting was called to order by the president at....o'clock....M. The secretary being absent, ...was appointed secretary.

The order of business was stated by the president.

On motion of Mr..... , a tax of.....dollars was voted for school-house purposes.

Mr... .....moved that a tax of eight hundred dollars be voted for the purpose of erecting a school-house in subdistrict No...

Mr.....moved to amend by striking out "eight hundred dollars" and inserting "one thousand dollars," which motion was carried and the motion as amended was decided in the affirmative.

Mr.....moved to transfer.....dollars of unused school-house fund to teachers' (contingent) fund. Carried.

Mr.....moved that the various powers conferred by law on the district meeting, which may be delegated to the board of directors, be and the same are hereby so delegated. After discussion the vote was taken and the motion was adopted.

On motion of Mr....., the meeting adjourned.

....,

Chairman.

....,

Secretary.

NOTE.—It is essential that the secretary make a full and accurate record of the proceedings of the district township meeting, which should be submitted to the president for his approval at the close of the meeting, and afterwards recorded in the district records, or otherwise preserved.

These records, together with all certificates of the action of any subdistrict in relation to voting school-house taxes, must be submitted by the secretary, who is the proper custodian of the records, to the board, at the meeting held on the following Monday, to form the basis of their action in apportioning and certifying school-house taxes to the board of supervisors.

NUMBER 2.

Form of Notice for Annual Meeting in Subdistricts.

[Section 1718.]

Notice is hereby given, that a meeting of the qualified electors of subdistrict No....., of the district township of....., in the county of....., and state of Iowa, will be held at....., on the first Monday in March, 188.., at... o'clock, for the election of one subdirector, and the transaction of such other business as may legally come before it.

Dated....., 188..

....,
Subdirector of Subdistrict No....

NOTES.—(*a*) In case there is no subdirector, the above notice must be given by the secretary of the district township. It must be posted five days previous to the meeting, in at least three public places in the subdistrict. The notice should designate the hour of meeting, which cannot be earlier than 9 o'clock A. M. Section 1789.

(*b*) When an organized district township is left without officers, or without a quorum, the above notice for a special election should be posted by the township trustees, in at least three public places in each subdistrict, changing the time of holding the election to suit the circumstances of the case. Section 1714.

NUMBER 3.

Form of Proceedings of Annual Subdistrict Meeting.

[Sections 1718, 1719, 1720.]

March....., 188..

The electors of subdistrict No...., of the district township of....., in the county of..... ...., and state of Iowa, met pursuant to previous notice.

.....was appointed chairman, and.....secretary of the meeting.

On motion of Mr ....., the meeting proceeded to the election by ballot of one subdirector.

The chairman announced the result of the ballot to be as follows:

20 votes were cast for A B; 15 votes for C D; and 10 votes for E F; upon which A B was declared duly elected subdirector for the ensuing year.

Mr..... .....moved that a tax of.....dollars be voted for the erection of a school-house in this subdistrict.

The motion was lost.

On motion of Mr..... .....the meeting adjourned.

....., *Chairman.*

....., *Secretary.*

NOTES.—(*a*) If the electors desire to hold a caucus, it should be done before the subdistrict meeting is called to order. Only one ballot can be had for the election of subdirector, and a plurality will elect.

(*b*) The amount voted by the subdistrict must be certified to the next regular district township meeting.

(*c*) To avoid the levy of taxes upon the subdistrict, the district township may simply be requested, by a vote of the electors of the subdistrict, to build them a school-house, without asking for a definite amount of money.

NUMBER 4.

Form for Certificate of Election of Subdirector.

[Section 1719.]

We hereby certify that, at the annual meeting of subdistrict No....., of the district township of....., in the county of....., and state of Iowa, held on the first Monday in March, 188.., ...was duly elected subdirector for said subdistrict.

....., *Chairman.*

....., *Secretary.*

NOTES.—(*a*) This certificate, slightly varied, will answer in case of the election of a subdirector at a special meeting called by the township trustees. In both cases, it should be presented by the subdirector elect to the board of the district township, and filed with the president of said district.

(*b*) In case of a tie vote, the fact should be certified in a similar manner to that given in the above form, by the officers of the meeting.

NUMBER 5.

Form for Certificate of the Tax Voted by Subdistrict Meeting.

[Section 1718, 1778.]

To..... ..... ,

Secretary of the board of directors of the district township of.....

I hereby certify that the electors of subdistrict No....., of the district township of....., in the county of....., and state of Iowa, at the annual meeting, held on the first Monday in March, 188.., voted a tax of .....dollars for the erection of a school-house in said subdistrict.

....,

Subdirector.

NOTE.—This certificate may be made either by the subdirector or by the chairman and secretary of the subdistrict meeting.

NUMBER 6.

Proposals for the Erection (or Repair) of a School-house.

[Section 1723.]

Notice is hereby given that proposals for the erection (*or repair*) of a school-house in subdistrict No....., in the district township of....., in the county of..... ..., will be received by the undersigned, at his office in.....(where plans and specifications may be seen), until 1 o'clock P. M.,....., 188.., at which time the contract will be awarded to the lowest responsible bidder. The board reserve the right to reject any or all bids.

....,

Secretary of the Board of Directors.

NUMBER 7.

Form of Contract for Building a School-house.

[Section 1723.]

Contract made and entered into between....., of the county of....., and state of Iowa, and... ....., in behalf of the district township of ...., in the county of..... ....., and state of Iowa, and his successors in office.

In consideration of the sum of.....dollars, to be paid as hereinafter specified, the said.....hereby agrees to build a school-house, and to furnish the material therefor, according to the plans and specifications for the erection of said house hereto appended, at..... .... in said district township. The said house is to be built of the best material, in a substantial, workmanlike manner, and to be completed and delivered to the said....., or his successors in office, free from any lien for work done or material furnished, on or before the.....day of ...., 188.. And in case the said house is not finished by the time herein specified, the said.....shall forfeit and pay to the said ....., or his successors in office, for the use of said district township, the sum of..... .....dollars, and shall also be liable for all damages that may result to said district township in consequence of said failure.

The said..... ....., or his successors in office, in behalf of said district township, hereby agrees to pay the said..... the sum of..... .....dollars when the foundation of said house is finished; and the further sum of .....dollars when the walls are up and ready for the roof; and the remaining sum of.....dollars when the said house is finished and delivered as herein stipulated.

It is further agreed that this contract shall not be sublet, transferred, or assigned without the consent of both parties.

Witness our hands this.....day of....., 188..

....,
Contractor.

....,
President.

This is to certify that the foregoing contract was approved by the board of directors of the district township of..... ..., in the county of ...., and state of Iowa, this.....day of....., 188..

.....,
President.

.....,
Secretary.

NOTES.—(*a*) The law requires the board to make all contracts necessary to carry out any vote of the district, and the president of the district to sign all contracts made by the board. Section 1739. Contracts must, in all cases, be made according to the instructions and directions of the board, and after being made they should be approved by the board before any work is done.

(*b*) In building a school-house, it is important to secure plans of the building, with full specifications as to its dimensions, style of architecture, number and size of windows and doors, quality of materials to be used, what kind of roof, number of coats of paint, of what material the foundation shall be constructed, its depth below and its height above the surface of the ground, the number and style of chimneys and flues, the provisions for ventilation, the number of coats of plastering and style of finish, and all other items in detail that may be deemed necessary. The plans and specifications should be attached to the contract, and the whole filed with the secretary of the district township.

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NUMBER 8.

Form of Bond for Performance of Contract.

[Section 1723.]

Know all Men by these Presents: That we,..... ....., as principal, and.....and .....as sureties, of the county of .....and state of Iowa, are held and firmly bound unto the district township of....., in the county of ....., and state of Iowa, in the penal sum of.....dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators and assigns, jointly, severally and firmly by these presents.

The condition of the above obligation is such that, whereas the said..... .....has this day entered into a written contract with..... ....., as president of the board of directors of the district township of ...., in the county of ....., and state of Iowa, and his successors in office, for the erection and completion of a school-house

in said subdistrict, by the.....day of....., 188.., according to the plans and specifications for the construction of said house appended to said contract.

Now, therefore, if the said.....shall faithfully and fully comply with all the stipulations of said contract, then this obligation shall be void, otherwise remain in full force and virtue in law.

In testimony whereof we have hereunto subscribed our names this..... day of ....., 188..

....., *Principal.*

.....,

....,

.....,

Sureties.

NUMBER 9.

Form for Certificate of Appointment of School Officers.

[Section 1730.]

....., 188..

To..... .. .. :

You are hereby notified that, at a meeting of the board of directors of the district township of....., in the county of ....., and state of Iowa, held on the.....day of....., 188.., you were duly appointed (*here name the office*), in and for said district township, to fill the vacancy occasioned by the (*here state the cause of the vacancy*) of ....

....., *Secretary of the Board of Directors.*

NOTE—For the appointment of subdirector, insert in the above form the words *subdistrict number.....of* immediately after the word *for*.

NUMBER 10.

Form for Bond of Secretary or Treasurer.

[Section 1731.]

Know all Men by these Presents: That I,.....as principal, and.....and.....as sureties of the district township of....., in the county of....., and state of Iowa, are held and firmly bound unto the district township of....., in the said county and state, in the penal sum of .....dollars, to be paid to the said district township of ...., for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators firmly by these presents.

The condition of the above obligation is such that if the above bounden ....., shall well and truly fulfill the duties of secretary (or treasurer) in the district township of..... ....., and county of....., and state of Iowa, to the best of his ability, according to law, then the above obligation to be void, otherwise to remain in full force and action in law.

In testimony whereof we have hereunto subscribed our names this..... .. day of ...., 188..

....., *Principal.*

...., ..., *Sureties.*

STATE OF IOWA, ... county. } ss.

I,....., do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the state of Iowa, and that I will faithfully and impartially discharge the duties of secretary (or treasurer) of the district township of ....., in the county of ....., and state of Iowa, according to law and as provided by the condition of my bond above written.

....

Subscribed and sworn to before me by the above named..... this ..... day of ....., A. D. 188..

In testimony whereof witness my hand and official seal.

....., *Notary Public.*

[SEAL.]

STATE OF IOWA, ...county. } ss.

I, ..., being duly sworn, depose and say that I am a resident freeholder of the state of Iowa, and am worth the sum of .... dollars beyond the sum of my debts, and have property liable to execution in this state equal to the sum of. ..... dollars.

.....

Subscribed and sworn to before me by the above named..... ..... this..... day of..... ....., A. D. 188..

In testimony whereof witness my hand and official seal.

...., [SEAL.] *Notary Public.*

NOTES—(*a*) See section 1731, notes.

(*b*) The aggregate amount to which the sureties are required to qualify, is double the amount of the bond required. Section 249, Code.

NUMBER 11.

Form of Certificate for Election of the Officers of the Board, to the County Superintendent, Auditor, and Treasurer.

[Section 1736.]

I hereby certify that at a meeting of the board of directors of the district township of..... ...., held on the.....day of ....., 188.., the following named officers were elected and have duly qualified according to law:

....., to the office of....., P. O. Address.....

...., to the office of....., P. O. Address.....

Dated at....., 188..

...., *Secretary.*

NOTE.—All the officers of the board, in addition to the oath which they may have taken as members, must take the oath of office as prescribed by section 5, article 11, of the constitution.

NUMBER 12.

Form of Draft on the County Treasury.

[Sections 1739, 1785.]

To....., County Treasurer:

Pay to....., treasurer of the district township of....., in the county of....., and state of Iowa, ...dollars school-house fund, ... dollars contingent fund, and .....dollars teachers' fund, being the amount of taxes collected and due this district, for the quarter ending on the first Monday of.... ....., as shown by your notice of....., 188..

....., *President.*

....., *Secretary.*

NOTE.—Whenever a draft is drawn on the county treasury, it is the duty of the secretary to charge the district treasurer with the amount named in the draft, keeping a separate account with each fund. Section 1782.

NUMBER 13.

Form of Order on District Treasury.

[Section 1739.]

$..... ....., 18...,

To....., treasurer of the district township of.....

Pay to....., or order, the sum of..... ... .dollars from the (*here state the fund*) fund for (*here state the object for which drawn*).

....., *President.*

....., *Secretary.*

NOTE.—No order shall be drawn on the district treasury, until the claim for which it is drawn has been audited and allowed. Section 1733.

All orders drawn on the district treasury should be registered by the secretary as per form 16.

NUMBER 14.

Form of Lease.

[Section 1739.]

Know all men by these presents: That....., of the county of ...., and state of Iowa, for the consideration hereinafter mentioned, does hereby lease unto..... , president of the board of directors of the district township of.... ...., in the county of....., and state of Iowa, or his successor in office, for the use of said district township for school purposes, the following described premises, situated in the county and state aforesaid, to-wit: (*Here describe the house and lot or parcel of ground*), together with all the privileges thereto belonging, for the term of.....months from the..... day of....., 188..

The said....., president as aforesaid, or his successor in office, hereby agrees to pay the said....., for the use of said premises the monthly rate of.....dollars, to be paid at the expiration of this lease.

In testimony whereof, we have hereunto subscribed our names this..... day of....., 188..

Signed in duplicate. .....,

... .,

President.

NOTE —As a matter of safety, the above lease should be executed in duplicate, one to be held by the secretary of the board, and the other by the lessor. The lease should be approved by the board, as in case of a contract, and should be filed with the secretary.

NUMBER 15.

Form of Deed.

[Section 1739.]

Know all men by these Presents: That we, ..., and ....., h... ....., of the county of ....., and state of Iowa, in consideration of the sum of..... dollars in hand paid, do hereby sell and convey unto the district township of ....., in the county of....., and state of Iowa,

the following described premises, situate in the county of....., and state of Iowa, to-wit: (*Here describe the premises.*)

And we do hereby covenant with the said district township that we are lawfully seized of said premises; that they are free from incumbrance; that we have good right and lawful authority to sell the same; and we do hereby covenant to warrant and defend the title to the said premises against the lawful claims of all persons whomsoever.

Signed this.....day of....., 188..

....

.....

STATE OF IOWA, }
.....county. } ss.

On this.....day of....., A. D. 188.., before me, a notary public in and for said county, personally came..... and....., h... ....., personally to me known to be the identical persons whose names are affixed to the above deed as grantors, and acknowledged the same to be their voluntary act and deed, for the purposes therein expressed.

Witness my hand and notarial seal this.....day of....., 188..

[L. S.]

....,

Notary Public.

NOTES.—(*a*) In purchasing the grounds for school-house purposes, the president should require an abstract of title and satisfy himself that the property is free from incumbrance. Let the property in all cases be conveyed to the district in its corporate name. The deed should be filed with the president.

(*b*) In case of the donation of school-house site, the following reversionary clause may be appended to the deed: *Provided, that if, for the space of two consecutive years said premises shall cease to be used for school purposes, the same shall revert to the original donor; his heirs or assigns, without legal hinderance or expense.*

(*c*) Since, by section 1827, the receipt of the treasurer for the money deposited with him, for the owner of the land, may be the only evidence of title, such receipt should have a full description of the property, contain the proviso of note (*b*) of this form with this addition, *upon the repayment of the principal amount paid by the district, without interest, together with the value of any improvements thereon made by the district*, and the receipt should be recorded by the county recorder.

NUMBER 16.

[Section 1741.]

Form of Order Register of Secretary and Treasurer.

No.	DATE.	IN WHOSE FAVOR DRAWN.	FOR WHAT PURPOSE	School-house fund. Amount.	Contingent fund. Amount.	Teachers' fund. Amount.
1	April 7, 188..	John Smith.....	Teaching school.....	$	$	$45.00
2	April 7, 188..	A. J. Adams.....	Rep. on S.-house	15.00		
3	April 7, 188..	Joel B. Young....	Fuel		5.00	
4	May 10, 188..	Thos. Harrison..	Erection of S.-house.	125.00		
5	May 14, 188..	Sarah Johnson...	Teaching school.....			63.74

NOTE.—The law requires both the secretary and treasurer to keep a register of all orders drawn on the district treasury, containing a record of each item enumerated in the above form.

Whenever orders are drawn, the secretary should register them and furnish the treasurer with a transcript of the same to place upon his register.

Whenever partial payment is made, the treasurer should indorse the payment on the order and take a receipt for the amount paid. When paid in full, the order should, in all cases, be indorsed by the person presenting it, and left with the treasurer. It is then a voucher for the amount paid.

NUMBER 17.

Form of Notice of District Township Meeting.

[Section 1742.]

Notice is hereby given to the qualified electors of the district township of ....., in the county of ....., and state of Iowa, that the annual meeting of said district will be held at ....., on the second Monday in March, 188.., at .. o'clock, .. M., for the transaction of such business as may legally come before it.

....,
Secretary.

Dated, ..., 188..

NOTES.—(*a*) The above notice must be posted in five different conspicuous places in the district and a copy of the same furnished to the teacher of each school in session to be read to the pupils thereof. In independent districts, insert immediately after the word *for*, in the concluding part of the notice, the words *the election of officers and* in accordance with the provisions of sections 1807, 1808, and section 4, chapter 8, laws of 1880.

(*b*) The same notice may be given for the extra meetings provided for in sections 1717½ and 1822, changing the time of holding the election to suit the circumstances of the case.

NUMBER 18.

[Section 1745.]

Report of the Secretary of .... District of ... ..., ..., for the Year Ending September .., 188..

DISTRIC'S. Number of subdistrict or name of independent district.	SCHOOLS. Number ungraded.	SCHOOLS. Number of rooms in graded schools.	SCHOOLS. Number of months school since September of last year.	TEACHERS. Number of different teachers employed. Males.	TEACHERS. Number of different teachers employed. Females.	TEACHERS. Average compensation per month. Males.	TEACHERS. Average compensation per month. Females.	PUPILS. Number of persons between the ages of 5 and 21 years. Males.	PUPILS. Number of persons between the ages of 5 and 21 years. Females.	PUPILS. Total number of different scholars registered in the schools since last September.	PUPILS. Average daily attendance in each school.	PUPILS. Average cost of tuition per month for each pupil.	SCHOOL-HOUSES. Number. Frame.	SCHOOL-HOUSES. Number. Brick.	SCHOOL-HOUSES. Number. Stone.	SCHOOL-HOUSES. Number. Log.	SCHOOL-HOUSES. Value.	APPARATUS. Value.	LIBRARIES. Number of volumes.	No. of trees set out on grounds and in thrifty condition.	Are effects of stimulants and narcotics taught?
....	....	..	....	..	..	....	....	....	....	......	....	....	..	..	..	..	....	....	....	....	....
....	....	..	....	..	..	....	....	....	....	......	....	....	..	..	..	..	....	....	....	....	....
....	....	..	....	..	..	....	....	....	....	......	....	....	..	..	..	..	....	....	....	....	....
....	....	..	....	..	..	....	....	....	....	......	....	....	..	..	..	..	....	....	....	....	....
....	....	..	....	..	..	....	....	....	....	......	....	....	..	..	..	..	....	....	....	....	....
....	....	..	....	..	..	....	....	....	....	......	....	....	..	..	..	..	....	....	....	....	....
....	....	..	....	..	..	....	....	....	....	......	....	....	..	..	..	..	....	....	....	....	....
....	....	..	....	..	..	....	....	....	....	......	....	....	..	..	..	..	....	....	....	....	....
....	....	..	....	..	..	....	....	....	....	......	....	....	..	..	..	..	....	....	....	....	....
....	....	..	....	..	..	....	....	....	....	......	....	....	..	..	..	..	....	....	....	....	....
....	....	..	....	..	..	....	....	....	....	......	....	....	..	..	..	..	....	....	....	....	....
....	....	..	....	..	..	....	....	....	....	......	....	....	..	..	..	..	....	....	....	....	....
Total	....	..	*	..	..	*	*	....	....	*	*	*	..	..	..	..	....	....	....	....	

* Leave these totals blank.

STATISTICS OF BLIND AND DEAF AND DUMB.

NAME.	AGE.	NATURE OF DEFECT.	NAME OF PARENT.	P. O. ADDRESS.

I hereby certify that the foregoing report is correct.

.....post-office, September....., 188..

....., *Secretary.*

NOTES—(*a*) At the regular meeting in September, call the attention of your board to section 690, Code, which directs them to settle in full with the treasurer, and require him to account for and produce all funds and property under his control. The fact that the treasurer has made a complete settlement, and that he is in possession of the funds, should be indorsed on the new bond. This will furnish the legal proof that the treasurer has the funds in his possession.

(*b*) Two or more terms taught in the same school-house, the same year, constitute but one school.

(*c*) Express all fractions decimally; omit cents in the valuation of school-houses and apparatus.

(*d*) To find *the average daily attendance in the district*, divide the sum of the total attendance in days, as shown by the register of the teacher or teachers, by the number of days the school has been taught.

(*e*) To find *the average cost of tuition per month for each pupil*, divide the total amount paid teachers by the number of months, and this quotient by the average daily attendance.

(*f*) The average compensation per month averages between winter and summer schools, or of all the teachers of the same grade employed in a given district.

(*g*) Secretaries must file their reports with the county superintendent immediately after the meeting of the board, on the third Monday in September.

NUMBER 19.

Form for the Treasurer's Account with the Teachers' Fund.

[Sections 1747, 1748.]

....., TREASURER, *in account with Teachers' Fund.* DR.

Sept. 28, 188..	To cash received of County Treasurer, semi-annual apportionment	$ 270.00
Oct. 5, 188..	To cash received of County Treasurer, district tax..	75.00
Jan. 4, 188..	To cash received of County Treasurer, district tax...	150.00
April 5, 188..	To cash received of County Treasurer, district tax ..	197.00
April 5, 188..	To cash received of County Treasurer, semi-annual apportionment	135.00
July 5, 188..	To cash received of County Treasurer, district tax ..	100.00

....., TREASURER, *in account with Teachers' Fund.* CR.

Oct. 13, 188..	By cash paid James Hogan, on order No. 1 ...	$ 136.00
Oct. 13, 188..	By cash paid Sarah Smith, on order No. 3	89.00
Nov. 14, 188..	By cash paid Nicholas Hoover, on order No. 4	135 00
May 3, 188..	By cash paid Louisa Martin, on order No. 7	82.00
May 4, 188..	By cash paid Jas. M. Higgins, on order No. 10	115.00
May 4, 188..	By cash paid Stephen Phelps, on order No. 11	175.00
May 5, 188..	By cash paid Amelia Mason, on order No. 13	95.00

NOTE.—A similar account is to be kept with the school-house fund and contingent fund, and a statement of the condition of any fund is to be rendered at any time when required by the board. By keeping a correct account of the orders, as per form 16, the treasurer will know the amount outstanding, and can readily determine what per cent on each he can pay with the funds on hand.

The above form is intended for separate pages opposite each other.

NUMBER 20.

[Section 1751.]

Report of the Treasurer of the ..... District .....
of ....., for the year ending September ....., 188..

DR. SCHOOL-HOUSE FUND. CR.

On hand at last report.....	$	..	Paid for school-houses and sites	$	..
Received from district tax....	....	..	Paid on bonds and interest ...	....	..
Received from other sources..	....	..	Paid for library and apparatus	....	..
			Transferred to other funds ...	....	..
			Paid for other purposes	....	..
			On hand	....	..
Total	....	..	Total	....	..

DR. CONTINGENT FUND. CR.

On hand at last report.... ...	$	..	Paid for fuel, rent and repairs of school-houses	$	..
Received from district tax....	....	..	Paid secretary and treasurer..	....	..
Received by transfer from school-house fund	....	..	Paid for records, dictionaries, and apparatus	....	..
Received from other sources..	....	..	Paid for insurance and janitors	....	..
			Paid for brooms, chalk and other supplies	....	..
			Paid for other purposes.....	....	..
			On hand	....	..
Total	....	..	Total	....	..

DR. TEACHERS' FUND. CR.

On hand at last report.....	$	..	Paid teachers since last report.	$	..
Received from district tax....	....	..	Paid other districts for tuition.	....	..
Received from semi-annual apportionment	....	..	Paid for other purposes.....	....	..
			On hand	...	..
Received by transfer from school-house fund.	....	..			
Received from other sources..	....	..			
Total	....	..	Total	....	..

I hereby certify that the foregoing report is correct.

..... post-office, September ....., 188..

....., *Treasurer.*

NOTE.—(*a*) The totals of the debit and credit columns in each fund MUST, IN ALL CASES, BE EQUAL; the report should exhibit the exact amounts received and paid out by the district since the date of last report. Unpaid orders are not to be reported.

(*b*) The amount *on hand at last report* MUST BE IDENTICAL with the amount reported *on hand* in your last report to the county superintendent.

(*c*) The treasurer is required to make a full report to the board, at the expiration of his term of office on the third Monday of September, and to file a copy of the same immediately with the county superintendent. Section 1751 and notes.

(*d*) The report must be made *in the identical items* printed on this blank. Any deviation or interlining simply causes the county superintendent the trouble of condensing. Itemize fully, and take pride in making *paid for other purposes* as small as possible.

(*e*) The report made to the county superintendent should be identical with the final report for a full year made by the treasurer to the board at their meeting on the third Monday in September.

NUMBER 21.

Form of Contract between Subdirector (or Secretary), and Teacher.

[Sections 1753, 1757, 1758.]

This contract, between ....., of .....county, Iowa, and ....., subdirector of subdistrict No. .....of the district township of....., in the county of..... and state of Iowa, witnesseth:

That the said....., agrees to teach the public schools in said subdistrict for the term of.....weeks, commencing on the..... day of....., 188.., and well and faithfully to perform the duties of teacher in said school, according to law, and the rules legally established for the government therof, including the exercise of due diligence in the preservation of school buildings, grounds, furniture, apparatus, and other school property.

In consideration of said services, the said....., as subdirector aforesaid, in behalf of said district township, agrees to pay the said....., the sum of .....dollars per school month, at the end of..... ....., and to perform all the duties required by law as such subdirector.

Witness our hands this.....day of....., A. D. 188..

.....,
Teacher.

.....,
Subdirector.

The within contract is hereby approved this.....day of....., A. D. 188..

.....,
President.

NOTE—With a little variation the above form will answer for independent districts. The subdirector should file the contract with the president and secure his approval before the teacher enters upon his duties. The president cannot withhold his approval, unless there has been a violation of law, or the instructions of the board have been disregarded.

NUMBER 22.

Form for List of Heads of Families and Children, to be kept by Subdirectors.

[Section 1754.]

PARENTS OR GUARDIANS.	NAMES OF CHILDREN.	SEX.	AGE.
John Smith.....	Peter Smith.....	Male.....	12 years.
	Eliza Smith.....	Female...	10 years.
James Jones.	William Jones.....	Male.....	15 years.
	Charles Peters, (ward).	Male.	13 years.
Anna Byron.....	James Byron	Male.... ..	20 years.

NOTE—The above list should be recorded in a book, and carefully preserved with the records of the subdistrict, from this record the subdirector will be able to make his annual report to the district secretary, as required by section 1755.

NUMBER 23.

Form for Teacher's Daily Register of Attendance.

[Section 1759.]

Register of the school taught in subdistrict number....., of the district township of....., county of....., and state of Iowa for the term commencing May 18, 188..., and closing....., 188....

....., Teacher.

No.	PUPILS. NAME.	Age.	MAY. DAY OF MONTH. M., 18.	T., 19.	W., 20.	Th., 21.	F., 22.	Weekly Summary.	M., 25.	T., 26.	W., 27.	Th., 28.	F., 29.	Weekly Summary.	JUNE. M., 1.	T., 2.	W., 3.	Th., 4.	F., 5.	Weekly Summary.	M., 8.	T., 9.	W., 10.	Th., 11.	F., 12.	Weekly Summary.	Total attendance in days.	BRANCHES STUDIED. Orthography.	Reading.	Writing.	Mental Arithmetic.	Written Arithmetic.	Geography.	Grammar.	Physiology.	U. S. History.	Stimulants and Narcotics.
1	Peter Smith.....	10	E		10e /			4.5	X		15e			4	7					5					5	18.5	*	*	*	*		*				*
2	Eliza Smith.....	12	E				5e /	4.5					/	4.5	/	/	X			3					5	17	*	*	*	*	*	*	*	*		*
3	William Jones.....	8	E			X		4		6				5		7				5					5	19	*	*	*	*						*
4	Charles Peters.....	15	E					5						5						5					5	20	*	*	*	*	*		*			*
5	James Byron.....	12				E		2	/	e	X	/	4e	3						5					5	15	*	*	*	*						*
6	Thomas Ward.....	9								E				4			X	X	X	2					5	11	*	*	*	*						*

NOTE.—The board should supply each school-room in the district with a bound copy of school register.

In the above form, E indicates the date of the pupil's entrance; \, absence in the forenoon; /, absence in the afternoon; 20, twenty minutes late in forenoon; 10e, ten minutes late afternoon, excused. The absence of marks indicates that the pupil was present the entire day. Absence at roll-call is indicated by a dot, which is afterward changed to figures, or a diagonal mark, as the circumstances require; * indicates branch studied.

NUMBER 24.

[Section 1760.]

Form for Teacher's Term Report, to District Secretary.

Teacher's report to the district secretary of the school taught in subdistrict No....., of the district township of....., ... county, Iowa, for the term commencing..... ....., 188..

	MALES.	FEMALES.	TOTAL.
Whole number of pupils enrolled.....			
Average number belonging.....			
Total attendance in days.....			
Average daily attendance			
Total number of days absent.....			
Number of cases of tardiness			
Number neither absent nor tardy			
Number studying orthography			
Number studying reading			
Number studying writing			
Number studying arithmetic			
Number studying geography			
Number studying grammar			
Number studying physiology			
Number studying United States history....			
Number studying effects of stimulants, etc.			

Whole number of days taught ....

Compensation of teacher per month ..... $.....

Average cost of tuition per month, for each pupil ..... $.....

I hereby certify that the above report is correct.

....., *Teacher.*

NOTES.—(a) The number belonging on any day is equal to the number enrolled less the number who have been absent more than three consecu-

tive whole days. To obtain the average number belonging for the term, divide the sum of the numbers belonging for each day by the number of days the school has been taught.

(*b*) To find the average daily attendance, divide the total attendance in days by the number of days the school has been taught.

(*c*) To find the average cost of tuition for each pupil per month, divide the amount paid the teacher per month by the average daily attendance for the term.

The above form may also serve for a monthly report to the county superintendent, in case he requests it.

NUMBER 25.

Form of Teacher's Certificate.

[Sections 1766, 1767.]

TEACHER'S.....CLASS CERTIFICATE.

OFFICE OF COUNTY SUPERINTENDENT,
.....county, Iowa,
....., 188..

This certifies that.....has passed an examination, as required by law, with the results hereto appended, and that..... possesses a good moral character, aptness to teach and ability to govern. I hereby authorize.....to teach in the public schools of ..... county for a period of.....months from the date of this certificate.

	Per cent.		Per cent.
Orthography.....	.....	U. S. History.....	.....
Reading.....	.....	Effects of stimulants, etc.	.....
Writing.....	.....	Theory of teaching.....	.....
Arithmetic.....	.....	Practice of teaching.....	.....
Geography.....	.....	.....	.....
Grammar.....	.....	.....	.....
Physiology.....	.....	.....	.....
No.....		.....	

County Superintendent.

NOTE.—This certificate is valid only in the county where granted.

NUMBER 26.

Form for Monthly Report of Institute Fund.

[Section 1769.]

MONTHLY REPORT OF INSTITUTE FUND.

Received from examination fees, for the month of....., and paid to the treasurer of..... .....county, Iowa, as required by Chapter 57, Laws of 1874, as amended by Chapter 54, Laws of 1878.

	NAME OF APPLICANT.	AMOUNT RECEIVED.		NAME OF APPLICANT.	AMOUNT RECEIVED.
		$			$
1			27		
2			28		
3			29		
4			30		
5			31		
6			32		
7			33		
8			34		
9			35		
10			36		
11			37		
12			38		
13			39		
14			40		
15			41		
16			42		
17			43		
18			44		
19			45		
20			46		
21			47		
22			48		
23			49		
24			50		
25			51		
26			52		
				Total.....	

I certify that that the above report is correct.

....., Iowa. ...., *County Superintendent.*

.....1, 188..

NOTES.—(*a*) The monthly report and payment of institute fund required by section 1769 should be made on the first day of each month.

(*b*) By section 1769, one dollar must be paid by every applicant for a certificate.

NUMBER 27.

Form for Receipt of Institute Fund.

[Section 1769.]

$.....

RECEIVED OF..... ....., superintendent of schools.....county, Iowa,.....dollars institute fund.

....., Iowa. .....,

..... 1, 188.. *County Treasurer.*

NUMBER 28.

Form of Application for Teachers' Normal Institute.

[Section 1769, also 1584, Code.]

OFFICE OF COUNTY SUPERINTENDENT, }
.....county, ...188.. }

To the Superintendent of Public Instruction:

From satisfactory evidence on file in this office, I hereby certify that not less than twenty teachers desire to assemble at ....., ...county, Iowa, on the.....day of....., 188... for the purpose of holding a teachers' normal institute, to remain in session for a period of.....weeks.

I shall act as director, and have appointed, subject to your approval, ... conductor, and.....,.....,....., assistants and hereby request your concurrence in said appointments.

.....,
County Superintendent.

NUMBER 29.

Form for Report of Registration Fees, Institute Fund.

[Section 1769.]

Report of Institute Fund.

Received from registration fees of normal institute, held at....., commencing ....., 188.., for a period of.....weeks, and paid to the treasurer of.....county, Iowa, as required by Chapter 57, Laws of 1874.

	NAME OF TEACHER.	AMOUNT RECEIVED.			NAME OF TEACHER.	AMOUNT RECEIVED.	
		$				$	
1				27			
2				28			
3				29			
4				30			
5				31			
6				32			
7				33			
8				34			
9				35			
10				36			
11				37			
12				38			
13				39			
14				40			
15				41			
16				42			
17				43			
18				44			
19				45			
20				46			
21				47			
22				48			
23				49			
24				50			
25				51			
26					State appropriation		
					Total	$	

I hereby certify that the above report is correct.

....., ...,
County Superintendent.

....., Iowa,

....., 188..

NUMBER 30.

Form of Order on Institute Fund.

[Section 1769]

OFFICE OF COUNTY SUPERINTENDENT,

$..... ..... county, ..., 188..

To..... , Treasurer of.....county:

Pay to....., or order, ...dollars out of the institute fund, for.... ...., as per bill No..... approved this day, as required by law, and on file in my office.

No..... ....,

County Superintendent.

NOTE.—The county superintendent must pay to the county treasurer all moneys received for the institute fund, including the warrant for the state appropriation. He should not issue warrants for a greater amount than the funds in the hands of the county treasurer will pay off and satisfy.

NUMBER 31.

Form for Report of Teachers' Normal Institute.

[Section 1769.]

Report of Teachers' Normal Institute held at.....,
....county, commencing on the.....day of .....,188.., and continuing.....weeks.

INSTRUCTORS AND LECTURERS.

TEACHERS.	LECTURERS.
.....Conductor.	....
.....Instructor.	....
..... "	....
..... "	....
..... "	....

ATTENDANCE.

	MALES.	FEMALES.	TOTAL.
Whole number enrolled			
Total average attendance			

DR. INSTITUTE FUND. CR.

On hand at date of last institute report	$		INSTRUCTORS AND LECTURERS.			
Examination fees received and paid to county treasurer			Orders issued to			
Registration fees received and paid to county treasurer						
State appropriation received and paid to county treasurer						
County appropriation received and paid to county treasurer						
			Orders issued for incidental expenses		$	
			Unexpended			
Total	$		Total		$	

I hereby certify that the above report is correct,

....., *County Superintendent.*

NOTE.—The report of the institute fund should show the total receipts and expenditures since the date of the last institute report. The debit column should contain the amount on hand as shown by the last institute report, plus all subsequent receipts. The credit column should contain the total amount expended since date of last report, plus amount on hand at date of present report.

The examination fees must be equal to as many dollars as there are applicants for certificates.

The registration fees must equal the whole number enrolled.

Give the total incidental expenses, making but one entry.

The totals in the debit and credit columns should in all cases be equal.

A duplicate of this report will be required as part of the annual report of the county superintendent; it is, therefore, necessary that county superintendents preserve the items to make this report.

NUMBER 32.

Form for Revocation of Teacher's Certificate.

[Section 1771.]

OFFICE OF COUNTY SUPERINTENDENT,

.....*county*, ..., *188*..

To the Boards of School Directors in the county of....., *and State of Iowa:*

WHEREAS, On the.....day of....., 188.., a certificate was issued authorizing.....to teach in the public schools of this county; and,

WHEREAS, Upon due examination, of which the said ..... received personal notice, and was permitted to be present and make..... defense, it appeared that the said.....in consequence of (*here state the offense—gross immorality, for example*), is unworthy longer to retain the same.

Now, therefore, in pursuance of the provisions of section 1771, of the school laws of the state of Iowa, the said certificate is hereby revoked, to take effect from and after the date hereof.

....,

County Superintendent.

NOTE.—A copy of the above revocation should be transmitted to the secretary of each district, and the secretary should immediately notify each subdirector in his district of the fact. The teacher should also be served with a copy.

NUMBER 33.

Form for Certificate to the Board of Supervisors of the Tax Determined by the Board of Directors.

[Section 1777.]

....., 188..

To the Board of Supervisors of.... .....county:

I hereby certify that a tax of.....dollars was this day determined by the board of directors of the district township of.... ..... , in the county of ....., and state of Iowa, for the contingent fund, and .....dollars for the teachers' fund, as provided in section 1777 of the Code.

.... ,

Secretary.

NUMBER 34.

Form of Certificate to the Board of Supervisors of Tax Voted by the District Township.

[Sections 1777, 1778.]

....., 188..

To the Board of Supervisors of.....county, Iowa:

I hereby certify that at a meeting of the electors of the district township of....., in the county of .... , and state of Iowa, held on the second Monday in March, 188.., a tax of .....dollars was voted for school-house purposes; and that this tax has been apportioned by the board of directors among the subdistricts as follows:

Upon subdistrict No. 1,... .....dollars.
Upon subdistrict No. 2,..... .....dollars.
Upon subdistrict No. 3,.....dollars.
Upon subdistrict No. 4,.....dollars.
Upon subdistrict No. 5,.....dollars.

....,
Secretary.

NOTE.—All school-house taxes voted by the district township electors, must be apportioned among the subdistricts. Section 1778.

NUMBER 35.

Form for Certificate of Tax Voted by a Subdistrict, and not Granted by the District Township Electors.

[Section 1778.]

I hereby certify that the electors of subdistrict No.....in the district township of....., at the last annual meeting, voted to raise the sum of..... ....dollars, for school-house purposes, more than was granted by the electors of said district township.

.....,
Secretary.

....., 188..

NOTE.—The subdistrict electors may vote a tax for school-house purposes and certify the same to the district township meeting. Form 5. Whatever portion of this sum the township electors neglect or refuse to grant, must be certified to the board of supervisors to be levied directly upon the subdistrict making the request. Section 1778.

NUMBER 36.

Form for Notice from the County Auditor of the Amount of Semi-annual Apportionment.

[Section 1782.]

OFFICE OF COUNTY AUDITOR,
..... county, ..., 188..

To.....,
President of the District Township of.....,.....

Sir:—You are hereby notified that according to the semi-annual apportionment made this day, as provided by section 1781, Code, the sum of..... dollars is due the district township of ....., in the county of....., and state of Iowa, for which I hand you herewith my warrant on the county treasurer.

.. ..,
County Auditor.

NOTE.—This warrant must be signed by the president and countersigned by the secretary of the board, to authorize payment of the amount named therein upon presentation by the district treasurer.

———

NUMBER 37.

Form of Certificate of Election of County Superintendent.

[Section 1783.]

OFFICE OF THE COUNTY AUDITOR,
... . county, ...,188..

I hereby certify that..... .....was elected to the office of county superintendent, for the term commencing January.....,188..

His post-office address is....., Iowa.

.....,
County Auditor.

NOTE.—This certificate should be forwarded to the superintendent of public instruction immediately after the result of the election is officially determined.

NUMBER 38.

Form for Certificate of Qualification of County Superintendent.

[Section 1783.]

OFFICE OF COUNTY AUDITOR,

..... county, ..., 188..

I hereby certify that.....has duly qualified for the office of county superintendent, as required by sections 675 and 678, Code, for the term commencing January ....., 188..

His post-office address is....., Iowa.

....., ...,

County Auditor.

NOTE.—This certificate should be forwarded to the superintendent of public instruction as soon as the qualification and bond is filed in the office of the county auditor, after such bond has been approved by the board of supervisors.

NUMBER 39.

Form for Notice from County Treasurer of School Tax Collected.

[Section 1785]

OFFICE OF COUNTY TREASURER,

.....county, ..., 188..

To....., President of the Board of Directors of the District Township of.....:

You are hereby notified that the amount now collected and due the district township of....., in ....county, Iowa, is:

$..... school-house fund.

$..... .....contingent fund.

$.....teachers' fund.

....., ...,

County Treasurer.

NOTE.—It is the duty of the county treasurer to notify the president of the board of each district, quarterly, of the amount collected for each school fund and pay it to the district treasurers on the warrant of the presidents, countersigned by the secretaries.

On the first Monday in April of each year, the county treasurer also renders a statement of the amount of taxes uncollected in each district township. Section 1784.

The treasurer is required to pay over the amount of each fund collected, monthly, to independent districts, on the order of the board.

NUMBER 40.

Form of Notice Permitting the Attendance of Pupils from Adjoining Districts.

[Section 1793.]

To....., *Secretary of the Board of Directors of the District Township of*.....:

Notice is hereby given that..... ..... and....., pupils residing in the district township of ....., have been granted permission by the board and county superintendent to attend school in subdistrict No....., in the district township of..... ....., commencing on the..... day of....., 188.., for a term of.....months.

Dated at..... ....,

....., 188.. .....,

President.

.....,

Secretary.

NOTE.—By section 1793, when boards cannot agree on the attendance of scholars in adjoining districts, they may attend, if the other conditions of the law are fulfilled, by permission of the board where they wish to attend, and the consent of the county superintendent of the county where they reside, but tuition can be collected only from date of the official notice.

NUMBER 41.

Form of Application for Appointment of Appraisers of School-house Site.

[Section 1827.]

To..... ....., *Superintendent of*.....*county, Iowa:*

In accordance with the action of the board of directors of the district township of..... ....., you are hereby requested to appoint three disinterested persons to inspect, and assess the damages which the

owner will sustain by appropriating for school purposes, the following described real estate, viz : .....
.....
.....

Dated at.....,
..... ., 188..

....., *President.*

....., *Secretary.*

NUMBER 42.

Form for Appointment of Appraisers of Site for School-house.

[Section 1827.]

To....., ... *and* .....:

You are hereby appointed and constituted a board of appraisers, under the provisions of section 1827 of the Code of Iowa, to assess the damages which the owner will sustain by the appropriation for school purposes, of the following described real estate, viz : .....
.....
.....
in subdistrict No....., of the district township of.....,
in the county of..... ....., and state of Iowa, containing one acre of land.

You will therefore, on the... .....day of....., 188..,
at.....o'clock....M., proceed to examine the real estate above described, and assess, under oath, the cash damages which the owner will sustain by the appropriation of said land for school purposes, and immediately thereafter report to me in writing the amount of said damages.

Dated at.....,
...., 188.. .....,
County Superintendent.

Oath of Appraisers.

We, ..., and..... .....,
do solemnly swear that we will well and truly, and to the best of our ability perform all of the duties imposed upon us by the foregoing commission.

....,

.....,

....

Subscribed and sworn to before me by ...., ..., and ....., this .... day of ....., 188..

....,

.....

NOTE.—Sufficient time must be allowed between the appointment of this commission and the time set for appraising the damages to give the owner legal notice thereof. See note (*a*) to section 1827.

———

NUMBER 43.

Form of Notice to Owner of Real Estate of Appointment of Appraisers.

[Section 1827.]

To ....., ..., ... county, Iowa:

You are hereby notified that I have this day appointed appraisers to assess the damages which the owner will sustain by the appropriation for school purposes, of the following described real estate, viz.: .....
....
....
....
Said appraisers will meet at the above described real estate, on the .... day of ...., 188.., at ..... o'clock .. M., and assess said damages as provided by section 1827 of the Code of Iowa.

Dated at .....,
... ., 188..

.....,
County Superintendent.

NUMBER 44.

Form for Report of Appraisement of Property for School Purposes.

[Section 1827.]

To ....., Superintendent of ..... county, Iowa:

We, the undersigned, having been appointed to appraise the damages which the owner will sustain by the appropriation, for school purposes, of the following described real estate, viz.: ... .
....
....
....

do hereby report that we have on this ..... day of ....., 188.., carefully examined said described real estate, and have appraised the damages at .... dollars.

Dated at .....,
....., 188..

....
..... } *Appraisers.*
.....

NUMBER 45.

Form of Notice of Assessment of Damages.

[Section 1827.]

To ...., ..., ... county, Iowa:

You are hereby notified that appraisers were appointed to assess the damages which the owner would sustain by the appropriation for school purposes, of the following described real estate, viz.: .....
....
....
....

and that said appraisers met at said premises on the .... day of ....., 188.., and assessed said damages at ..... dollars, as shown by their report on file in my office.

Dated at .....,
....., 188..

.....,
County Superintendent.

NUMBER 46.

Form of Affidavit of Appeal.

[Section 1830.]

STATE OF IOWA, ...county. } ss.

..... }
v.
DISTRICT TOWNSHIP OF .. .. }

I, ..., being duly sworn, on oath, say: that on the ... . day of ....., A. D. 188.., the board of directors of said district township rendered a decision (or made an order) whereby (*here, state facts showing affiant's interest in the decision, and the injury to that interest);* that said board in rendering the decision (or making the order) aforesaid, committed errors as follows: (*Here state the errors charged.*)

....

Subscribed and sworn to by..... , before me, this ..... day of....., A. D. 188....

....,
.....

NUMBER 47.

Form for Notice of Appeal.

[Section 1832.]

STATE OF IOWA, ...county. } ss.

.... }
v.
DISTRICT TOWNSHIP OF..... }

To..... .....,

Secretary of the Board of Directors of the District Township of.....:

You are hereby notified that .....has filed in my office an affidavit alleging that said board of directors, on the. ....day of....., A. D. 188.., made a decision (*or an order*) whereby (*here describe the decision or order so that the secretary may identify it*), and claiming an appeal therefrom. You are therefore required within ten days after receiving this notice, to file in my office at....., in said county, a complete

transcript of the record of the proceedings of the board relating to said order, together with copies of all papers filed with you pertaining to said action appealed from.

Dated at.....,
....., 188..

.....,
County Superintendent.

NUMBER 48.

Form of Certificate to District Secretary's Transcript.

[Section 1832.]

I, ..., secretary of the board of directors of the district township of ....., in the county of..... ....., Iowa, hereby certify that the foregoing is a correct and complete transcript of the record of all proceedings of the board and of all papers filed relating to the case.....*v.* ....

Dated at.....,
... ., 188..

.....,
Secretary.

NOTE.—The secretary's transcript will contain:

1. A copy of all that portion of the records of the proceedings of the meeting, relating to the action appealed from, with the date of the meeting.

2. A copy of each petition, remonstrance, plat, or other paper relating to said action, submitted to the board; to which will be annexed the above certificate.

NUMBER 49.

Form for Notice of Hearing of Appeal.

[Section 1833.]

STATE OF IOWA, }
.....county. } ss.

.. .. }
v. }
DISTRICT TOWNSHIP OF ..... }

To..... .....:

You are hereby notified that there is file in this office a transcript of the

proceedings of the board of directors of the district township of.....
....., at a meeting held on the.....day of....., 188.., in relation to (*here describe the decision or order appealed from*), from which appeal has been taken; and that the said appeal will be heard before me at....., in said county, on the.....day of ....., 188.., at.....o'clock... .....M.

Dated at.....,
...., 188..

.....,
County Superintendent.

NOTE.—The appellant, the president and secretary of the board, and other parties known to be interested, should receive a copy of this notice.

NUMBER 50.

Form of Certificate to County Superintendent's Transcript.

[Sections 1832, 1835.]

I, ..., superintendent of .... county, Iowa, hereby certify that the foregoing is a correct and complete transcript of the records of all proceedings had, evidence given, and papers filed in my office, and my rulings thereon; also of my decision in the case .....v..... .....

Dated at..... ,
....., 188..

.....,
County Superintendent.

NOTES. (*a*) The date of filing every paper should be indorsed thereon; also in the case of motions, orders and rulings of the county superintendent. All oral motions and evidence should be reduced to writing.

(*b*) The transcript of the county superintendent will consist of a literal copy of every paper filed and all indorsements thereon, together with a copy of all testimony given; the whole arranged in chronological order closing with the decision of the county superintendent in full, with the above certificate annexed. See notes (*c*) and (*d*) to section 1834.

ERRATUM.

After section 8, to chapter 167, laws of 1882, as printed on page 95, add the following:

SEC. 9. The board of examiners shall keep a detailed and accurate account of all moneys received and expended by them, which, with a list of the names of persons receiving certificates and diplomas, shall be published by the superintendent of public instruction in his annual report.

INDEX.

	SEC.	PAGE.
ACCOUNTS—		
District treasurer shall keep	1747	35
County superintendent should keep	1769	47
County auditor shall keep	1781	54
Secretary shall keep	1782	55
County treasurer shall keep	1784	55
APPARATUS—		
Board of regents may purchase	1597	8
No debts shall be contracted to purchase	1729	26
Unappropriated contingent fund used to purchase	1729	26
APPEALS—		
Who may take, and when taken	1829	77
Affidavit, basis of	1830	78
Affidavit shall set forth errors	1831	78
County superintendent to notify secretary	1832	78
Secretary to send up transcript	1832	78
Interested parties to be notified	1833	79
Testimony heard and decision rendered	1834	79
To the superintendent of public instruction	1835	80
Judgment for money not to be rendered	1836	81
Postage paid by party taking appeal	1836	81
BARBED WIRE (Chap. 103, Laws of 1884)—		
Shall be removed from school grounds	1	96
Shall not be used enclosing school grounds	2	96
Penalty for failure or neglect to remove	3	96
BIBLE—		
Shall not be excluded from any school	1764	44
No pupil required to read, contrary to parent's wishes	1764	44
BLIND PERSONS—		
Of school age, reported to county superintendent annually	1745	34
Must be reported annually to Iowa college for blind	1775	50

	SEC.	PAGE.
BOARD OF DIRECTORS—		
Continue to act when district is divided	1715	13
Divide assets and liabilities	1715	13
Choose arbitrators in case of disagreement	1715	13
Call special meeting of electors, when	1717½	16
Consist of three subdirectors, when	1720	18
Consist of subdirectors of the several subdistricts	1721	19
Enter upon duties at regular meeting in March	1721	19
Organize by electing president from own number	1721	19
President simply entitled to vote as a member	1721	19
Elect secretary and treasurer at September meeting	1721	19
Secretary and treasurer chosen outside the board, when	1721	19
Secretary and treasurer have no vote, when	1721	19
Hold regular meetings in March and September	1722	20
Hold special meetings on call of president or request of board	1722	20
Hold meetings at any place in civil township	1722	20
Shall make contracts to execute vote of district	1723	20
Must consult superintendent before erecting school-house	1723	20
Proposals and contracts must be advertised for, when	1723	20
Require bond for performance of contract	1723	20
Choose site for school-house	1724	22
Determine number of schools, and duration	1724	22
Determine where pupils shall attend school	1725	23
Divide districts into subdistricts when necessary	1725	23
Create no district for less than fifteen pupils of school age	1725	23
May rent room and employ teacher for ten pupils	1725	23
May establish graded schools	1726	24
May select superintendent of schools of district	1726	24
One or more schools must be taught in each subdistrict	1727	25
Required to provide a school in each subdistrict	1727	25
Must provide for one or more schools, for at least six months	1727	25
Released from obligation by county superintendent	1727	25
Not to change text-books oftener than once in three years	1728	26
Electors may authorize board to change text-books	1728	26
May use unappropriated contingent fund to buy apparatus	1729	26
Shall contract no debts for apparatus	1730	26
May appoint temporary president and secretary	1730	26
Fill vacancy in the board or its officers	1730	26
Require secretary and treasurer to give bond	1731	27
Bonds to be filed with the president	1731	27
Examine accounts of treasurer and settle with him	1732	27
Present statement to district township meeting	1732	27
Audit and allow just claims	1733	28
Fix compensation of secretary and treasurer	1733	28
Draw no order until claim is audited and allowed	1733	28
Visit schools of their district, and aid teachers	1733	28

	SEC.	PAGE.
BOARD OF DIRECTORS—CONTINUED—		
Assist in enforcing rules and regulations	1734	28
Discharge teacher after investigation	1734	28
May dismiss or suspend pupils	1735	28
May re-admit pupils after suspension	1735	29
Require secretary to certify election of school officers	1736	30
Make rules to govern subdirectors	1737	30
Majority of board a quorum	1737	30
Certify no tax after third Monday in May	1738	31
Majority vote required to change boundaries of subdistricts	1738	31
Members, except secretary and treasurer, receive no pay	1738	31
President of board, duties of	1739	31
President shall act as counsel in suits	1740	32
Secretary shall act as counsel in suits, when	1740	32
Counsel may be employed by board	1740	32
Proceedings of, to be recorded by secretary	1741	32
Secretary of board give notice of district township meeting	1742	33
Secretary of board shall keep accurate accounts	1743	33
Audit accounts presented by secretary	1743	33
Secretary to notify superintendent when schools begin	1744	34
Secretary must report to superintendent annually	1745	34
Secretary's report, what it shall consist of	1745	34
Penalty for failure to file report	1746	35
Treasurer of, shall hold all moneys belonging to district	1747	35
Pay funds on order of president, countersigned by secretary	1747	35
Keep account of moneys received and paid out	1747	35
Keep separate account with each fund	1748	36
Pay no order which does not specify fund and object	1748	36
Make partial payments on orders	1748	36
Receive money apportioned to district	1749	36
Receive district school tax	1749	36
Register orders on district treasurer	1750	37
May require statement from treasurer	1751	37
Limit subdirector in making contracts	1753	38
Responsible for township on contracts	1753	38
Must have languages taught, when	1763	44
County superintendent not to be a member of	1765	45
Estimate amount of teachers' and contingent funds	1777	51
Apportion school-house tax	1778	52
Satisfy judgment with order	1787	56
Must qualify on or before third Monday in March	1790	57
Have no jurisdiction over independent districts	1792	58
May admit pupils from adjoining districts	1793	58
May, with consent of county superintendent, admit pupils	1793	58
Notify board of adjoining district, when	1793	58
Fix terms of tuition, when	1794	60

	SEC.	PAGE.
BOARD OF DIRECTORS—CONTINUED—		
Divide district into subdistricts, and change boundaries	1796	60
Cause description of subdistricts to be recorded	1696	60
May consent to attach territory to adjoining township	1797	61
May restore territory	1798	62
Must restore territory, when	1798	62
Establish boundaries of contemplated independent district	1801	63
Give notice of election of directors	1802	64
May concur in change of boundaries	1809	67
Submit question of consolidated organization	1814	70
Make settlement under sections 1814-1819	1820	73
Shall deposit amount of appraisement	1827	76
Shall pay costs of appraisement	1827	76
Provide for payment of bonds (Chap. 132, Laws of 1878)	2	85
Shall cause trees to be set out (Chap. 23, Laws of 1882)	1	92
May insure property (Chap. 149, Laws of 1882)	1	93
Must have effects of stimulants taught (Chap. 1, Laws of 1886)	2	97
May change boundaries, when (Chap. 62, Laws of 1888)	1	100
BOARD OF REGENTS—		
Governor president of	1587	8
Superintendent of public instruction member of	1587	8
One member from each congressional district	1587	8
Departments determined by	1589	8
May confer degrees	1589	8
Make laws to govern university	1596	8
Appoint president and professors	1596	8
Fix salaries and tuition fees	1596	8
Remove officer when required	1596	8
Purchase library, apparatus, etc	1597	8
Report to superintendent of public instruction	1601	9
Report of, what it shall contain	1601	9
BONDS—		
Required for performance of contract	1723	20
Secretary and treasurer to give	1731	27
Filed with president	1731	27
Independent district may issue, for erection of school-house	1821	73
Rate of interest on	1821	73
Electors to vote on question of issue	1822	74
Denomination and time	1822	74
Treasurer to negotiate at par	1822	74
Principal and interest, how paid	1823	74
Trustees of county high school must give	1699	9
Treasurer of county high school give additional	1704	11
Treasurer of normal school must give (Chap. 129, Laws 1876)	4	83
Trustees may require of other officers (Chap. 129, Laws 1876)	4	83

	SEC.	PAGE.
BONDS—CONTINUED—		
Any district issue for indebtedness (Chap. 132, Laws of 1878)	1	85
Form of, and other requirements (Chap. 132, Laws of 1878) ..	1	85
Any district issue for indebtedness (Chap 51, Laws of 1880)	1	90
Form of, and other requirements (Chap. 51, Laws of 1880)...	1	90
Board of independent district refund (Chap. 132, Laws of 1880)	1	91
Rate of interest and other conditions (Chap 132, Laws of 1880)	1	91
Treasurer to sell (Chap. 132, Laws of 1880)...	2	91
Time to run (Chap. 132, Laws of 1880).....	3	91
Form and other requirements (Chap. 132, Laws of 1880).....	4	91
Provisions for payment (Chap. 132, Laws of 1880)...	6	91
BOUNDARIES—		
Of subdistricts may be changed.....	1796	60
Plat filed with county officers.....	1796	60
Of independent district may be changed	1809	67
Of independent districts, changed.....	1814	70
Of independent districts, changed (Chap 133, Laws of 1878..)	1	86
Of independent districts, changed (Chap. 62, Laws of 1888)..	1	100
BOARD OF SUPERVISORS—		
May submit question of establishing county high school.....	1698	9
Appoint trustees of county high school.....	1699	9
Fill vacancies in trustees of county high school	1711	12
Allow compensation of trustees...	1712	12
Pay tuition of children in poor-house (Chap. 166, Laws of 1878)	1	88
Levy tax to pay bonds, when (Chap. 132, Laws of 1880).....	6	91
County superintendent not to be a member of	1765	45
Provide place for examination of teachers.....	1766	45
May appropriate sum for normal institute	1760	47
May grant county superintendent additional compensation..	1776	51
Levy taxes for school funds.....	1777	51
Levy tax on subdistrict, when	1778	52
Levy county tax of from one to three mills.....	1779	53
Limits of taxes for school purposes.....	1780	54
Levy tax to pay money borrowed from school fund	1788	57
Shall not divide school district, when.....	1799	62
Levy tax for independent district just organized.....	1804	65
COMPENSATION—		
Of secretary and treasurer.....	1733	28
Members of board may not have.....	1738	31
Of teachers	1757	41
Of county superintendent	1776	51
Of appraisers of site..... .	1827	76

	SEC.	PAGE.
CONTRACTS—		
Board to make, to execute vote of district	1723	20
Subdirector to make, under rules and restrictions	1753	38
When made by subdirector, must be approved by president	1753	38
Teachers', must be in writing	1757	41
Secretary or subdirector and teacher to sign	1757	41
Approved by and filed with the president	1757	41
Copy also filed with secretary	1757	41
COUNTY AUDITOR—		
Superintendent to file statement with, of time employed	1776	51
Make semi-annual apportionment	1781	54
Notify presidents of apportionment; issue warrants for same	1782	55
Certify election and qualification of superintendent	1783	55
Forward certificate to auditor of state	1783	55
Deduct cost of tuition from semi-annual apportionment, when	1793	58
Record plat of districts	1796	60
COUNTY HIGH SCHOOLS—		
Object of establishing	1697	9
County, with a population of 2,000 may establish	1697	9
Board of supervisors shall submit question of establishing	1698	9
Votes for or against, how canvassed	1699	9
Board of supervisors appoint trustees	1699	9
Bond and oath of trustees	1699	9
County superintendent, member of board	1699	9
When and how trustees are elected	1700	10
Terms of office of trustees	1700	10
County superintendent president of board	1701	10
Secretary and treasurer appointed from board	1701	10
Trustees shall make estimate of funds needed	1702	10
Trustees shall present estimate to board of supervisors	1702	10
Tax not to exceed two mills and five mills	1702	10
Tax for, how levied and collected	1703	10
Tax to be paid to treasurer of county high school	1703	10
Treasurer to give additional bond	1704	10
Duties of treasurer	1704	10
Secretary and treasurer to keep accurate account	1704	10
Statement to be made, when	1704	11
Board to select site for high school	1705	11
Site to be without expense to county	1705	11
Board to make purchases, contracts, etc	1705	11
Board to employ teachers	1706	11
Board to provide for payment of salaries	1706	11
Model schools to be encouraged	1706	11
Tuition free to residents of county	1707	11
Apportionment of pupils	1707	11
Pupils from other counties may be admitted	1707	11

	SEC.	PAGE.
COUNTY HIGH SCHOOLS—CONTINUED—		
Refractory pupils may be expelled	1709	12
Rules and regulations for, how made	1709	12
Trustees to make annual report to board of supervisors	1710	12
Copy of report sent to superintendent of public instruction	1710	12
Board of supervisors may fill vacancies	1711	12
Compensation of members of board of trustees	1712	12
COUNTY SUPERINTENDENT—		
Recommend plans for school-houses	1723	20
May release boards from obligation to have schools taught	1727	25
May require teacher to record matters designated	1734	28
Notified when school begins	1744	34
Receive annual report from secretary	1745	34
Receive annual report from treasurer	1751	37
Grant certificate to teach foreign languages	1763	44
Not to be a member or officer of board of directors	1765	45
Not to be a member or officer of board of supervisors	1765	45
Examine teachers last Saturday of each month	1766	45
Branches in which examination is made, specified	1766	45
May have assistant examiners	1766	45
May give certificate for special branches	1766	45
Must give certificate if examination is satisfactory	1767	46
Examinations must be public	1768	46
Keep record of examinations	1768	46
Hold normal institute annually	1769	47
With concurrence of state superintendent procure assistance	1769	47
Require registration fee	1769	47
Require fee from every applicant for certificate	1769	47
Transmit moneys to county treasurer	1769	47
Make report to county treasurer	1769	47
Issue orders upon institute fund	1769	47
May appoint deputy, who cannot visit schools or try appeals	1770	48
May revoke certificate of teacher	1771	48
Give personal notice of investigation	1771	48
Make annual report to superintendent of public instruction	1772	49
File statement of number of youth with county auditor	1772	49
Penalty for failure to file report	1772	49
Conform to instructions of superintendent public instruction	1774	49
Visit schools on request of board of directors	1774	49
Report the blind, and deaf and dumb	1775	50
Compensation of	1776	51
File statement of time employed	1776	51
Attach territory to another township, when	1797	61
Appoint appraisers and give notice to owner of land	1827	76
Notify secretary to file transcript	1832	78
Notify interested parties	1833	79

	SEC.	PAGE.
COUNTY SUPERINTENDENT—CONTINUED—		
Hear testimony and decide appeal	1834	79
Make provisions for institutes	1584	7
Member of board of trustees county high school	1699	9
President board of trustees county high school	1701	10
Sex not a bar to the office (Chap. 136, Laws of 1876),	1	85
COUNTY TREASURER—		
Disburse institute fund on order of superintendent	1769	47
Pay over all collected taxes on first Monday in April	1784	55
Keep separate account with independent districts	1784	55
Render statement of uncollected taxes	1784	55
Pay over taxes quarterly	1784	55
Keep school-house taxes separate from subdistrict, when	1784	55
Pay taxes collected, to independent districts monthly	1784	55
Notify presidents quarterly, of tax collected for each fund	1785	56
Pay taxes to district treasurers on warrants	1785	56
Pay treasurer of county high school taxes collected	1703	10
COUNSEL—		
When president of board of directors may appear as	1740	32
When president interested, secretary acts as	1740	32
When board of directors shall employ	1740	32
DEAF AND DUMB PERSONS—		
Of school age reported to county superintendent annually	1745	34
Must be reported annually to Iowa institution	1775	50
DECISION—		
Of board may be appealed from	1829	77
Of county superintendent final unless appealed from	1834	79
Of superintendent of public instruction final	1835	80
DISTRICT TOWNSHIPS—		
Each civil township a school district	1713	13
When left without officers, how supplied	1714	13
When divided, board act until next election	1715	13
Respective boards divide assets	1715	13
Arbitrators chosen in case of disagreement	1715	13
Division of assets when independent districts are formed	1715	13
Corporate name	1716	14
Hold annual meeting	1717	15
Dispose of property, authorize additional branches	1717	15
Obtain highways	1717	15
Transfer of school house fund	1717	15
Hold special meeting when necessary	1717½	16
Suit to be brought in name of	1731	27
Claims against, audited by board	1733	28
Bring suit if secretary fails to make annual report	1746	35
Bring suit if treasurer fails to make annual report	1751	37

	SEC.	PAGE.
DISTRICT TOWNSHIPS—CONTINUED—		
Liable for tuition in certain cases	1793	58
May be consolidated and organized as independent districts.	1814	70
May be formed from independent districts	1815	71
DISTRICT TOWNSHIP MEETING—		
Held annually on the second Monday in March	1717	15
May appoint chairman and secretary	1717	15
Direct sale of district property	1717	15
Determine additional branches	1717	15
Delegate foregoing powers	1717	15
Vote tax for school-houses, sites, and libraries	1717	15
Transfer surplus school-house funds	1717	15
Vote of, executed by board	1723	20
May authorize board to change text-books	1728	26
Statement to be presented at, by board	1732	27
Five notices, stating hour, posted by secretary	1742	33
Copy of notice furnished to teachers	1742	33
May vote concerning control of school-house	1753	38
May vote that foreign languages be taught	1763	44
Vote tax to pay judgment and other liabilities	1787	56
Not to organize before 9 A. M. nor adjourn before 12 M.	1789	57
EDUCATIONAL JOURNAL—		
State superintendent may subscribe for	1581	6
ELECTION—		
Special for directors	1714	13
For subdirectors	1718	17
To form new city or town district	1801	63
For directors	1808	67
To form new districts	1811	68
For voting bonds	1822	74
For establishing county high school	1698	9
Of trustees for county high school	1700	10
EXAMINERS,—STATE BOARD OF (Chap. 167, Laws of 1882).		
Of whom it shall consist	1	94
When and where meet	2	94
Rules and records	2	94
Power of board	3	94
Branches to examine candidates upon	4	94
Certificate five years, diploma for life	5	95
Certificate or diploma may be revoked	6	95
Certificate or diploma must be registered	7	95
Compensation of members of board	8	95
Shall keep and publish accurate account annually	9	95
FEE—		
Paid by every one attending institute	1769	47
Paid by every applicant for certificate	1769	47

	SEC.	PAGE.
FINES AND PENALTIES—		
Of district secretary, for failure to report	1746	35
Of district treasurer for failure to report	1751	37
Of county superintendent, for failure to report	1773	49
To whom they shall inure	1786	56
Suit brought in name of district, when	1786	56
Suit brought in name of county, when	1786	56
Suit brought by county attorney, when	1786	56
Added to fund next used	1786	56
For misapplication of money	1791	58
Of directors, for failure to make statement	1813	70
FORMS—See *Index to Forms.*		
FUNDS—		
School-house, contingent, and teachers', defined	1748	36
Separate account with each, to be kept by treasurer	1748	36
Fund and object must be specified in order	1748	36
Teachers', and contingent, amount for, estimated by board	1777	51
Amount levied for school-house fund not to exceed ten mills	1780	54
Amount for contingent fund, not to exceed $5 per scholar	1780	54
Amount of teachers' fund, not to exceed $15 per scholar	1780	54
$75 may be levied for contingent fund, for each subdistrict	1780	54
$270 may be levied for teachers' fund, for each subdistrict	1780	54
Permanent, interest on, apportioned	1781	54
Secretary to keep separate account with each	1782	55
GENERAL PROVISIONS—		
School month defined	1761	43
Electors may vote that foreign languages be taught	1763	44
Schools must be taught in English	1763	44
Bible not to be excluded from schools	1764	44
Pupils not required to read Bible contrary to wish of parents	1764	44
HIGHWAYS—		
May be ordered by the electors	1717	15
INDEPENDENT DISTRICTS—		
Left without officers, trustees call election	1714	13
Assets and liabilities divided when boundaries are changed	1715	13
Corporate name of	1716	14
Majority of board, and president may dismiss pupils	1735	29
Tax for, county treasurer to pay over monthly	1784	55
Polls remain open from 12 M. to 7 P. M., when	1789	57
Polls to remain open from 9 A. M. to 4 P. M., when	1789	57
City, town or village of over 200 inhabitants may organize	1800	63
Directors of district township to establish boundaries	1801	63
Electors to vote for or against separate organization	1801	63
Term of office of directors determined by lot	1802	64
Board to elect president	1802	64

	SEC.	PAGE.
INDEPENDENT DISTRICTS—CONTINUED—		
Board to elect secretary and treasurer in September	1802	64
Board to consist of three members when	1802	64
Treasurer of board may not be member	1802	64
President and secretary, judges at first election	1803	65
Organization must be complete before August 1st	1804	65
Taxes levied by district township to be void, when	1804	65
Board to levy taxes, when	1804	65
When formed from two or more townships, who give notice.	1805	66
Governed by laws for district townships, when applicable	1806	66
Electors may vote tax for erection of school houses, etc	1807	66
Annual meeting of	1808	67
Election of officers	1808	67
Who are judges of election	1808	67
Boundaries between, and district township, changed how	1809	67
Abandoned, with concurrence of boards	1809	67
Board to set off territory when	1810	68
May consolidate	1811	68
May be formed from adjoining counties	1811	68
Territory incorporated town part of (Chap. 118, Laws 1882).	1	93
Boundaries changed, boards settle (Chap. 118, Laws 1882)	1	93
School in two counties formed into independent district	1812	69
Board make statement of receipts and disbursements	1813	70
Board publish statement, when	1813	70
Board post statement, when	1813	70
Board liable to penalty for failure to make statement	1813	70
District township may become independent	1814	70
Independent districts may be constituted district township	1815	71
Election to be called	1816	71
Independent districts become subdistricts	1817	72
Elect subdirectors on first Monday in March	1818	72
Governed by laws for district townships	1819	72
New board to make settlement of assets and liabilities	1820	73
May borrow money by issuing bonds	1821	73
Board to submit question of issuing bonds to electors	1822	74
Board to issue bonds in accordance with vote of electors	1822	74
Bonds signed by president and attested by secretary	1822	74
Denomination and time of bonds	1822	74
Board vote tax to pay bonds if electors neglect	1823	74
Orders draw legal interest after presentation	1824	75
Board may provide for industrial expositions (Chap. 64, 1874)	1	82
May bond to fund indebtedness (Chap. 132, Laws of 1878)	1	85
May subdivide, or have territory detached (Chap. 133, 1878)	1	86

	SEC.	PAGE
INDEPENDENT DISTRICTS—CONTINUED—		
Of 15,000, have separate polling places (Chap. 8, Laws of 1880)	1	88
Questions submitted decided by ballot (Chap 8, Laws of 1880)	2	88
Register of electors shall be prepared	3	89
Notice of election, how given (Chap 8, Laws of 1880)	4	89
Board of, issue bonds to fund indebtedness (Chap. 132, 1880).	1	91
Levy of tax for payment of bonds (Chap. 132, Laws of 1880)..	6	91
May be formed, when (Chap. 62, Laws of 1888).	1	100
INDUSTRIAL EXPOSITIONS—(Chap. 64, Laws of 1874)		
Board provide for, in each school, if deemed expedient	1	82
Consist of what	2	82
Pupils to explain mode of manufacture or culture	3	82
Parents and friends may attend	4	82
Ornamental work encouraged	5	82
When and where held	6	82
INSURANCE—		
All districts may effect (Chap. 149, Laws of 1882)	1	93
No debts shall be contracted for (Chap. 149, Laws of 1882) ..	1	93
JUDGMENT—		
Against district, how paid	1757	56
Bonds issued to pay indebtedness (Chap. 132, Laws of 1878)..	1	85
Bonds issued to refund indebtedness (Chap. 51, Laws of 1880)	1	90
Bonds issued to fund indebtedness (Chap. 132, Laws of 1880).	1	91
LANGUAGE—		
German, or other foreign, when shall be taught	1763	44
Teacher of foreign must have certificate	1763	44
Schools must be taught in English	1763	44
LAWS—		
Relative to schools to be furnished	1579	5
LIABILITIES—		
Boards to make division of	1715	13
LIBRARY—		
Electors may vote to purchase	1717	15
Electors may vote to buy library and apparatus	1807	66
Number books in, reported	1583	6
MAPS—		
May be purchased by board	1729	26

	SEC.	PAGE.
MISCELLANEOUS—		
Fines and penalties, disposition of	1786	56
Judgment, how satisfied	1787	56
District township meeting vote tax to pay judgment	1787	56
Money borrowed from school fund, how paid	1788	57
Meeting not to organize before 9 A. M. nor adjourn before 12 M.	1789	57
Polls remain open from 9 A. M. to 4 P. M., when	1789	57
Polls remain open from 12 M. to 7 P. M., when	1789	57
Director, or director elect may administer official oath	1790	57
Penalty for misapplication of money	1791	58
Township board no control over independent districts	1792	58
Children may attend school in adjoining districts, when	1793	58
Board to fix terms of attendance, when	1794	60
Pupils may attend school in another subdistrict	1795	60
Board may divide district township into subdistricts	1796	60
Plat showing changes in boundaries must be filed	1796	60
Subdistrict boundaries conform to congressional lines	1796	60
Changes in boundaries take effect, when	1796	60
Superintendent may attach territory to another township	1797	61
Territory may be restored, how	1798	62
School district not to be divided, when	1799	62
MONTH—		
Of what school month consists	1761	43
NAME—		
Of school district	1716	14
Shall be given (Chap. 133, Laws of 1878)	4	86
May be changed (Chap 133, Laws of 1878)	4	86
NORMAL SCHOOL—*See State Normal School.*		
ORDERS—		
When drawn	1733	28
How drawn	1739	31
Partial payment on	1748	38
May draw interest, when	1824	75
PENALTIES—See *Fines and Penalties.*		
PRESIDENT—		
Chosen from the subdirectors	1721	19
Call special meetings of board	1722	20
Temporary, may be appointed	1730	26
Vacancy in office of, filled by board	1730	26
To file bonds of secretary and treasurer	1731	27
Bring suit on bond of secretary and treasurer, when	1731	27
Concur with majority in expelling pupils	1735	29
Preside at meetings of board and of district township	1739	31
Draw drafts on county treasurer	1739	31

	SEC.	PAGE.
PRESIDENT—CONTINUED—		
Sign orders on district treasurer	1739	31
Sign all contracts made by board	1739	31
Appear for district in suits	1740	32
Secretary appear, when	1740	32
Counsel may be employed	1740	32
Approve contracts of subdirectors	1753	38
Concur with subdirector in dismissing pupil	1756	40
Approve and file teachers' contracts	1757	41
Sign warrant for semi-annual apportionment	1782	55
Certify to account for tuition filed with auditor	1793	58
Sign district bonds	1822	74
PUPILS—		
Attend school where, determined by board	1725	23
Fifteen, required for creation of subdistrict	1725	23
Teacher may be employed to teach ten	1725	23
Legal age of	1727	25
Enumerated by subdirector	1755	40
Dismissed by subdirector and president	1756	40
May be re-admitted	1756	40
Register of attendance, when kept separate	1759	42
Not required to read Bible contrary to wish of parent	1764	44
Attend school in an adjoining district, when	1793	58
Temporarily sojourning, may attend school, on what terms	1794	60
Board to fix terms of attendance, when	1794	60
May attend school in another subdistrict	1795	60
RECORDS—		
Secretary to keep	1741	32
REGISTER—		
Teacher to keep	1759	42
REGULATIONS—		
For control of school and teachers	1726	24
For government of subdirectors	1737	30
REPORTS—		
Copies of to be preserved by secretary	1741	32
Secretary to make annually	1745	34
Treasurer to make annually	1751	37
Subdirector to make to secretary	1755	40
Made to state superintendent by county superintendent	1772	49
Of blind, and deaf and dumb, by county superintendent	1775	50
Of interest on permanent school fund	1783	55
ROADS—See *Highways.*		
SALE OF PROPERTY—		
May be directed by electors of district township	1717	15
May be directed by electors of independent districts	1807	66

	SEC.	PAGE.
SCHOLARS—See *Pupils.*		
SCHOOL LAWS—		
To be furnished school officers	1579	5
To be given to successor	1791	58
SCHOOL MONTH—		
Consists of what	1761	43
SCHOOLS—		
Number of, determined by board	1724	22
Duration of, beyond legal period	1724	22
Graded, may be established	1726	24
One or more taught in each subdistrict	1727	25
Duration of	1727	25
Superintendent may allow board to reduce the time	1727	25
Visited by board of directors	1734	28
Pupils may be expelled from	1735	29
Subdirector shall visit twice during each term	1756	40
Teacher of, must have certificate	1758	42
School month defined	1761	43
Bible not to be excluded from	1764	44
Visited by county superintendent	1774	49
May be attended by pupils from adjoining district, when	1793	58
SCHOOL DISTRICTS—		
Each civil township declared a school district	1713	13
When without officers, how supplied	1714	13
If divided, board of directors act until next election	1715	13
Assets and liabilities to be equitably divided	1715	13
Disagreements to be settled by arbitrators	1715	13
Assets divided when independent district is formed	1715	13
Every school district is a body corporate	1716	14
When school-house is destroyed, what to do	1717½	16
SCHOOL-HOUSES—		
Plans for, recommended by county superintendent	1723	20
Built or repaired by contract if cost exceed $300	1723	20
Proposals to build, invited by advertisement	1723	20
Contracts let to the lowest responsible bidder	1723	20
Site of, fixed by board	1724	22
Contracts for repairs made by subdirector	1753	38
Under control of subdirector unless otherwise ordered	1753	38
SCHOOL-HOUSE SITES—		
Lawful for district to take	1825	75
Not to exceed one acre without consent of owner	1825	75
Must be on highway	1826	75
Not within forty rods of residence, if owner objects	1826	75
County superintendent to appoint appraisers	1827	76
County superintendent to give notice to owner	1827	76
Appraisers to assess damages and make report	1827	76

	SEC.	PAGE.
SCHOOL-HOUSE SITES—CONTINUED—		
Board to deposit money with the county treasurer	1827	76
Either party may appeal to district court	1827	76
Title acquired for school purposes only	1828	77
Growing timber shall not be injured or removed	1828	77
SCHOOL ORDERS—		
Not drawn until claim is audited	1733	28
Signed by the president	1739	31
Fund and object must be specified in	1739	31
Secretary to countersign and register	1741	32
Transcript of, must be furnished to treasurer	1741	32
Must specify fund and purpose	1748	36
Treasurer to register	1750	37
Given to satisfy judgment	1787	56
Draw lawful interest after presentation	1824	75
SECRETARIES—		
Give notice of subdistrict election, when	1718	17
Draw for absent member in case of a tie	1719	17
Elected on third Monday in September	1721	19
Qualify and enter on duty within ten days	1721	19
Chosen from township at large, when	1721	19
Have no vote unless member of board	1721	19
Temporary, may be appointed	1730	26
Vacancy in office of, filled by board	1730	26
Give bond	1731	27
Compensation of, fixed by board	1733	28
Report names of school officers to county officers	1736	30
Appear in suits, when	1740	32
Record all proceedings of board	1741	32
Preserve copies of all reports	1741	32
File all official papers	1741	32
Countersign and register drafts and orders	1741	32
Furnish district treasurer with transcript of orders	1741	32
Post five notices of district township meeting	1742	33
Notices to state hour of meeting	1742	33
Present accounts to board to be audited	1743	33
Notify superintendent when each school begins	1744	34
Make annual report to county superintendent	1745	34
Penalty for failure of, to report	1746	35
Certify amounts for school funds	1777	51
Countersign warrants for semi-annual apportionment	1782	55
Debit and credit treasurer	1782	55
File account of tuition, when	1793	58
Deliver plat to county treasurer and auditor	1796	60
Record order of county superintendent and correct plat, when	1797	61

	SEC.	PAGE.
SECRETARIES—CONTINUED—		
Chosen outside the board, when	1802	64
Act as judge of annual election	1808	67
Draw for absent member, in case of tie vote	1808	67
Post notices of election	1811	68
Send up transcript	1832	78
SEX—(Chap. 136, Laws of 1876.)		
Not a test of eligibility to school offices	1	85
No person deprived of school office by reason of sex	2	85
STATE NORMAL SCHOOL—(Chap. 129, Laws of 1876.)		
Object and location	1	83
Controlled by board of directors	2	83
Vacancy in board filled by governor	2	83
Officers of the board, and compensation	3	83
Officers to give bond	4	84
Teachers employed by board	5	84
Property and funds controlled by board	5	84
Rules for management of school made	5	84
Provide for admission of teachers	5	84
Arrange for board of teachers	5	84
Require fee for contingent expenses	5	84
Session must continue twenty-six weeks	5	84
Board may charge tuition fee	5	84
Report made each year	9	142
STATE UNIVERSITY—		
Object and location of	1585	7
Course of study, where to commence	1585	7
Student not completed elementary branches not admitted	1585	7
No religious denomination to control	1586	7
Governed by board of regents	1587	8
Governor, president of board	1587	8
Superintendent public instruction, member of board	1587	8
Regent elected from each congressional district	1587	8
Departments determined by board of regents	1589	8
Include collegiate, scientific, law, and other departments	1589	8
Board of regents may confer degrees	1596	8
Enact laws for government of university	1596	8
President, professors and tutors, how appointed	1596	8
Salaries of officers determined by the board	1596	8
Tuition fees fixed by the board	1596	8
Officer removed, when deemed necessary	1596	8
Library, apparatus, etc., purchased by board	1597	8
All specimens, collected by state geologist, to belong to state	1598	8
President report to board of regents	1600	8
Board report to superintendent of public instruction	1601	9

	SEC.	PAGE.
SUBDIRECTORS—		
Special election of	1714	13
Elected annually first Monday in March in each subdistrict	1718	17
Give notice of subdistrict election	1718	17
One, elected from the district at large, when	1720	18
Vacancy in office of, filled by board	1730	26
Governed by rules made by board	1737	30
Take oath	1752	38
Office vacant in case of failure to qualify	1752	38
Make contracts under restrictions of board	1753	38
Have control of school-house	1753	38
Contracts must be approved by president	1753	38
Take enumeration of children	1754	40
Make annual report to secretary	1755	40
May dismiss pupils with concurrence of president	1756	40
Shall visit schools twice during each term	1756	40
Authorized to administer official oath	1790	57
Qualify on or before third Monday in March	1790	57
When superseded deliver up books, etc	1791	58
Penalty for misapplication of money, etc	1791	58
May consent that pupils attend school in another subdistrict	1795	60
Elected for new subdistrict, when	1796	60
No person ineligible by reason of sex (Chap. 136, Laws of 1876)	1	85
SUBDISTRICTS—		
Embracing whole district elect three subdirectors	1720	18
If but two subdistricts in township, subdirectors chosen, how	1720	18
Board determine number of schools taught in each	1724	22
One or more schools taught in each	1727	25
Rule of taxation on, for school-house purposes	1778	52
Pupils may attend in another	1795	60
Plat of, to be made	1796	60
May be formed from independent districts	1817	72
Hold meeting to elect subdirector, on first Monday in March	1818	72
SUBDISTRICT BOUNDARIES—		
Vote of majority of board required to change	1738	31
Established and changed by board	1796	60
Conform to congressional lines	1796	60
Changes in, to take effect when	1797	61
SUBDISTRICT MEETING—		
Held annually, on the first Monday in March	1718	17
Five days' notice of, given by subdirector	1718	17
Three notices stating hour, posted	1718	17
Chairman and secretary act as judges of election	1719	17
Vote decided by lot, in case of a tie	1719	17
Three subdirectors elected, when	1720	18

	SEC.	PAGE.
SUBDISTRICT MEETING—CONTINUED—		
One subdirector in each district, and one at large	1720	18
Judges of election canvass votes for subdirector at large	1720	18
Not to organize before 9 A. M., or adjourn before 12 M.	1789	57
Held on first Monday in March	1818	72
SUPERINTENDENT OF PUBLIC INSTRUCTION—		
Approve appointment of institute instructors	1769	47
May entertain appeals from county superintendent	1835	80
Give thirty days' notice to county superintendent	1835	80
Like notice to adverse party	1835	80
Decision shall be final	1835	80
Shall not render judgment for money	1836	81
Receive no additional compensation for determining appeals	1836	81
May meet county superintendents in convention	1577	5
Charged with supervision of schools and superintendents	1577	5
Attend teachers' institutes, when practicable	1577	5
Determine appeal cases	1577	5
Render written opinion to school officers when asked	1577	5
Have office at seat of government	1578	5
File all papers, reports and documents	1578	5
Keep fair record of matters in office	1578	5
Publish and distribute school laws and amendments	1579	6
Publish and distribute other necessary forms	1579	6
Subscribe for Educational Journal	1581	6
Furnish copies of same to county superintendents	1581	6
Publish decisions in Educational Journal	1581	6
Report number of children to auditor of state	1582	6
Report to governor of state	1583	6
Have report printed and presented to general assembly	1583	6
Appoint teachers' institutes	1584	7
Transmit appropriation to county superintendent	1584	7
Member of board of regents of state university	1587	8
Board of regents shall annually report to	1601	9
Member of board directors state normal school	2	83
TAXES—		
Board not to certify after third Monday in May	1738	31
For teachers' and contingent funds determined by board	1777	51
Certified by secretary to board of supervisors	1777	51
Board of supervisors to levy for school funds	1777	51
School-house, to be apportioned	1778	52
Excess levied upon subdistrict, when	1778	52
Fifteen mills may be levied, when	1778	52
One to three mills county tax to be levied	1779	53
Receivable only in cash	1779	53
Limits of for school purposes	1780	54

	SEC.	PAGE.
TAXES—CONTINUED—		
Paid to district township treasurer quarterly	1784	55
Paid to independent districts monthly	1784	55
Presidents of boards to be notified of tax collected	1785	56
Paid to district treasurers on warrants	1785	56
Levied by district townships, void, when	1804	65
All taxes determined by board of directors, when	1804	65
Determined before third Monday in August, when	1804	65
Certified before first Monday in September, when	1804	65
Board of supervisors levy for independent districts	1804	65
Of mills voted, when (Chap. 67, Laws of 1874)	1	83
Board to levy, to pay judgment (Chap. 132, Laws of 1878)	2	85
TEACHERS—		
Keep list of pupils showing attendance, etc	1734	28
May be discharged by board	1734	28
Subdirector or secretary makes contracts with	1757	41
Contracts must be in writing	1757	41
President must approve and file contract	1757	41
Not to be employed without certificate	1758	42
Keep daily register	1759	42
Keep separate register for non-resident pupils	1759	42
File certified copy of register with secretary	1760	43
Regular examination of, last Saturday in each month	1766	45
Satisfy county superintendent regarding moral character	1767	46
Certificate cannot exceed one year	1767	46
Examination of, to be public	1768	46
Pay fee on application for examination	1769	47
Pay registration fee	1769	47
Certificate of, may be revoked	1771	48
Shall have personal notice of charges preferred	1771	48
Of county high school, by whom selected	1706	11
TEACHERS' NORMAL INSTITUTE—		
Shall be held annually in each county	1769	47
Aided by state appropriation	1584	7
TEXT-BOOKS—		
Board may adopt	1728	26
May be changed after three years	1728	26
Electors may authorize board to change sooner	1728	26
TIE VOTE—		
For subdirector determined by lot	1719	17
For director determined by lot	1808	67
TRANSCRIPT—		
Secretary notified to send on appeal	1832	78

	SEC.	PAGE.
TREASURERS—		
Chosen outside of the board, when	1721	19
Have no vote unless member of board	1721	19
Vacancy in office of, filled by board	1730	26
Give bonds	1731	27
Accounts of, examined by board	1732	27
Compensation of, fixed by board	1733	28
Hold all moneys belonging to district	1747	35
Pay funds on order of president; countersigned by secretary	1747	35
Keep account of moneys received and paid out	1747	35
Keep separate account with each fund	1748	36
Pay no order which does not specify fund and object	1748	36
Make partial payments on orders	1748	36
Receive money apportioned to district	1749	36
Receive district school tax	1749	36
Register orders	1750	37
Render statement of finances	1751	37
Make annual report to board of directors	1751	37
Make annual report to county superintendent	1751	37
Penalty for failure to report	1751	37
Draw semi-annual apportionment on warrant	1782	55
Receive moneys for district township quarterly	1784	55
Receive moneys for independent district monthly	1784	55
Chosen outside of board, in all independent districts	1802	64
Negotiate bonds	1822	74
Countersign bonds when negotiated	1822	74
Charged with bonds delivered to him	1822	74
Of county high school	1701	10
Of county high school, duties of	1701	11
Of state normal school (Chap. 129, Laws of 1876)	3	83
Of state normal school, duties of (Chap. 129, Laws of 1886)	4	83
To sell bonds, when (Chap. 132, Laws of 1880)	2	91
Keep record of parties buying bonds (Chap. 132, Laws of 1880)	3	91
Charged with bonds delivered to him (Chap. 132, Laws of 1880)	5	91
TREES—		
Number and condition of, reported annually	1745	34
Growing and standing, shall not be injured	1828	77
Board shall cause to be set out (Chap. 23, Laws of 1882)	1	92
Superintendent to notify boards (Chap. 23, Laws of 1882)	2	92
TRUSTEES OF HIGH SCHOOLS—		
Appointed by boards of supervisors	1699	9
Qualification of	1699	9
Oath, and bond of	1699	9
County superintendent member of board of	1699	9
Divided into three classes	1700	10
Election of	1700	10

	SEC.	PAGE.
TRUSTEES OF HIGH SCHOOLS—CONTINUED—		
Terms of office	1700	10
County superintendent president of board	1701	10
Secretary and treasurer appointed from board	1701	10
Estimate of funds needed, made by	1702	10
Shall present estimate to board of supervisors	1702	10
May require treasurer to give additional bond	1704	11
Shall select site for high school	1705	11
Make purchases, let contracts, etc	1705	11
Employ teachers, pay salaries	1706	11
Make rules regarding admission	1707	11
Determine tuition of pupils from other counties	1708	12
Approve of rules and regulations governing schools	1709	12
May expel refractory pupils	1709	12
Make annual report to board of supervisors	1710	12
Vacancies filled by board of supervisors	1711	12
Compensation of members	1712	12
TUITION—		
Of pupils from other districts, how paid	1793	58
Of non-residents, fixed by board	1794	60
At county high school free, when	1707	11
Of scholars from other counties at county high school	1708	12
At state normal school (Chap. 129, Laws of 1876)	5	83
VACANCY—		
Filled by special election, when	1714	13
Filled by appointment, when	1730	26
VISITATION OF SCHOOLS—		
By board of directors	1734	28
By subdirector	1756	40
By county superintendent	1774	49

INDEX TO FORMS.

	NO.	PAGE.
Proceedings of district township meeting	1	103
Notice for annual meeting in subdistricts	2	104
Proceedings of annual subdistrict meeting	3	104
Certificate of election of subdirector	4	105
Certificate of tax voted by subdistrict meeting	5	106
Proposals for the erection (or repair) of school-houses	6	106
Contract for building school-houses	7	107
Bond for performance of contract	8	108
Certificate of appointment of school officers	9	109
Bond of secretary or treasurer	10	110
Certificate of election of officers of the board	11	111
Draft on county treasury	12	112
Order on district treasury	13	112
Lease	14	113
Deed	15	113
Order register of secretary and treasurer	16	115
Notice of district township meeting	17	116
Report of secretary	18	117
Treasurer's account with teachers' fund	19	119
Report of treasurer	20	120
Contract between subdirector and teacher	21	121
List heads of families and children, kept by subdirectors	22	122
Teacher's daily register of attendance	23	123
Teacher's term report to district secretary	24	124
Teacher's certificate	25	125
Monthly report of institute fund	26	126
Receipt of institute fund	27	127
Application for teachers' normal institute	28	127
Report of registration fees, institute fund	29	128
Order on institute fund	30	129
Report of teachers' normal institute	31	129
Revocation of teacher's certificate	32	131
Certificate to supervisors of tax determined by board	33	131
Certificate to supervisors of tax voted by district township	34	132

	NO.	PAGE.
Certificate of tax voted by a subdistrict, not granted by district	35	132
Notice from the county auditor of semi-annual apportionment	36	133
Certificate of election of county superintendent	37	133
Certificate of qualification of county superintendent	38	134
Notice from county treasurer of school tax collected	39	134
Notice permitting attendance from adjoining districts	40	135
Application for appointment of appraisers of site	41	135
Appointment of appraisers of school-house site	42	136
Notice to owner of real estate of appointment of appraisers	43	137
Report of appraisement of property for school-house purposes	44	138
Notice of assessment of damages	45	138
Affidavit of appeal	46	139
Notice of appeal	47	139
Certificate to district secretary's transcript	48	140
Notice of hearing of appeal	49	140
Certificate to the county superintendent's transcript	50	141

SCHOOL LAW DECISIONS

IN

APPEAL CASES,

BY THE

Superintendent of Public Instruction

EDITION OF 1888.

COMPILED FOR THE USE OF SCHOOL OFFICERS

BY

HENRY SABIN,

SUPERINTENDENT OF PUBLIC INSTRUCTION.

DES MOINES:
GEO. E. ROBERTS STATE PRINTER.
1888.

PREFACE.

The following compilation of School Law Decisions is believed to be as full and complete as can be made under the circumstances.

Such decisions have been selected as bear more directly upon those cases frequently brought to the attention of school officers.

A close study of these decisions, together with a careful reading of the sections of law which they are designed to construe, taken in connection with the explanatory notes, will give county superintendents and other school officers a better understanding of their duties and of their relation to each other and to the public.

In order that those most interested may avoid errors, attention is called to a few particulars.

Neither the county superintendent nor the superintendent of public instruction has power to decide the legality of a contested election. They are often asked to give an opinion in such cases, but always hesitate, because there are usually many important points involved which can only be brought out in the courts, where such cases must eventually go, unless settled by compromise. County superintendents may advise mutual concessions, such as justice and equity may suggest, but cannot entertain such cases on appeal.

This department cannot attempt to determine the validity of a contract. An appeal will lie to determine whether the board, in dismissing or refusing to dismiss a teacher, acted through mistaken or improper motives, but the courts alone can pass upon the validity of the contract, or enforce its fulfillment.

In cases where the concurrence of another board is necessary to the completion of an action, there can be no appeal from the order of the board originating the action.

County superintendents should give great weight to acts of a board purely discretionary in their nature. Unless such acts are plainly shown in the testimony to be the result of manifest injustice or improper motives, or in some other way an abuse of discretion, the action of the board should be affirmed.

On the other hand, however, the county superintendent is not limited to affirming or reversing the action of the board, but he may do on appeal, whatever the board had power to do. This point has been long determined, and will be sustained by this department in the future. But in all such cases, the county superintendent must be able in his decision to show plainly that he is warranted by the evidence in determining the error of the board.

While the county superintendent may not compel the attendance of witnesses at the trial of an appeal, he may order depositions to be taken, in accordance with sections 3692–3696, Code, and thus secure the required testimony.

It would lighten the labors of this office if county superintendents would take great care in sending up the transcript. The outside of each paper should be so marked as clearly to indicate the contents. The pages of the testimony should be carefully numbered, and the whole fastened together. The directions given in notes to sections 1830–1836, should be closely followed. The map, which should be sent in all cases where boundaries or sites are in question, should show the roads, streams, location of dwellings, and number of school age at each residence, with any other information of value to a clear understanding of the case. A complete and accurate plat, agreed to by all parties as being correct, often furnishes a key to the whole situation.

The same weight given by county superintendents to the discre-

tionary acts of boards will be given by this department to the discretion of county superintendents in refusing or revoking certificates.

We are always glad, as it is a part of our duty, to answer all questions from school officers concerning the interpretation of the school law. But we think frequent perusal of the decisions following will give careful readers the ability to answer for themselves many questions likely to arise in the administration of school affairs.

HENRY SABIN,

Superintendent of Public Instruction.

DES MOINES, July 1, 1888.

TABLE OF CASES.

A.

Albion, District Township of, Smith v. 18
Amity, Independent District of, Darnell v. 103
Arthur v. Independent District of Fairway 93

B.

Baker v. Independent District of Waukon 130
Bartlett v. District Township of Spencer 111
Beard v. District Township of Washington 67
Belmont, District Township of, Moorman v. 53
Boomer, District Township of, Remington v. 57
Boyer v. Independent District No. 2, Dutch Township 135
Brewer v. District Township of Washington 73
Brighton, District Township of, Woods v. 90
Brown v. District Township of Van Meter 82
Brown, District Township of, Gordon v. 43
Brown v. District Township of Richland 17
Bunn v. District Township of Douglas 64
Burlington, Independent District of, David v. 75
Buzzard v. Independent District of Liberty 95

C.

Caldwell v. Peebles 62
Cedar, District Township of, Dayton v. 58
Cedar, District Township of, Miner v. 51
Center, District Township of, Folsom v. 141
Charles City, Independent District of, Harwood v. 69
Chester, District Township of, Hays v. 85
Coffin's Grove, District Township of, Smith v. 33
Colburn v. District Township of Silver Lake 110
Colcord v. Independent District of Vinton 113
Cormack v. District Township of Lincoln 106

Cousins v. Independent District Township of Spirit Lake..... 133
Crookshank v. District Township of Maine..... 88
Curry v. District Township of Franklin..... 41

D.

Darnall v. Independent District of Amity..... 103
David v. Independent District of Burlington..... 75
Davis v. District Township of Madison..... 60
Dayton v. District Township of Cedar..... 58
Deck v. District Township of Eden..... 139
Des Moines, District Township of, Handersheldt v..... 115
Dobbins and Briggs v. District Township of Salem..... 24
Dougherty v. Tracy..... 29
Douglas, District Township of, Bunn v..... 64
Dunlavy v. Klinginsmith..... 102
Dutch, Independent District No. 2, Boyer v..... 135

E.

Eden, District Township of, Deck v..... 139
Edwards v. District Township of West Point..... 35
Elden, Independent District of, Taylor v..... 65
Exira, District Township of, Watson v..... 68

F.

Fairway, Independent District of, Arthur v..... 93
Fisher v. District Township of Tipton..... 123
Flynn v. District of Whitebreast..... 26
Folsom v. District Township of Center..... 141
Franklin, District Township of, Curry v..... 41

G.

Galland's Grove, District Township of, McIntosh v..... 22
Gordon v. District Township of Brown..... 43
Gosting v. District Township of Lincoln..... 80

H.

Hall v. District Township of Massillon..... 55
Handersheldt v. District Towhship of Des Moines..... 115
Hansel v. District Township of Mallory..... 117
Hardy v. District Township of Wyacondah..... 91
Harlan Township, District No. 1 v. District No. 2..... 107
Harlan Township, District No. 2 v. District No. 1..... 107
Harwood v. Independent District of Charles City..... 69
Hays v. District Township of Chester..... 85
Hays v. District Township of Jefferson..... 96
Hubbard v. District Township of Lime Creek..... 78

J.

Jacoby v. Independent District of Nodaway..... 104
Jasper, District Township of, Thompson v 87
Jefferson, District Township of, Hays v 96
Johnson v. District Township of Monroe..... 25

K.

Kennon, Orme and Bullock v. Independent District of Nodaway No. 4. 100
Klinginsmith, Dunlavy v 102
Koontz v. District Township of Liscomb..... 127

L.

Lester, District Township of, Sipple v 46
Lewis v. District Township of Woolstock 132
Liberty, District Township of, Rook v..... 72
Liberty, Independent District of, Buzzard v..... 95
Lime Creek, District Township of, Hubbard v..... 78
Lincoln, District Township of, Gosting v..... 80
Lincoln, District Township of, Randall v..... 84
Lincoln, District Township of, Cormack v..... 106
Liscomb, District Township of, Koontz v..... 127
Lodomillo, District Township of, Rankin v..... 108

M.

Madison, District Township of, Davis v 60
Maine, District Township of, Crookshank v 88
Mallory, District Township of, Hansel v..... 117
Maquoketa, District Township of, Smith v 39
Marshall v. District Township of Marshall..... 129
Marshall, District Township of, Marshall v..... 129
Massillon, District Township of, Hall v 55
McIntosh v. District Township of Galland's Grove..... 22
Miner v. District Township of Cedar..... 51
Monroe, District Township of, Johnson v..... 25
Monroe, District Township of, Wilson v..... 98
Moorman v. District Township of Belmont..... 53

N.

Nodaway, Independent District No. 4, Kennon, Orme and Bullock v... 100
Nodaway, Independent District of, Jacoby v 104

P.

Park v. Independent District of Pleasant Grove..... 120
Peebles, Caldwell v 62
Pleasant Grove, Independent District of, Park v..... 120

R.

Randall v. District Township of Lincoln 84
Rankin v. District Township of Lodomillo 108
Reed v. District Township of Union 76
Remington v. District Township of Boomer 57
Richland, District Township of, Brown v 17
Rook v. District Township of Liberty 72

S.

Salem, District Township of, Dobbins and Briggs v 24
Silver Lake, District Township of, Colburn v 110
Sipple v. District Township of Lester 46
Smith v. District Township of Albion 18
Smith v. District Township of Coffin's Grove 33
Smith v. District Township of Maquoketa 39
Spencer, District Township of, Bartlett v 111
Spirit Lake, Independent District Township of, Cousins v 133
Stine v. District Township of Wahkonsa 21

T.

Taylor v. Independent District of Eldon 65
Thompson v. District Township of Jasper 87
Tipton, District Township of, Fisher v 123
Tracy, Dougherty v 29

U.

Union, District Township of, Reed v 76

V.

Van Meter, District Township of, Brown v 82
Vinton, Independent District of, Colcord v 113

W.

Wahkonsa, District Township of, Stine v 21
Washington, District Township of, Beard v 67
Washington, District Township of, Brewer v 73
Watson v. District Township of Exira 68
Waukon, Independent District of, Baker v 130
West Point, District Township of, Edwards v 35
Whitebreast, District Township of, Flynn v 26
Wilson v. District Township of Monroe 98
Woods v. District Township of Brighton 90
Woolstock, District Township of, Lewis v 132
Wyacondah, District Township of, Hardy v 91

SCHOOL LAW DECISIONS.

JANE BROWN v. DISTRICT TOWNSHIP OF RICHLAND.

Appeal from Tama County.

1. SUBDISTRICT BOUNDARIES: *Change of.* In changing subdistrict boundaries, both the present and the future welfare of the district should be considered.
2. SUBDISTRICT: *Size of.* It is better to have large subdistricts with good school-houses well furnished, than small subdistricts with small and poorly furnished school-houses.

The board of said district township, at their regular meeting in September, 1864, changed the boundaries of certain subdistricts, whereby subdistrict number seven and a portion of subdistrict number one, were attached to subdistrict number five.

From this order of the board an appeal was taken to the county superintendent who, after a full and fair investigation of the case, sustained the action of the board. From his decision an appeal is brought to the superintendent of public instruction.

It is not claimed that either the board or the county superintendent committed errors in law or exceeded their jurisdiction. Everything seems to have been done fairly and openly, and a final decision of the case is asked for solely on the ground of equity and justice.

Appellants claim that subdistrict number seven has a good school of thirty-four scholars, and that by the proposed change, three-fourths of these pupils will be cut off from school privileges in consequence of their distance from the proposed site of the new school-house.

But it is shown by testimony that by building a bridge across a certain stream the distance will be diminished, so that all parties will be accommodated. There is no assurance in the record before us that the bridge will be built this year or next. Meanwhile a large number of children may be deprived of school. As a general rule it is better to have large subdistricts with good school-houses well fur-

nished, than to have small subdistricts with small and poorly furnished school-houses.

We believe the board had in view the welfare of the whole district, as did also the county superintendent in confirming their action, but we can see no injustice in this case in allowing the subdistricts to remain another year without change, or until the proposed bridge is built. The reason for consolidating the subdistricts now will probably exist then, and the occasion for complaint will then be removed.

In this view of the case we feel compelled to reverse the decision of the county superintendent. REVERSED.

ORAN FAVILLE,
Superintendent of Public Instruction.

March 1, 1865.

SARAH E. SMITH v. DISTRICT TOWNSHIP OF ALBION.

Appeal from Howard County.

TEACHERS: *Right of, to inflict punishment upon their pupils.* A school-master who stands in *loco parentis* may, in proper cases, inflict moderate and reasonable chastisement. The law confides to teachers a discretionary power in the infliction of punishment upon their pupils, and will not hold them responsible criminally, unless the punishment be such as to occasion permanent injury to the child, or be inflicted merely to gratify their own evil passions.

The record in this case shows that the plaintiff, Sarah E. Smith, entered into a contract with the subdirector of subdistrict number two in said district township, to teach a school for four months, commencing on the 19th of December, 1864. That she commenced her school accordingly, and taught until the 30th of January, 1865. That on the 29th of January she was notified to meet the board to answer to the charge of undue severity in chastising one of her pupils; that she attended the meeting of the board and made her defense, but the board decided to expel her from her school, paying her for the time she had taught. From this action of the board she appealed to the county superintendent, who reversed the order of the board, and from

the decision of the county superintendent an appeal is brought to the superintendent of public instruction.

It is claimed on the part of the board that the county superintendent had no jurisdiction, and that he erred in entertaining the appeal and reversing the order of the board; but having gone to trial before the county superintendent, and having submitted the case, after making their defense, they cannot now plead want of jurisdiction.

The testimony shows that the pupil, a boy of some twelve years of age, did not like the seat assigned him by the teacher, and asked permission to go out, which was given; that he started toward home; that the teacher called to him to come back, threatening to punish him if he disobeyed; that he went home and remained out of school about a week; that at the close of the school on the day he returned the teacher reminded him of the punishment threatened, and proceeded to administer it, striking him over the shoulders and back with a whip furnished by one of the pupils; that the boy resisted, striking back, snatching away the whip and using bad language; that the teacher obtained another whip, a willow switch, and administered several strokes with it, some of which were across his head and face, in consequence of which one of the boy's eyes was apparently injured. An older brother of the boy then interfered, and the "affray ended".

It does not appear that the teacher punished hastily or in anger, or that it would have been too severe, or improperly administered, had the boy not resisted. It is doubtful whether the resistance justified the teacher in striking the boy across the head and thereby causing an injury, fortunately temporary, to one of his eyes. The county superintendent regarded this as accidental, and as no permanent injury was sustained, justified the teacher.

Much has been written during the last twenty-five years in regard to the proper means to be used for maintaining the authority of the teacher over the pupils. We can remember when the whip was applied very frequently and very severely, when the pupil obeyed from fear of punishment, and not from any sense of duty or of respect for authority. Since that time there has been a great change; appeals to reason, to a sense of duty and to right have been successfully used by the most competent teachers. In many schools the rod is excluded,

and yet ready and cheerful obedience is secured from the pupil. We wish such a result could be reached in all the schools; that the teacher could inspire the pupils with such a love for order, for good government and for rightful authority; with such a love for right doing and such a hate for wrong doing, that it would only be necessary to point out the path of duty instead of the command to walk in it. While family government and the public sentiment of some communities may render such a course possible, the want of family government and the loose reins given to "Young America" in many communities require strong and physical force to hold in subjection unsubdued nature.

All admit that the teacher must maintain authority, and for that purpose he is sustained by the highest authorities in inflicting moderate punishment.

In Kent's Commentaries, 9th edition, volume 2, page 222, is the following: "A school-master who stands in *loco parentis*, may in proper cases inflict moderate and reasonable chastisement."

In Wharton's American Criminal Law, 5th edition, volume 1, page 669, is the following:

"The law confides to school-masters and teachers a discretionary power in the infliction of punishment upon their pupils, and will not hold them responsible criminally, unless the punishment be such as to occasion permanent injury to the child, or be inflicted merely to gratify their own evil passions." *State v. Pendergrass*, 2 Dev. & Bat., 407.

"On the trial of an indictment of a school master for an assault on a pupil the judge refused to instruct the jury that the defendant was criminally liable for punishing a pupil only when he acted *malo animo*, from vindictive feeling, passion, or ill-will, or inflicted more punishment than was necessary to secure obedience, and not for error of opinion or judgment, provided he was governed by an honest purpose to promote discipline and the highest welfare of the school, and the best interests of the child; and instructed them that in inflicting corporal punishment a teacher must exercise reasonable judgment and discretion, and be governed as to the mode and severity of the punishment by the nature of the offense, the age, size, and apparent powers of endurance of the pupil." *Commonwealth v. Randall*, 4 Gray (Mass.), 36.

"If there is any reasonable doubt that the punishment was excessive the master should have the benefit of it." *Lander v. Seaver*, 32 Vt. (3 Shaw), 114.

We add the following as having some bearing on this case:

"Though a school-master has in general no right to punish a pupil for misconduct committed after the dismissal of a school for the day, and the return of the pupil to his home, yet he may, on the pupil's return to school, punish him for any misbehavior, though committed out of school, which has a direct and immediate tendency to injure the school and to subvert the master's authority." *Lander v. Seaver*, *supra.*

Many other authorities might be cited establishing the authority of the teacher to inflict punishment necessary for securing obedience to reasonable rules. As it is not shown in this case that the rules were unreasonable or the punishment severe (the teacher must have the benefit of the doubt in regard to the manner of punishing), the decision of the county superintendent is

AFFIRMED.

ORAN FAVILLE,
Superintendent of Public Instruction.

April 22, 1865.

D. E. STINE v. DISTRICT TOWNSHIP OF WAHKONSA.

Appeal from Webster County.

RECORDS: *Defective.* May be amended.

The board of supervisors of said county at their regular meeting in January, 1865, set off certain territory from the township of Washington to the township of Wahkonsa. On the 28th day of the same month the board of the district township of Wahkonsa made an order conforming the boundary of said district township to that of the civil township, and attaching the annexed territory to sub-district number one, of the said district township. From this order an appeal was taken to the county superintendent, who reversed the action of the board, and from his decision the board appeals.

The only point in issue in this case is whether the board complied with the law in changing the boundaries of the district.

The record of the board is defective in not more particularly describing the territory in question and in not having a plat showing the change of boundaries. The record, however, shows that provision was made for furnishing such a plat, and that the board had attempted in good faith to regulate the boundaries of the district in accordance with a petition of the people to the board of supervisors.

The law does not limit the time within which the plat shall be made and recorded, and as alterations in district boundaries do not take effect until the first Monday in March, the board should have until that time to complete their records.

The county superintendent decides that the board acted in good faith and for the best interests of the public; and we think he should have allowed the board to correct and perfect the district records.

REVERSED.

ORAN FAVILLE,

Superintendent of Public Instruction.

June 12, 1865.

JOHN A. MCINTOSH v. DISTRICT TOWNSHIP OF GALLAND'S GROVE.

Appeal from Shelby County.

SCHOOL-HOUSE: *Power of the board to build.* If in their judgment the wants of a subdistrict require, the board are empowered to erect a school-house without action on the part of the electors of the subdistrict.

The plaintiff appeals from the action of the board, in approving a contract for building a school-house in the subdistrict of which the plaintiff is a resident, for the following reasons:

The house was ordered to be built against the wishes of a majority of the electors of said subdistrict.

A house was already leased for school purposes, and there was no need of a new house.

The county superintendent investigated the case and set aside the

action of the board in the premises, and from this decision the board appeal.

The record shows that a lease was executed in February, 1863, for the use of a house for school purposes in said subdistrict for five years. This contract was signed by the lessor and the subdirector; but there is no evidence that it was approved by the board or signed by its president. No objection seems to have been made to the lease on this account. Strict construction of the law, however, would not consider this a valid lease.

At the annual meeting of the electors in said subdistrict in 1864, a resolution was adopted requesting the district township meeting to levy a tax of five mills on the township for the purpose of building a school-house in said subdistrict. It seems that no action was taken by the board that year; but at its regular meeting in April, 1865, the board authorized the building of a school-house in said subdistrict, although no action was taken by the electors at their annual meeting in March previous.

The superintendent reversed the action of the board for the following reasons:

The board has no right to build a school house unless asked to do so by the electors of the subdistrict.

The subdistrict in question had a house leased for school purposes for a term of years.

The district has no right to force a house upon a subdistrict.

The first and second positions of the superintendent are not well taken; for the evidence shows that the electors in 1864 did request a tax to build a house, as the request was not withdrawn in 1865, it was still before the board; second, admitting that the lease was valid, the circumstances of the subdistrict may have changed so as to require a new house, and this may be inferred from the fact that a tax was requested in 1864.

His third proposition may, as a general rule, hold true. Yet there are cases where the electors of a district township would doubtless be justified in voting a tax to build a house in a subdistrict not requesting it. There may possibly be communities feeling so little interest in the education of their children that they are not willing to bear a share of the expenses necessary to maintain schools. In such cases

there should be a power somewhere to see that schools are provided, and that power must rest with a majority of the electors of the district township and with the board.

In the above case we feel compelled to differ from the county superintendent, and his decision is

REVERSED.

ORAN FAVILLE,

Superintendent of Public Instruction.

November 15, 1865.

DOBBINS AND BRIGGS v. DISTRICT TOWNSHIP OF SALEM.

Appeal from Henry County.

1. APPEAL. An appeal will not lie from an order of a board initiating a change in the boundaries of the district township, where the concurrence of the board of an adjoining district township is necessary to effect the change.
2. JURISDICTION. The superintendent's jurisdiction on appeal is not greater than that of the board from whose action the appeal is taken.

In January, 1866, the appellees and others presented a petition to said board, requesting a change in the boundaries of said district township, so that certain residents therein might be set off to the independent district of Salem.

The board decided not to grant the request of petitioners, from which decision an appeal was taken to the county superintendent, who, after a protracted and patient investigation, reversed the decision of the board, and ordered changes to be made in the boundaries of the district township, by which certain territory was transferred to the independent district, and from his decision an appeal is taken to the superintendent of public instruction.

This is an interesting case, from the fact that it presents a question not before determined, to-wit: whether the county superintendent has jurisdiction in a matter requiring the concurrent action of different school boards. If this question is answered in the affirmative, then

the various points raised by counsel must be examined, and the case must be determined on its merits; but if answered in the negative no discussion of the various issues raised is necessary.

It has heretofore been held and is still held, that the county superintendent has authority to affirm or reverse the action of school boards in changing the boundaries of subdistricts; but all cases of this kind hitherto determined have been confined to the action of boards affecting territory within their respective district townships. The present case relates to the transfer of territory from the district township, under the control of one board, to the independent district under the jurisdiction of another board. The cases are not analogous. In the former case the board has complete authority, and the action taken is final, unless reviewed within a limited time; but in the latter case, one board initates a movement which is completed or not at the option of another board. In other words, neither board has complete jurisdiction; and it necessarily follows that the county superintendent, having only appellate jurisdiction, cannot assume original jurisdiction and do what the board could not do, from whose action the appeal was taken.

Having arrived at this conclusion, in which we are sustained by the attorney-general, we feel obliged to disagree with the county superintendent, and his decision is therefore

REVERSED.

ORAN FAVILLE,

Superintendent of Public Instruction.

July 23, 1866.

C. W. JOHNSON v. DISTRICT TOWNSHIP OF MONROE.

Appeal from Madison County.

SCHOOL-HOUSE TAX. Where it has been the uniform custom to apportion the school-house tax among the several subdistricts, the board are not governed by a vote of the electors instructing them to levy the tax directly upon the property of a subdistrict.

In April, 1866, the board of said district township decided to levy a tax for building a school house in subdistrict number one, on the

property of said subdistrict, instead of apportioning it among the several subdistricts. From this decision an appeal was taken to the county superintendent, who reversed the action of the board, and from his decision an appeal is brought to this office.

The evidence shows conclusively that it has not been the custom for each subdistrict to build its own school-house, and the only reason the board can assign for its action is an expression of the electors of the district township that hereafter each subdistrict be required to build its own school-house.

The law is plain and positive on this subject, and it is extremely doubtful whether the electors can instruct the board to pursue a course contrary to that laid down in the law. If such a vote of the electors is binding at all on the board, it should be a unanimous vote of all the electors of the district township; and even then the board would not be justified in acting contrary to justice and equity.

The county superintendent in his decision says: "The board therefore, should have apportioned the amount necessary to build a school-house in subdistrict number one among the several subdistricts, taking as a basis of apportionment the amounts previously levied on said subdistricts for school-house fund."

I entirely agree with the county superintendent, and his decision is

AFFIRMED.

ORAN FAVILLE,
Superintendent of Public Instruction.

August 10, 1866.

C. D. FLYNN v. DISTRICT TOWNSHIP OF WHITEBREAST.

Appeal from Lucas County.

SUBDISTRICT BOUNDARIES: *Change of.* The county superintendent may on appeal, redistrict. A refusal by the board to act upon a petition to redistrict is an act from which an appeal will lie.

In September, 1866, plaintiff and others presented to defendants a petition to redistrict the township; and a motion was adopted to "redistrict the township as they thought best for the interests of the

township and of the people." At a special meeting held in November to carry out that action, the former motion was reconsidered, and a motion adopted to let the boundaries of the subdistricts remain as they were. From this decision of the township board, plaintiff appealed to the county superintendent, who dismissed the case on the ground that the board, having made no change in the subdistrict boundaries, there was no action to appeal from, the plaintiff was not aggrieved, and hence the county superintendent had no jurisdiction.

The question of the jurisdiction of the county superintendent in this case, is the only one which requires examination.

The counsel for appellees confine their argument to two points:

The county superintendent has no jurisdiction, either original or appellate, over the question of fixing or changing the boundary lines of subdistricts.

If the county superintendent has appellate jurisdiction to review the action of the board in changing or fixing said boundary lines, yet he could not exercise it in this case, for the reason that there was no action of the board from which an appeal would lie.

The first point is based on section 31, chapter 1, of the school laws now in force. Preceding sections define the powers of the board; but said section 31 contains limitations of those powers. One of the limitations is—"nor shall the boundaries of subdistricts be changed except by a vote of the majority of the board." This, when taken in connection with the context, evidently means, merely, that when a change in subdistrict boundaries is made by the board, said change must receive the sanction of a majority of all the members of the board, and is not intended to deny, neither does it deny, the appellate jurisdiction of county superintendents in the change of subdistrict boundaries. Of course it is not true, neither is it claimed, that superintendents have original jurisdiction in making such change.

In the discussion of the second point, by the substitution of the word "action" for the terms "decision or order" used in the law, and ingeniously attaching to that word a signification of something done beyond the mere adoption of a resolution, such, for instance, as the actual redistricting of the township, the counsel make a very plausible argument, in which it is clearly seen that no one could be ag-

grieved by an act when no act was done, hence, there was no ground for appeal.

But the language of the law is that "any person aggrieved by any decision or order" of the board may appeal. Was there a "decision or order" made by the board, and was any person aggrieved thereby? It appears from the transcript of the secretary, that the board did decide to "let the subdistrict boundaries remain as they were," and passed a motion or "order" to that effect. The action of the board in November, though virtually merely an order of refusal, is proper ground for appeal, provided any person was aggrieved thereby; and in this decision I am sustained by the opinion of the attorney-general.

It only remains to inquire whether any person might have been aggrieved by this action of the board. The affidavit of the plaintiff sets forth that "a larger number of subdistricts and school-houses are imperatively demanded to accommodate the children of the district"; and in the hearing before the county superintendent, plaintiff requested an opportunity to introduce evidence to that effect.

Facilities for the education of children are among the most highly cherished privileges enjoyed by intelligent citizens; and it may easily be conceived that persons may be aggrieved by a refusal to grant such facilities as are "imperatively demanded."

The county superintendent erred in sustaining the motion to dismiss; and the case is therefore remanded for a hearing upon its merits. In the event that the finding shall be for the plaintiff, the county superintendent may himself redistrict the township, as justice, equity and the interests of the people require.

REVERSED.

D. FRANKLIN WELLS,
Superintendent of Public Instruction.

April 19, 1867.

MARIA L. DOUGHERTY v. L. D. TRACY, COUNTY SUPERINTENDENT.

Appeal from Grundy County.

1. REVOCATION OF TEACHER'S CERTIFICATE. The order of a county superintendent revoking a certificate will not be interfered with on appeal unless it appears that he acted from passion or prejudice.

2. ———. Opinions unsupported by facts cannot be received as satisfactory evidence of prejudice.

April 1, 1867, L. D. Tracy, superintendent of common schools for the county of Grundy, revoked the certificate of Maria L. Dougherty, a teacher of said county, on the alleged ground of incompetency to properly govern and control a school. A notice of the revocation made out in due form, was served upon the secretaries of the several district townships; but no notice of the revocation was served by the superintendent on the plaintiff.

The plaintiff appealed to the superintendent of public instruction, who by circular of May 15, 1867, directed that the case should be heard by the county superintendent. Such hearing took place June 7, 1867. During the examination twenty-three persons, patrons and pupils, testified to the good order of the school, and the general good character and reputation of the plaintiff as a teacher. Fourteen persons made affidavit that they believed plaintiff's certificate was revoked from personal prejudice.

One witness called by the defense testified that the school was not governed as well as it might have been; that he several times heard cursing and swearing on the school grounds at noon and recess. Three persons testified that they did not believe the superintendent revoked plaintiff's certificate from prejudice or passion. Nineteen persons certified that they believed Mr. Tracy to be a competent and impartial officer, and free from any malicious administration.

The county superintendent, disregarding the weight of evidence in regard to the plaintiff's qualifications, affirmed his previous decision revoking plaintiff's certificate, and certified that the act was done with-

out prejudice or passion toward the plaintiff, and that he was impelled to that conviction, which was the result of personal observation and knowledge, that plaintiff was incompetent to govern a school properly.

From that decision the plaintiff appeals.

If this case could be determined by the weight of evidence in regard to the plaintiff's ability to govern a school properly the decision would be in plaintiff's favor. But there are other elements for consideration. The county superintendent is clothed with large discretionary powers. So great has this discretion been regarded that it has been held by previous incumbents of the office of superintendent of public instruction that the refusal to grant a teacher's certificate or the revocation of such certificate by a county superintendent was an act so wholly discretionary that it was not subject to revision. The circular of May 15, 1867, from this department, maintaining the right of appeal in such cases was not intended to curtail the discretionary power of county superintendents, but to point out a way in which its abuse might be corrected.

In the absence of special statutory provisions in regard to the manner of hearing appeals, it is presumed that general principles are applicable.

It may not be amiss at this time to enunciate some general principles which will be observed in the adjudication of this and similar cases.

I. The discretion of a county superintendent in refusing or revoking a teacher's certificate will not be interfered with by the superintendent of public instruction unless it is clearly shown that the county superintendent in such act violated the law in letter or spirit, or was influenced by passion or prejudice. This position is believed to be correct in the light of both principle and public policy. The general rule is, "the supreme court will not interfere with the decisions of the district court in cases where the latter has a discretionary power, unless it is fully apparent that such power has been abused." Hammond's Iowa Digest, page 65. Numerous cases might be cited in support of this rule, but such citations are deemed unnecessary. The county superintendent is presumed to be selected from among his fellow citizens on account of his ability to exercise a sound discretion

in the discharge of the important duties of his office. He is bound by a solemn oath to discharge his trusts with fidelity. He is on the ground and has a personal knowledge of the circumstances. He can judge of the educational requirements of his county better than another person, scores of miles distant. In his examination of teachers and in his visits to their schools he can judge of the teacher's comparative and actual merit and ability better than those who have less extended opportunities for observation. He is responsible to his constituents for the manner in which his duties are performed. His official acts may be reviewed and modified or annulled by the superintendent of public instruction. Frequent interference with the discretion of county superintendents would tend to bring their authority into contempt, and unsettle the foundations of our school system. While, then, the right to review an abuse of discretion is reserved, and the right to reverse an illegal decision maintained, the discretion of county superintendents will not be interfered with unless such interference is necessary to secure justice or vindicate law.

II. The proof of the violation of law, or of the influence of passion or prejudice in the performance of official duty must be clear and convincing. Mere opinion, unsupported by facts, is insufficient to establish the allegation of passion or prejudice. "As a general rule, witnesses, unless experts, should state facts, not opinions." *Whitmore v. Bowman*, 4 G. Greene, (Iowa), 148. "Except when given by experts, evidence of mere opinion is not competent, unless upon some controlling ground of necessity: resulting from the nature of the inquiry." *Dalzell v. City of Davenport*, 12 Iowa, 437; *Danforth, Dennis & Co. v. Carter & May*, 4 Iowa, 230.

In the light of these principles, which are believed to be correct and proper, conclusions may be readily formed.

It is held that it is not necessary for the county superintendent to notify the plaintiff of his intention to revoke her certificate before taking such action; neither does the law require him to serve a copy of the revocation upon the plaintiff, subsequently. Courtesy and propriety, however, would dictate that the teacher should receive immediate notice of the revocation from the county superintendent.

The rulings of the county superintendent on the admission of evi-

dence have no material effect on the final decision of the case, hence the exceptions of the plaintiff thereto are passed over.

The revocation of a teacher's certificate is adjudged to be an act of discretion on the part of the county superintendent, which will not be interfered with, without satisfactory proof of illegality or of prejudice.

In this case, while the weight of testimony is favorable to plaintiff's qualification, and opinion is conflicting in regard to prejudice, there is not a single fact adduced in the testimony upon which the theory of prejudice can be based. On the other hand the county superintendent headed a subscription to pay plaintiff's board, and was the first to pay said subscription. During the term he told the subdirector that the plaintiff must be sustained in her government of the school at all hazards; and these facts indicate the absence of prejudice. The mere opinion of witnesses, unsupported by facts, cannot be received as satisfactory evidence of prejudice.

Some embarrassment is experienced in this case from the circumstance that the plaintiff belongs to that gentler sex to which we are all educated to do homage, and the idea is largely prevalent that they are not amenable to law in an equal degree with the opposite sex; but having a high regard for the rights of women, we dare not pervert law even to shield them from its operation. We are therefore compelled to affirm the decision of the county superintendent.

AFFIRMED.

D. FRANKLIN WELLS,
Superintendent of Public Instruction.

October 1, 1867.

Benjamin Smith v. District Township of Coffin's Grove.

Appeal from Delaware County.

1. Proceedings. In the absence of proof to the contrary, the legal presumption is that the proceedings before the county superintendent were entirely regular.
2. Explanatory Notes: *Force of.* Notes to the school law, while proper aids to school officers, have not the binding force of law, and a non-compliance with them is not necessarily a violation of law.

On the petition of the electors of subdistrict number one, Coffin's Grove district township, the board thereof located the site of a proposed new school-house "just east of the burying ground, on the right hand side of the road, adjoining the corner of Mr. Brook's field." From this action plaintiff appealed to the county superintendent on the 25th of March, by whom the case was heard April 19, 1867. On the 13th of June the county superintendent issued an order re-locating the site three-fourths of a mile further south, and at or near the center of the subdistrict. From this order an appeal is taken, and thus the case comes up for review.

The appellants claim a reversal of the county superintendent's decision on the ground:

1. That the county superintendent had no jurisdiction in the matter.

2. That the county superintendent erred in not taking the depositions of witnesses in writing and having the same signed and sworn to by the witnesses.

3. That the county superintendent erred in not making up his record at the time of the trial.

4. On the merits of the case.

The denial of the county superintendent's jurisdiction is based on the fact that the original affidavit does not state that the appeal was taken within thirty days of the action of the board complained of, and reference is made to page 57 of "explanatory notes," in which it is stated that this fact should appear, though there is no such specific

requirements in "An act to provide for appeals." The question naturally arises as to the legal force of these "explanatory notes." Have they the effect of statutory provisions, or otherwise? While the right of every tribunal to establish rules and regulations not inconsistent with law, must be admitted, these "explanatory notes" made by the superintendent of public instruction are not legal enactments, nor "rules and regulations," and so far from being mandatory in their character are merely advisory and directory, and intended for the assistance and guidance of school officers. They are a commentary on the school law; and as they are replete with good common-sense suggestions, their observance will render the administration of the school law more accurate and satisfactory; but a non-compliance with them is not necessarily a violation of law.

It must be admitted that an affidavit which does not state the date of the decision or act complained of is very carelessly drawn, and a superintendent might be justified in refusing to entertain it; but if it be entertained, it is still competent for the opposite party to show that the thirty days allowed by law had expired previous to the filing of the affidavit, and thus secure the dismissal of the case. The law gives the superintendent jurisdiction within thirty days, and the state superintendent could not by any rule or regulation annul the statutory provisions. It is not even claimed by appellants that the time for taking appeal had expired, and the date of petitions submitted to the board indicate that it had not expired. In the absence of proof to the contrary, the legal presumption is that the proceedings before the county superintendent were entirely regular, and therefore the jurisdiction of the superintendent must be sustained.

The second and third errors assigned by appellants are also based on "explanatory notes" instead of upon the law, and cannot be sustained for reasons previously given. While there were things in the management of this case from which we must withhold our commendation; as there seems to have been a substantial compliance with the law, we do not feel justified in dismissing it without an examination of its merits.

The county superintendent gave due notice of the hearing in writing to all the electors of the subdistrict. On the day of hearing several persons appeared, but no "evidence on either side was offered,"

except the original affidavit of Benjamin Smith. The record of the county superintendent goes on to say: "But to satisfy myself in regard to the number of inhabitants that would be accommodated best by the site remaining where it is at present located by said board," Nelson Bly, James McBride and Harry Baker were sworn. "Nelson Bly stated that about thirty families lived in said subdistrict, and that only about one-third would be accomodated by the site remaining where it is at present located by said board. James McBride corroborated the statements made by Nelson Bly." After Henry Baker was sworn "so much confusion and controversy arose" that it was found "almost impossible to preserve order," and the superintendent "proceeded to view the different sites."

Among the papers sent up by the district secretary were two petitions to the board, one signed by fifteen persons asking that the site should be located "at or near the corner of Mr. Brook's field;" the other signed by twenty-three persons, asking that the site be "established as near as practicable in the center of the subdistrict."

In view of the facts before us we cannot do otherwise than sustain the county superintendent, whose decision is

AFFIRMED.

D. FRANKLIN WELLS,
Superintendent of Public Instruction.

December 16, 1867.

JOSEPH F. EDWARDS *et al.* v. DISTRICT TOWNSHIP OF WEST POINT.

Appeal from Lee County.

1. APPEAL. The right of appeal is not limited to cases of personal grievance.

2. DISCRETIONARY ACTS. The county superintendent having only appellate jurisdiction, should not reverse discretionary acts of the board, without explicit and clearly stated proof of the abuse of such discretion, even though not fully approving their action.

Joseph F. Edwards et al. v. District Township of West Point.

3. SUBDISTRICT BOUNDARIES: *Change of.* The acts of a board changing subdistrict boundaries and locating school-houses are so far discretionary that they should be affirmed on appeal, unless it is shown that there has been an abuse of discretion.

September 16, 1867, the board of the district township of West Point, Lee county, transferred one hundred and twenty acres of land belonging to one Timothy Allen, from subdistrict number one to subdistrict number three, in the same district township. From this alteration of subdistrict boundaries, Joseph F. Edwards *et al.* appealed to the county superintendent, by whom the order of the board was reversed. From this decision of the county superintendent, Timothy Allen appeals to the superintendent of public instruction.

It is not claimed that the board exceeded their powers in changing boundary lines, or in any respect violated law. While equality among the several subdistricts, in area, population, and taxable property, is in some respects desirable, it is not required by law, and in fact is impracticable. The claim in the argument of appellees that the action of the board was necessarily wrong, because it had the effect to increase the inequality in some or all of these respects, is not well founded. It is an element which should receive proper consideration, but it will not always exercise a controlling influence.

Mr. Nourse, in his argument for appellant, claims that "no right of appeal existed in the plaintiffs who took the case to the county superintendent"; hence, the county superintendent was without jurisdiction. He claims that to entitle a person to the right of appeal the grievance must be of a personal character—one that effects the rights or interests of the individual as distinguished from the public. In support of this view he refers to the following decisions by our supreme court: *Humphrey v. Ball*, 4 G. Greene, 204; *Myers v. Simms*, 4 Iowa, 500; *McCune v. Swafford*, 5 Iowa, 552; *Lippencott v. Allander*, 23 Iowa, 536. In all of these cases it is held that there is no appeal from the county court or the board of supervisors, unless the grievance is of a personal or individual character as distinguished from the public; and hence by analogy it is claimed that there is no appeal from the board of school directors unless the grievance is of a like character. If the right of appeal in the two cases was derived from the same statute, the decisions cited above would be conclusive. But these decisions are based upon section 267, Revision of 1860, in which

the right of appeal is limited to "any matter affecting the rights or interests of individuals as distinguished from the public," etc.; while appeals to county superintendents are based on section 2133, Revision 1860, which provides that "any person aggrieved by any decision or order of the district board of directors in matter of law or fact," may appeal, etc.

As section 2133 does not limit the right of appeal in cases of personal grievance, the decisions cited have no application in the case under consideration.

The important point upon which the issue in this case must turn remains to be stated. The meeting at which the change of subdistrict boundaries was made was attended by six of the eight members of the board, and after a full discussion of the proposed change and an examination of plats of the district, the change was made by unanimous vote, and subsequently approved by one of the absent members. The remaining subdirector, who resides in the subdistrict from which the territory was taken, opposes the change. It is not claimed that the law was violated in the change, but only that the educational interests of the district were impaired.

The question is not so much one of law as of sound judgment and discretion. The change was approved by seven of the eight members of the board, who reside in different parts of the township, six of whom at least are absolutely without personal interest in the matter. It is opposed by one whose pecuniary interests are contingently adversely affected. The county superintendent opposes his judgment to the judgment of the board. What, in such a case, is the duty of the ultimate tribunal.

The superintendent of public instruction has, as in duty bound, an earnest desire to sustain the acts and decisions of county superintendents. The legal presumption is always in favor of the correctness of official acts and decisions. While the state superintendent applies this principle to county superintendents, it is equally incumbent upon them to apply it to the decisions or orders of district boards of directors. It not unfrequently happens that county superintendents decide appeal cases upon their own judgment and discretion as if they had original, instead of appellate jurisdiction; and fail to give that consideration to the discretion of district boards, which the above principle requires.

The law prescribing the duties of boards of directors is, in some respects, mandatory, requiring that certain specified duties shall be performed in a particular manner. In other cases, the board acts as a local legislature, and its action is discretionary. Among these discretionary powers, though not including all of them, are the establishment and change of subdistrict boundaries and the location of school-houses. It has been doubted by some whether an appeal to the county superintendent, from acts of the board wholly discretionary, would lie. While the right of appeal in such cases is maintained, the real character should not be lost sight of; and the action of the board within the limits of the law should not be reversed unless it is evident that it acted with passion, prejudice, or manifest injustice. It is a general principle in law that the exercise of discretionary power will not be interfered with unless it is fully apparent that such power has been abused. For further remarks on discretionary power and the manner of proving its abuse, reference is made to the case of *Dougherty v. Tracy, county superintendent.*

In changing subdistrict boundaries, and locating school-houses, the law gives the board of directors original jurisdiction, and as it is discretionary power the action of the board should be affirmed on appeal, unless it is fully apparent by the evidence that the board violated law or abused its discretion. If there is reasonable doubt the board is entitled to its benefit. The action of the board may not be wholly approved by the judgment of the county superintendent, but if it be not illegal or clearly unjust it should be sustained. When, however, county superintendents feel called upon to reverse decisions of school boards, they should give a clear and explicit statement of their reasons for so doing, that the superintendent of public instruction may be the better enabled to judge of the soundness of their conclusions.

These general remarks have been made with a view to guide county superintendents in their decisions, as well as to indicate some of the principles which will be observed by the superintendent of public instruction in the adjudication of similar cases.

In the particular case under consideration, the board of directors, with unusual unanimity, performed a discretionary act. It is not claimed that this act was illegal or the board was influenced by improper motives. It is not satisfactorily proven that the act was

unjust. In our opinion, the evidence does not sustain the county superintendent in annulling the order of the board, and his decision is therefore

REVERSED.

D. FRANKLIN WELLS.

Superintendent of Public Instruction.

February 15, 1868.

JAMES C. SMITH v. DISTRICT TOWNSHIP OF MAQUOKETA.

Appeal from Jackson County.

1. AFFIDAVIT. The affidavit may be amended when such action is not prejudicial to the rights of any party interested.
2. COUNTY SUPERINTENDENT. May upon appeal create subdistrict.

At the regular semi-annual meeting of the board of directors of the district township of Maquoketa, in September, 1867, Jacob Markle and twenty-seven others presented a petition, asking that all of that portion of subdistrict number five, lying south of the Maquoketa river, should be set off into a separate subdistrict. The prayer of the petition was refused, whereupon James C. Smith, one of the petitioners, appealed to the county superintendent, who reversed the action of the board and created a new subdistrict south of the river. From this decision D. F. Farr and E. H. Patterson appealed to the state superintendent.

The evidence discloses the following facts: Subdistrict number five is divided by the Maquoketa river into two nearly equal portions, the school-house being situated on the north side of the river. Said river is a navigable stream, the only means of crossing it being the ice in winter and a ferry in summer. It is subject to freshets, and obstructions from ice, so as to be impassable for days in succession. The weight of evidence shows the river to be such an obstruction that children cannot, with reasonable facility, enjoy the advantages of a school on the opposite side from that on which they reside. That this difficulty was recognized by the board is evidenced by the fact

that an appropriation of forty dollars was made last summer to support a school in that part of the subdistrict south of the river. Some children have never attended school north of the river because their parents consider the crossing of the river fraught with danger.

The appellant assigns three errors:

1. The insufficiency of the affidavit of J. C. Smith, and the consequent want of jurisdiction by the county superintendent.

2. That the county superintendent permitted said affidavit to be amended on the day of trial, thus admitting its insufficiency.

3. That the county superintendent divided said subdistrict number five into two subdistricts.

The system of appeals to county superintendents was inaugurated to provide a speedy and inexpensive method of adjusting difficulties arising in the administration of school laws. From the fact that many of the cases arising are prosecuted by the parties interested without the intervention or assistance of lawyers, no very stringent rules of practice have been adopted. The object of this system of appeals is to promote uniformity in the operation of school laws, and the attainment of substantial justice; and this object should not be defeated by technical objections.

While the affidavit of said Smith was not as full as it is customary to make such papers, it yet had such completeness as enabled the county superintendent to obtain a transcript of the proceedings of the board relating to the alleged grievance; and the ruling of the county superintendent on the first two points is sustained. It is neither intimated nor believed that the irregularities complained of prejudiced the interests of appellants.

The law imposes equal burdens upon all property in the township for contributions to the teachers fund and the contingent fund, and it contemplates that all the youth of the state shall enjoy as nearly as practicable equal educational facilities. The county superintendent, by his appellate jurisdiction, had power to create the new subdistrict. As by the evidence, the youth south of the river could not with reasonable facility enjoy the advantages of a school on the north side the county superintendent was justified in interfering with the

discretionary powers of the board, and in establishing a new subdistrict south of the river.

AFFIRMED.

D. FRANKLIN WELLS,
Superintendent of Public Instruction.

February 15, 1868.

S. L. CURRY v. DISTRICT TOWNSHIP OF FRANKLIN.

Appeal from Decatur County.

1. COUNTY SUPERINTENDENT. Has no jurisdiction of an appeal until an affidavit is filed.
2. AFFIDAVIT. An affidavit is a statement in writing, signed and made upon oath before an authorized magistrate.
3. NOTICE. The county superintendent should not issue notice of final hearing until both the affidavit and transcript of the district secretary have been filed in his office.
4. DISCRETIONARY ACTS. May be reversed on appeal, but should not be disturbed except upon evidence of unjust exercise or abuse.

December 16, 1867, at a special meeting of the board, a vote to change the boundaries of subdistricts in the district township of Franklin, Decatur county, so as to form a new subdistrict in accordance with the prayer of petitioners, resulted in a tie. From this virtual refusal to act, S. L. Curry appealed to the county superintendent, who on the 31st of the same month formed a new subdistrict.

Appellant alleges in his affidavit that the county superintendent assumed jurisdiction of this case without warrant of law; that there never was "at any time an affidavit or any other statement in said appeal case filed in the office of" the county superintendent; hence the want of jurisdiction.

The "act to provide for appeals," section two, provides that "The basis of proceeding shall be an affidavit, filed by the party aggrieved, with the county superintendent, within the time allowed for taking the appeal." An affidavit is a statement in writing, signed and made

upon oath before an authorized magistrate. A county superintendent can have no proper jurisdiction of an appeal case until such affidavit has been filed. A notice of intention to file an affidavit, a verbal complaint, or a petition, is not sufficient to give the county superintendent jurisdiction in appeal cases. The affidavit setting forth "the errors complained of in a plain and concise manner" must be in his hands before he is justified in commencing proceedings. The decision of the superintendent recites that the affidavit was filed December 21, which might be taken as conclusive, if it was not contradicted by the record. The transcript shows that said affidavit was not subscribed and sworn to until December 28, hence we do not clearly see how it could have been filed on the 21st.

December 24, four days before the affidavit was made, and which appellant alleges was never filed with the superintendent, said superintendent gave notice to the parties that the hearing would take place on the 30th. This proceeding, as an appeal case, was entirely unauthorized by law; and as he commenced proceedings in disregard of the plain provisions of law and without legal jurisdiction, his decision is annulled. In may be said, and not without authority, that as both parties responded to the notice, and came before the superintendent, that he thereby acquired jurisdiction; but we feel unwilling to sanction disregard of law by approving such great irregularities.

Without touching the real merits of the question at issue, the formation of a new subdistrict, which we are willing to leave to the local authorities, we refer briefly to a few points of law raised by appellants:

1. The county superintendent should not issue notice of final hearing until both the affidavit and the transcript of the district secretary have been filed in his office.

2. The law does not require that a revenue stamp shall be affixed to an affidavit; hence the neglect to cancel such stamp when affixed is immaterial.

3. Though the change of subdistrict boundaries by the board is a discretionary act, it may be reviewed by the county superintendent, on appeal; but the decision of the board should not be disturbed unless said discretionary power has been abused or exercised unjustly.

4. The county superintendent should have received the remonstrances offered on trial in evidence, and exercised his judgment as to their weight and value.

REVERSED.

D. FRANKLIN WELLS,
Superintendent of Public Instruction.

March 26, 1868.

C. S. GORDON v. DISTRICT TOWNSHIP OF BROWN.

Appeal from Linn County.

1. DISTRICT TOWNSHIP. Should not ordinarily contain more than nine subdistricts.
2. COUNTY SUPERINTENDENT. Should not reverse an action of the board which is in accordance with instructions of the superintendent of public instruction.
3. SUBDISTRICT: *Size of.* There are serious objections to the formation of small subdistricts.

The board of the district township of Brown, Linn county, Iowa, at a meeting held February 8, 1868, and attended by all the members of the board, except one, voted unanimously to redistrict the district township, and to relocate school-house sites in accordance with a decision of the superintendent of public instruction, rendered January 18, 1868, and in accordance with a plat submitted. From the action of the board in this matter Charles S. Gordon appealed to the superintendent, by whom the case was heard March 12, 1868, and whose decision, rendered the following day, reversed the action of the board, on the ground of alleged non-compliance with the decision of the superintendent of public instruction, as rendered on the said January 28, 1868, in the case of *Gordon v. District Township of Brown.*

The decision of the superintendent of public instruction above referred to, was provisory. It declared that if the board of directors should promptly make certain changes therein indicated, that the decision of the county superintendent, made November 12, 1867,

forming a new subdistrict, should be void; otherwise, in full force and effect. It required that school-house sites should be selected "at or near" certain points named; thus giving the board limited discretion in their location, and full discretion in regard to the boundaries of subdistricts. In one instance, a site was selected about one-fourth of a mile from the point indicated; but as the plat showed that it was at the crossing of two roads, and that is was nearer the center of the subdistrict as established by the board, this variation was approved. The other sites selected by the board did not vary from the points indicated in the decision. The changes made by the board on the said eighth day of February, were submitted to the superintendent of public instruction, who, March 3, gave them his official sanction and approval.

Mr. Gordon's appeal was based principally upon the fact that one of the sites, as explained above, was not at the precise point indicated by the decision of the superintendent of public instruction; and hence, as the board had not strictly complied with the proviso of said decision, the decision of the county superintendent, made November 12, 1867, establishing a new subdistrict, was in full force and effect, and should have been regarded by the board.

In support of its action the board offered in evidence the official approval of the superintendent of public instruction; this, however, was ruled out by the county superintendent, on the alleged ground that it was "*ex parte* testimony" obtained by one party after the inauguration of the appeal, without notice to the other party. In this ruling the county superintendent erred. The decision of the superintendent of public instruction being provisory, it was competent for him to confirm the subsequent action of the board in relation thereto, and to determine whether the location of sites made was, under the circumstances, a sufficient compliance with the decision. The phrase "at or near" implied that there might be a variation from the precise point named, and when this variation was officially approved, it was binding upon the county superintendent.

The provisory decision of January 28, permitted the board to exercise all the discretionary power in redistricting which the law confers. From their exercise of this power, also, the plaintiff appeals. The record shows that there are now ten subdistricts in Brown dis-

trict township ; but the plaintiff wishes another formed which shall contain only one and one-fourth sections. In our opinion there are serious objections to the formation of small subdistricts. The small number of children and small amount of taxable property which they will usually contain, will insure but a feeble support for the schools. Cheap teachers, short terms of school, and poor schools will inevitably result. Not every man can have a public school in his own immediate neighborhood. It is better that children should go a little farther, and have a good school when one is reached. Except in peculiar circumstances, we doubt whether there ever ought to be more than nine subdistricts in any district township of ordinary size, and it might be better to have only six. A school centrally located on every four or six sections of land, would afford reasonable facilities to all. Even in populous districts, it would be better to increase the size of the schools and have more than one teacher if necessary than to adopt the disastrous policy of subdivision.

The county superintendent in his lengthy argument in support of his decision, dwells upon some slight discrepancies in the secretary's transcript. At a meeting of the board, February 8, it appears that a motion was made to "proceed to redistrict," etc. One transcript says this motion carried ; the other omits such a statement. The county superintendent alleges that it was carried "by only one vote." Whether it carried or not is, under the circumstances, entirely immaterial ; as a motion was subsequently unanimously adopted, the yeas and nays being called, to adopt a certain plat on which the changed boundaries of the subdistricts were marked, and the school-house sites indicated. This was the important vote of the meeting, and in regard to its adoption there is no question. Even admitting that one man did not vote for it as claimed, there was still left more than the legally required number of votes. But the integrity of an official record cannot be impeached by any such collateral proceeding. It was error to admit evidence contradicting the record.

The board of directors had full discretionary powers in the matter of redistricting the township district, and the manner in which they exercised this power was a proper subject of review by the county superintendent on appeal. At the time the plaintiff's affidavit was filed, the county superintendent had no knowledge that the acts of

the board on said 8th day of February had been approved by the superintendent of public instruction, or that they would be so approved; he therefore properly assumed jurisdiction of the case. When however, the action of the superintendent of public instruction became known, the county superintendent should have been governed by it, and he should have affirmed the action of the board of directors or dismissed the case.

For reasons heretofore given, as well as upon the real merits of the case, and to promote the educational interests of the district township at large, the decision of the county superintendent

REVERSED.

D. FRANKLIN WELLS,
Superintendent of Public Instruction.

June 8, 1868.

ELIAS SIPPLE v. DISTRICT TOWNSHIP OF LESTER.

Appeal from Black Hawk County.

1. SUBDISTRICT BOUNDARIES: *Change of.* At the hearing of an appeal before the county superintendent it is competent for him, upon his own motion, to call additional witnesses to give testimony.
2. EVIDENCE: *Parol.* Cannot be received in the absence of allegations of fraud, to contradict or impeach the validity of school district records.
3. RECORD. The board may at any time amend the record of the district, when necessary to correct mistakes or supply omissions. And may, upon proper showing, be compelled by mandamus, to make such corrections.

At the regular meeting of the board of the district township of Lester, held September 16, 1867, which was attended by four of the seven members of the board, motions were made and seconded for the creation of two new subdistricts whose boundaries were described in the motions. In regard to the action on these motions the record of the secretary contains merely the word "carried." At a special meeting of the board, held February 15, 1868, the action of the board in September in relation to the formation of new sub-

districts was "reconsidered" and "rescinded." From the February action Elias Sipple appealed to the county superintendent. During the progress of the hearing, which took place March 20, 1868, the county superintendent called upon one of the four members of the board that attended the September meeting, who testified that he did not vote for the motion to create a new subdistrict. As it thus appeared that the new subdistricts were not established by a vote of a majority of all the members of the board, as required by law; and as said September action was rescinded at a full meeting of the board in February, the county superintendent, considering the formation of the subdistricts illegal and void, dismissed the appeal. From this decision Barney Wheeler appeals to the superintendent of public instruction.

Appellant alleges substantially that the county superintendent erred as follows:

1. In himself calling a witness to give testimony.
2. In receiving testimony to impeach the district record, which is claimed to be valid and binding after thirty days.
3. In dismissing the appeal.
4. In not establishing the subdistricts.

The law requires the county superintendent to give a "just and equitable" decision, and as the calling of additional witnesses may sometimes enable him to discharge this duty more faithfully, his action in this respect is sustained.

The second error assigned really includes two distinct points, which will be considered separately; and first, in regard to the impeachment of the district record. The law provides for an annual meeting of the electors of the district township, and for semi-annual and special meetings of the board of directors; also that "the secretary shall record all the proceedings of the board and district meetings in separate books kept for that purpose." It is a general principle of law that "oral evidence cannot be substituted for any instrument which the law requires to be in writing, such as records, public documents," etc. 1 Greenleaf's Evidence, § 86. "It is a well settled rule that, where the law requires the evidence of a transaction to be in writing, oral evidence cannot be substituted for that, so long as the writing exists and can be produced; and this rule applies as well to the transactions of public bodies and officers as to those of individuals." *The People v.*

Zeyst, 23 N. Y., 142. In the case of *Taylor v. Henry*, 2 Pick. 397, the supreme court of Massachusetts held that an omission in the records of a town meeting could not be supplied by parol evidence. Chief Justice Shaw, in discussing the case, said that it would be "dangerous to admit such a proof." Mr. Starkie, in his valuable treatise on Evidence, says: "Where written instruments are appointed either by the immediate authority of the law or by the compact of the parties, to be the permanent repositories and testimony of truth, it is a matter both of principle and of policy to exclude any inferior evidence from being used either as a substitute for such instruments or to contradict or alter them; of principle, because such instruments are, in their own nature and origin, entitled to a much higher degree of credit than that which appertains to parol evidence; of policy, because it would be attended with great mischief and inconvenience, if those instruments upon which men's rights depend were liable to be impeached and controverted by loose collateral evidence." Starkie, part IV, page 995, volume III, 3d Am. Ed.

The reason of the rule upon which the courts agree with such entire unanimity applies with force in the case now under consideration. The records of the district and board meetings contain a statement of the regulations adopted, and the acts done in the exercise of the powers with which the respective bodies are invested by the law. They present to all the citizens of the district township, in a permanent form, certain and definite information which could be obtained, with equal certainty, in no other way. Memory is defective, but the secretary records the transactions as they occur. The actors change from year to year, but the record is permanent. And though the admission of oral testimony to alter a record or to supply an omission therein might sometimes promote the attainment of justice, the prevalence of such a practice would result in more evil than good. It is held, therefore, that in the absence of alleged fraud the county superintendent errs in admitting parol evidence to contradict or impeach the record of the September meeting of the board.

In regard to the other part of the second point a few words will suffice. The counsel for appellant urges that though the record of the September meeting was imperfect, the lapse of thirty days made the record valid and binding upon the district. It is true that the

right to take an appeal to the county superintendent expires after thirty days; but I am unable to see how the lapse of time will validate what was before invalid. The secretary is the proper custodian of the records of the school district, and before the record of the proceedings of the board has been approved or adopted by the board, the secretary may amend them by supplying omissions, or otherwise correcting them. After they have been approved they may be amended and corrected by direction of the board, even after the lapse of thirty days. In Massachusetts a town clerk is permitted to amend the record in order to supply defects, even after a suit involving a question respecting them has been commenced. I am of the opinion that if the secretary or board of directors decline to make necessary corrections in the record, that a party interested may proceed by mandamus to compel the correction. If the record is to be impeached it must be, in the absence of fraud, by a direct proceeding instituted for that purpose, and not by a collateral or indirect method. *The People v. Zeyst*, 23 N. Y., 147–8.

The district record in this case is not as full as it might with propriety be. The law provides that the boundaries of subdistricts shall not be changed except by the vote of a majority of the members of the board. The record fails to show that this requirement of the law was complied with at the September meeting. The secretary says the motion to redistrict "carried." This is his opinion, but he fails to give the fact upon which it is based. Four of the seven members were present, but he does not say who, or how many voted for the change. Properly this should have been stated. When, however, the district record declares that a motion was "carried," the law will presume that it was carried in accordance with the requirements of the statute; though there is reason to believe that the presumption in this instance is a violent one. It follows that there was no legal evidence that the subdistricts were not established in accordance with law; hence, the conclusion is inevitable that the county superintendent erred in dismissing the appeal for the cause assigned.

At the commencement of the trial and again during its progress, the defendant moved the county superintendent to dismiss the case on account of the insufficiency of the affidavit. The affidavit of Mr.

Sipple is not as full as it is usual to make affidavits in such cases, yet it "set forth the errors complained of" with such plainness and conciseness as enabled the county superintendent to obtain the necessary transcripts, and this is all that the law really requires. Rev. 1860, § 2135. It has not been customary heretofore to enforce any particular form of affidavit, and the county superintendent's ruling refusing to dismiss on defendant's motion is sustained.

As the testimony appears not to have been all in when the case was dismissed by the county superintendent, no opinion can be given in regard to the propriety or necessity of establishing the proposed new subdistricts.

The case is, therefore, returned to the county superintendent, who will proceed with the hearing, first allowing a reasonable time for the correction of the district record or for the enforcement of its correction, should such correction be deemed necessary by either of the interested parties. Should the district record be amended so as to show conclusively that the said subdistricts were not legally formed at the said meeting in September, it will follow that the said subdistricts never had a legal existence, and that the plaintiff could not be aggrieved by the action of the February meeting, hence the county superintendent will determine the case in favor of the appellee. Should said record not be amended, or should it be amended so as to show clearly that said subdistricts were established in all respects in conformity with law, the question of establishing the new subdistricts, or more properly retaining their organization, will be determined upon its merits.

REVERSED.

D. FRANKLIN WELLS,
Superintendent of Public Instruction.

July 23, 1868.

E. J. Miner v. District Township of Cedar.

Appeal from Floyd County.

1. Contested Election: *Jurisdiction.* The proper method of determining a contested election for school director is by an action brought in the district court.
2. Election: *Evidence of.* The certificate of the officers of the annual subdistrict meeting is the legal evidence of election as subdirector, and as a general rule a board of directors is justified in declining to recognize a person as a member of the board until he produces such certificate.
3. Evidence. Where the law requires the evidence of a transaction to be in writing, oral evidence can be substituted for it only when the writing cannot be produced.

At the regular meeting of the board of directors of the district township of Cedar, Floyd county, in March 1868, E. J. Miner appeared and filed his oath of office as director of subdistrict number three of said district township, and claimed recognition as a member of the board from said subdistrict. The said Miner failed to present to the board the certificate of the officers of the subdistrict meeting or any other evidence of his election, except his own verbal statement. It was alleged in the board that he was not legally elected. Under these circumstances, the board refused him a seat and recognized his predecessor as holding over. From this order the said Miner appealed to the county superintendent; who after a full hearing of the manner in which the election was conducted, reversed the order of the board, and directed that the said Miner should be recognized as director of subdistrict number three, and as a member of the board of directors. From this decision an appeal is taken by A. J. Sweet, president of the board of directors. The above are but a small portion of the facts presented in the well arranged transcript of the county superintendent, but yet all that are material to the issues involved.

The case presented by these facts is similar to that of *Ockerman v. District Township of Hamilton*, and must be governed by the same principles. It was there held that the only proper way of determin-

ing a contested school election or the right of exercising any public office or franchise, is by an action in the nature of *quo warranto* brought in the district court. It seems unnecessary to repeat the arguments there used. Reference is made to that case as well as to the 19 Iowa, 199; 18 Iowa, 59; 16 Iowa, 369; 17 Iowa, 365; and the other cases there cited. The principle involved in the preceding references was recognized by the county superintendent, when he said in his decision that "the board of directors has no jurisdiction to inquire into the legality of the election of its members." When this just conclusion was reached, the case should have been dismissed, for the county superintendent can do on appeal only what the board itself might legally have done.

The county superintendent held that as the president of the subdistrict meeting refused to sign a certificate of election for the said Miner, that the board might receive other evidence of his election. In this the county superintendent departed from well established legal principles. The school law provides that at the meeting of the electors of the subdistrict on the first Monday in March, "a chairman and secretary shall be appointed, who shall act as judges of the election, and give a certificate of election to the subdirector elect." It is a well settled rule, that where the law requires the evidence of a transaction to be in writing, oral evidence cannot be substituted for it when the writing can be produced; and this rule applies alike to the transactions of public bodies, officers, and individuals. This question was discussed at some length in the case of *Sipple v. District Township of Lester*. Some of the references made are: 1 Greenleaf's Ev., § 86; *People v. Zeyst*, 23 N. Y., 142; 2 Pick., 397; and Starkie on Ev., part IV, p. 995, volume III, 3d Am. Ed.

There can be no doubt that the law contemplates that the certificate of the officers of the annual subdistrict meeting shall be the legal passport to a seat in the board, and that, as a general rule, a board of directors is justified in declining to recognize a person as a member of the board until such certificate is produced. If the certificate has been given and lost, the accident may be remedied by other testimony. If it has been illegally withheld the officer may be coerced by mandamus to furnish it. If it has been fraudulently given the law still provides a remedy.

Nor can the public interests suffer by this construction of the law; for if there is no election, or if there is a failure to qualify, the statute provides that the former incumbent of the office of director shall hold over for another year.

By the light of the previous principles, it is evident that when, under the circumstances, the county superintendent proceeded to investigate the rights of the plaintiff as a school director, he exceeded his jurisdiction, and that his decision must therefore be overruled. The law requires that the plaintiff, Miner, shall seek his remedy in the courts. The decision of the county superintendent is therefore reversed and the case dismissed.

REVERSED.

D. FRANKLIN WELLS,
Superintendent of Public Instruction.

July 29, 1868.

CHILES MOORMAN v. DISTRICT TOWNSHIP OF BELMONT.

Appeal from Warren County.

1. SCHOOL-HOUSE. *Removal of.* A vote of the electors of a subdistrict to remove a school-house, will not compel the board to act affirmatively in relation thereto.
2. JURISDICTION. An application for an appeal filed within thirty days from the act of the board complained of will not give the county superintendent jurisdiction of the case. The appeal must be taken by affidavit.

This appeal was taken to the county superintendent to secure the removal of the school-house in subdistrict number eight, of this district township.

At the annual subdistrict meeting in March, 1868, the electors voted by a large majority that the removal should be made. At the semi-annual meeting of the board held March 16, 1868, a motion to remove the school-house, in accordance with the vote of the subdistrict, was lost; and from this action of the board the plaintiff, by affidavit, filed with the county superintendent, May 9, 1868, took an appeal. Pre-

vious to this, that is on the 28th of March, the plaintiff had filed with the county superintendent an "application for an appeal." The county superintendent assumed jurisdiction of the case, and after a full hearing reversed the decision of the board and ordered the removal of the house. To this decision the appellant takes exception.

The power to locate the site for a school house is vested in the board of directors, and the power to "fix the site" carries with it the power to relocate the site. *Vance v. District Township of Wilton*, 23 Iowa, 408. Hence the vote of the subdistrict electors must be considered as advisory rather than mandatory.

Exception was taken to the action of the county superintendent on the ground that the appeal was not taken within the thirty days required by law, and the record shows that nearly two months had elapsed before the filing of the affidavit, which by law is made the basis of appeal. It has been decided in previous cases that the right of appeal can be enjoyed only within thirty days of the rendition of the decision complained of, and that the appeal can be instituted only by filing an affidavit with the superintendent. *Curry v. District Township of Franklin.* Following the line of these decisions we are compelled to hold that the county superintendent had no proper jurisdiction of this case, and that his action thereon is void.

If it is suggested that an "application for an appeal" was made before the expiration of thirty days from the board's decision, it must be replied that the law recognizes no such step in the proceedings. The law distinctly provides that the basis of appeal shall be "an affidavit, filed by the party aggrieved with the county superintendent within the time allowed for taking the appeal." The application for an appeal is all very well, provided the affidavit itself is filed within the time allowed by law; but the filing of the "application for an appeal" is an entirely superfluous and unnecessary proceeding.

As the case was not properly before the county superintendent we are compelled to set aside his decision, and leave the removal of the school-house to the discretion of the board of directors.

REVERSED.

D. FRANKLIN WELLS,
Superintendent of Public Instruction.

September 11, 1868.

Hiram Hall *et al.* v. District Township of Massillon.

Appeal from Cedar County.

1. Notice. The want of notice is waived by the voluntary appearance of the party for any purpose connected with the cause.
2. Subdistricts. The practice of cutting district townships into numerous subdistricts of small size, is detrimental to the educational progress of the state, and will not be sustained on appeal.

A petition was presented to the board of said district township at the regular meeting in March, 1868, praying for the erection of a new subdistrict. Said petition was laid over for consideration at the regular meeting in September. At the latter meeting two petitions in opposition were presented. A vote was had upon the proposition, which resulted adversely to the formation of the new subdistrict—one vote being cast in favor of, and five votes being cast against the same. From this action of the board Hiram Hall and others appealed to the county superintendent, who, on the 21st day of October, 1868, made an order forming the said subdistrict in accordance with the prayer of the petition, and the board appeal.

There was a motion for a continuance made on the hearing before the county superintendent, based upon an alleged want of notice, which motion was overruled, and the parties proceeded to trial. The overruling of this motion is one of the errors assigned on this appeal.

The want of notice, if there was any, was waived by the voluntary appearance of the party making the motion, and as the opposite party proposed to admit everything expected to be proven, in case of a continuance being granted, no injustice resulted, and therefore this error is not sustained.

The decision of the county superintendent will be reversed, however, on other grounds.

The proposed new subdistrict embraces but two and one-half sections of land, inhabited by fifteen families, having in all but twenty-

seven persons between the ages of five and twenty-one years; not enough to maintain a good school.

The practice of cutting district townships into numerous subdistricts of small size, is detrimental to the educational progress of the state. It increases the number of schools, and correspondingly reduces the number of pupils in each school, by reason of which, teachers of a lower grade must be employed, poorer school-houses built, or the expense of carrying on the schools greatly increased. Experience has demonstrated that it is better to have fewer subdistricts with better school-houses, and teachers of a high standard of qualifications, than to have more and smaller subdistricts, poor houses, small schools, and teachers of a low grade.

It is impossible in country districts to place a school-house in every man's door-yard—so to speak. Some must of necessity, be more remote from schools than others. From the plat submitted in this case it appears the farthest any scholars residing within the limits of the proposed subdistrict have to go to reach the school-houses now in use, is about one and one-half miles, and this is less than the average distance the children of most subdistricts in the state have to travel in going to and returning from school. See further the case of *Gordon v. District Township of Brown.*

REVERSED.

LEWIS I. COULTER,

Acting Superintendent of Public Instruction.

January 27, 1869.

Z. W. Remington v. District Township of Boomer.

Appeal from Pottawattamie County.

1. Jurisdiction. The county superintendent has not jurisdiction of cases involving a money demand.

2. School Orders. When improperly issued by the board, the proper remedy is an injunction from the civil courts.

The case presented by the record is this: On the 12th day of October, the board of directors of Boomer district township met in special session and made a settlement with one L. S. Axtell, who was the contractor for the erection of certain school houses in said district township. From the action of the board, Z. W. Remington appealed to the county superintendent. The superintendent dismissed the appeal upon the ground that the settlement with Axtell was for a money demand, and therefore involved a question over which he could exercise no jurisdiction. Remington again appeals.

If there was anything wrong in the action of the board issuing orders in favor of Axtell for the payment of his claim for building the school-houses that would render them invalid, plaintiff's remedy, if any, would have been by injunction to restrain the payment of such orders, or by some other proper action in the civil courts, and not by appeal to the county superintendent, as the latter tribunal is not clothed by the statute with authority to inquire into or determine the validity of school orders. The county superintendent, therefore, very properly decided to dismiss the appeal, and his order in the case is hereby

Affirmed.

A. S. KISSELL,

Superintendent of Public Instruction.

May 17, 1870.

Hiram Dayton v. District Township of Cedar.

Appeal from Washington County.

Appeal. Where changes are effected in district boundaries by the concurrent action of two boards, appeal may be taken from the order of the board concurring or refusing to concur, but not from the order of the board taking action first.

On the 18th day of September, 1871, the board of directors of the district township of Cedar, Washington county, passed a resolution to attach a portion of subdistrict number three to subdistrict number ten in the same township.

On the 14th day of October, Hiram Dayton appealed from the action of the board to the county superintendent, who, on the 12th day of December, 1871, on motion of appellee, dismissed the case for want of jurisdiction.

From this decision an appeal is taken to the superintendent of public instruction.

From the transcript it appears that subdistrict number three, concerning which the appeal is taken, is one of those school districts formed prior to March, 1858, and for which special provision was made when our present district township system was adopted. It consists of about three sections of land in Cedar township and nearly the same amount in Seventy Six township, with its school-house in Cedar, and hence all under the control of the district township of Cedar for school purposes.

Section 89, School Laws, provides that "the boundaries of such subdistrict shall not be changed, except with the concurrence of the boards of directors of the townships interested."

The board resolved that the west half of sections eighteen, nineteen and thirty, lying in subdistrict number three, be attached to subdistrict number ten for school purposes.

The appellant in his affidavit alleges among other errors committed by the board, that they erred in attempting to attach this tract to number ten, for the reason that said act was in effect dividing the

subdistrict without the concurrence of the board of directors of Seventy Six township, and therefore illegal.

The attorneys for appellee file a demurrer to the affidavit "because the said affidavit shows that the concurrent action of the two boards is necessary to divide said subdistrict," that this resolution being only the initiative act, does not divide the district, and is without force till concurred in by the other board, that no appeal can be had from an incomplete action, and that the appellant had as yet suffered no grievance, and had no ground of appeal.

The county superintendent sustained the demurrer and dismissed the case for want of jurisdiction.

This case involves an interesting question, and one, we believe, not hitherto determined by this department, viz.: In those changes of boundaries requiring the concurrent action of two boards, from which action, if any, will an appeal lie?

In a somewhat analogous case, *Dobbins and Briggs v. District Township of Salem*, a petition was presented to a board to change the boundaries between a district township and an independent district, the petition was refused; an appeal was taken to the county superintendent, who not only reversed their action, but decided to do more than one board could have done, and ordered the changes to be made.

This decision, we think, was very properly reversed; for the reason that the county superintendent could not do on appeal what was clearly beyond the power of the board, from which the appeal was taken, the concurrence of another board being necessary to complete the action. Another question, however, wholly distinct from this, is, has a county superintendent any jurisdiction in such a case? Can he properly affirm or reverse the decision of a board that initiates a movement which is completed or not at the option of another board? After careful consideration we are forced to the conclusion that he cannot. That an appeal will not lie from an order of a board making a change in district township boundaries, where the concurrence of another board is necessary to make the change. Otherwise a county superintendent may have to entertain and decide upon two appeals in one and the same case. This, in our opinion, would lead to confusion and unnecessary litigation. The law provides that "any person aggrieved by any decision or order of the district board of directors, in

matter of law, or fact, may appeal therefrom to the county superintendent." But if the order or decision is simply the initiative movement, though the action is not void, it remains inoperative, and without force, until concurred in, and does not of itself constitute a cause of grievance. In our opinion, equal and full justice will be secured in all such cases, if the appeal is taken only from the action of the board concurring or refusing to concur with the former action of another board interested. From this we believe an appeal should lie.

In the case before us, if the board, as alleged in the affidavit, seek to do an illegal act, or refuse to perform any duty imposed by law, they can be restrained by injunction, or compelled to do their duty by a resort to the civil courts.

It is therefore held that the county superintendent properly dismissed the case for want of jurisdiction, and his decision is therefore

AFFIRMED.

ALONZO ABERNETHY,
Superintendent of Public Instruction.

March 22, 1872.

W. P. DAVIS v. DISTRICT TOWNSHIP OF MADISON.

Appeal from Fremont County.

1. CONTRACTS. Contracts for the erection of school-houses, made by a subdirector or committee, require the approval of the board.
2. SCHOOL FUNDS: *Disbursement of.* The treasurer is the proper custodian of all funds belonging to the district, and can legally pay them out only upon orders specifying the fund upon which they are drawn and the specific use to which they are applied. The board cannot authorize the subdirector to use the public funds for any purpose.
3. CLAIMS. Just claims against the district can be enforced only in the courts of law.
4. SUBDISTRICT. A subdistrict is not a corporate body, and has no control of any public fund.

The electors of the district township of Madison, Fremont county, on the eleventh day of March, 1871, voted a tax of two and one-half mills on the taxable property of the district township, for school-

house purposes, and directed that three hundred dollars of the amount thus raised should be used for the erection of a school-house in subdistrict number nine.

March 20, 1871, W. P. Davis, subdirector of subdistrict number nine, was appointed a committee to build a school-house in said subdistrict. The house having been completed, at a special meeting of the board held June 1, 1872, it was moved that the report of the committee be received, and the school-house be accepted; also, that the secretary be instructed to draw an order on the treasurer for three hundred dollars, for subdistrict number nine. Both motions were lost, from which action the said W. P. Davis appealed to the county superintendent, who, on the 9th day of August, 1872, reversed the action of the board.

The district township, through its president, W. H. Gandy, appeals to the superintendent of public instruction.

The history of this case very fully illustrates the loose and irregular manner in which school officers too frequently transact official business. Section 15 of the School Laws provides that the board of directors "shall make all contracts, purchases, payments, and sales necessary to carry out any vote of the district, but before erecting any school-house they shall consult with the county superintendent as to the most approved plan of such building."

If the contract is made by a subdirector or committee of the board, it should in all cases be approved by the board before work is commenced.

A misapprehension often exists as to the manner in which school funds should be disbursed. The treasurer is the proper custodian of all funds belonging to the district township, and the law provides that he "shall pay no order which does not specify the fund on which it is drawn, and the specific use to which it is applied," *i. e.* for work done, material furnished, or the like.

The board are also required to "audit and allow all just claims against the district, and no order shall be drawn on the district treasury until the claim for which it is drawn has been so audited and allowed." This rule applies equally where funds are voted by the district township for the purpose of building school-houses in particular subdistricts, also where taxes have been raised on the property

of subdistricts in accordance with the proviso of section twenty-eight.

Such funds, or so much of them as may be required to carry out the vote of the electors, should be devoted to the specific object for which they were voted, but the disbursement should in all cases be under the direction and authority of the board.

Boards have no authority to give subdirectors money to use in their subdistricts for building school-houses or any other purpose, nor subdirectors to use money so received. A subdistrict is not a corporate body, and has no control of any public fund.

If Davis has a just claim against the district township of Madison which the board refuse to allow, or if the board refuse to apply the amount voted by the electors to the specific object for which it was designed, viz.: the erection of a school-house in subdistrict number nine, the civil courts only can furnish a means of redress.

REVERSED.

ALONZO ABERNETHY,
Superintendent of Public Instruction.

October 30, 1872.

J. D. CALDWELL v. STEPHEN PEEBLES, COUNTY SUPERINTENDENT.

Appeal from Mills County.

1. REVOCATION OF TEACHER'S CERTIFICATE. A teacher's certificate can be legally revoked only upon proof of charges of which he has had personal notice, and against which he has had the opportunity to make his defense.
2. ———. A person addicted to the use of intoxicating liquors who even occasionally becomes intoxicated is not likely to promote correct moral teaching in the public schools by his example, nor to possess such moral character as to entitle him to a teacher's certificate.

Complaint having been made to the county superintendent that J. D. Caldwell, a teacher, was addicted to the use of intoxicating liquors, an examination of the charges was made May 10, 1873, as provided by law, the result of which was the revocation of Mr. Caldwell's cer-

J. D. Caldwell v. Stephen Peebles, County Superintendent.

tificate. Mr. Caldwell appeals to the superintendent of public instruction.

We need not comment upon the testimony in the trial, since the county superintendent admits that the specifications contained in the complaint were not sustained. Facts, however, were developed incidentally, in the examination of witnesses, apart from the direct issues involved, to satisfy the county superintendent that the defendant does not possess a good moral character, and we are not sure but his conclusions are properly deducible from the evidence.

The law, however, providing for the revocation of certificates, requires that it shall only be "after an investigation of facts in the case, of which investigation the teacher shall have personal notice, and he shall be permitted to be present and make his defense."

In this instance, certain charges were preferred in an information, of which the teacher had due notice, and, as it appears, successfully defended himself against the charges made, and there rested his case.

It is, perhaps, doubtful if the superintendent has the authority to revoke a certificate upon evidence incidentally developed in the trial, however damaging in its nature, the substance of which was not contained in the original notice, and against which no defense was attempted.

We fully agree with the superintendent that a person addicted to the use of intoxicating liquors, who even occasionally becomes intoxicated, and who is in the habit of visiting disreputable beer saloons, does not possess that degree of moral character to entitle him to a teacher's certificate under our statute. We cannot too highly commend the efforts of county superintendents to promote correct moral teaching in the public schools through the example of the teacher.

Disqualifications of this nature should be fully proved, and in the manner prescribed by law; and we reluctantly set aside this decision, believing that the superintendent was actuated by worthy motives, and did the act solely with a view to promote the good of the schools, and in the conscientious discharge of a public duty.

REVERSED.

ALONZO ABERNETHY,

Superintendent of Public Instruction.

May 31, 1873.

James Bunn v. District Township of Douglas.

Appeal from Ida County.

1. Contracts. The district township is bound by the contract of the subdirector when made according to instructions of the board.
2. ———. If a subdirector enter into a contract on behalf of the district, without authority of the board, he does so at his own risk; such contract is not binding upon the district unless approved by the board.
3. Rules and Regulations. The power to prescribe rules and regulations for the government of the board is not a function of the electors. A rule adopted by the board, and not a provision of law, may be modified at the option of the board.

A contract for furnishing the school-houses in subdistricts numbers one and two with new seats, was approved by the board of directors; the county superintendent, upon appeal, affirmed the action of the board; James Bunn appeals to the superintendent of public instruction.

It is claimed by the appellant:

1. That the contract was made without authority from the board.
2. That new seats could not be legally purchased without a vote of the electors.
3. That by rule of the board public notice should be given before making any contract, except with teachers.

The district township is bound by the contract of the subdirector when made and entered into according to the specific instructions and directions of the board. *Thompson v. Linn*, 35 Iowa, 361.

If a subdirector enters into a contract on behalf of the district, without being authorized by the board, he does so at his own risk; such contract is not binding upon the district unless approved by the board; being approved, however, the district becomes responsible for the performance of the contract on its part. Affirmative action of the electors is not required by law before the board of directors can procure new seats for a school-house.

It appears from the transcript that the rule mentioned was adopted and prescribed by the district township meeting, and not by the board of directors; the power to prescribe rules and regulations for the government of the board of directors, except as specifically named in the law, is not a function of the electors when assembled at the district township meeting. Any rule adopted by the board, and not a provision of law, may be modified or disregarded at the option of the board.

AFFIRMED.

ALONZO ABERNETHY,
Superintendent of Public Instruction.

December 2, 1873.

D. K. TAYLOR v. INDEPENDENT DISTRICT OF ELDON.

Appeal from Wapello County.

1. APPEAL. Appeal may be taken from an action of the board which authorizes the making of a contract, but not from a subsequent action or order complying with the terms of a contract previously made; nor from an action authorizing the issuance of an order in payment of a debt contracted by previous action of the board.

2. ——. A case whose sole purpose is to determine the validity of an order on the district treasury, or the equity of a claim, cannot be entertained on appeal to the county superintendent; the courts of law alone can furnish an adequate remedy.

From the transcript it appears that on the 3d day of December, 1873, the board passed an order authorizing the payment of five per cent commission for negotiating the district bonds, and on the same day another authorizing D. P. Stubbs to negotiate said bonds.

On the 3d day of February, 1874, the board passed an order instructing the president and secretary to draw an order for $90 on the district treasury in favor of said D. P. Stubbs, for services rendered in negotiating said bonds, in accordance with the previous action of the board on December 3, 1873. From the action of the board in issuing said order of $90 this appeal was taken.

The county superintendent dismissed the case, on the ground that it was an action authorizing the payment of money, and a decision thereon would be equivalent to rendering a judgment for money, which is prohibited by the provisions of section 1836, Code. D. K. Taylor again appeals.

Appeal may be taken from any action of the board which authorizes the making of a contract, but not from a subsequent action or order complying with the terms of a contract previously made; or from an action authorizing the issuance of an order in payment of a debt contracted by a previous action of the board.

The order appealed from in this case is not a new action of the board, but a necessary result of the order of December 3, 1873. If the first action was legal and proper, the last is both proper and necessary, the services having been performed. Any interested party might have appealed, at the proper time, from the action of December 3, authorizing the payment of five per cent commission for negotiating bonds or authorizing the appointment of an agent therefor. But the time for an appeal, thirty days, having expired, appeal cannot now be taken from the subsequent action, which is simply carrying out their previous action, and the terms of the contract made thereunder.

In the case of *Winters et al. v. District Township of Clay*, it is held that, to determine the validity of an order on the district treasury, or the equity of a claim, is equivalent to the rendition of a judgment for money, and a case whose sole purpose is to determine this question cannot be entertained on appeal; that the courts of law alone can furnish an adequate remedy, if the law has been violated, or the interests of the district have suffered by the making of contracts or the issuing of orders for money on the treasury.

AFFIRMED.

ALONZO ABERNETHY,
Superintendent of Public Instruction.

May 5, 1874.

A. BEARD *et al.* v. DISTRICT TOWNSHIP OF WASHINGTON.

Appeal from Ringgold County.

1. SUBDISTRICT BOUNDARIES. Subdistrict boundaries can be changed only by affirmative vote of a majority of all the members of the board.
2. APPEAL. Appeal will not be entertained from the action of the board in rescinding a previous illegal action.

The board of the above named district consists of four members. On the 24th day of January, 1874, three members of the board met, pursuant to notice, for the purpose of forming a new subdistrict to consist of sections 27, 28, 33, and 34. Upon motion to establish said subdistrict, two of the members voted in the affirmative and one in the negative: by this action the subdistrict was considered as formed, and was so entered upon the record. On February 14, the board met pursuant to notice, for the purpose of reconsidering their action of January 24. Upon motion that the action of the board in establishing said subdistrict be annulled, three members voted in the affirmaative, and one in the negative. From this action appeal was taken to the county superintendent, who simply reversed the action of the board. I. F. Howell *et al* appeal to the superintendent of public instruction.

Section 1738, School Laws of 1873, provides that the boundaries of subdistricts shall not be changed, except by a vote of the majority of the board. Therefore, the subdistrict in question was not legally established by the action of the board of January 24; their subsequent action relative thereto may properly be considered as simply correcting the records of the meeting. Neither would the action of the county superintendent in reversing such action, have the effect to establish the subdistrict.

Since the action of the board was entirely proper under the circumstances in making such correction, the decision of the county superintendent is hereby REVERSED.

ALONZO ABERNETHY,
Superintendent of Public Instruction.

June 4, 1874.

E. Watson v. District Township of Exira.

Appeal from Audubon County.

Punishment. The punishment of a pupil with undue severity, or with an improper instrument, is unwarrantable, and may serve, in some degree to indicate the animus of the teacher.

Charges were preferred against E. Watson, a teacher in the schools of the district above named, for harsh and unreasonable punishment of a pupil; upon investigation the teacher was discharged; from this action of the board he appealed to the county superintendent, who reversed their action. The district appeals to the superintendent of public instruction.

From the evidence it appears that the pupil, upon whom the punishment was inflicted, was a boy thirteen years of age, and that the offense was such that punishment was deserved. The instrument selected for inflicting punishment was a hickory stick, three-fourths of an inch in diameter at one end, and one-half inch at the other, and fifteen or eighteen inches long. The punishment was inflicted by striking upon the palm of the hand from eight to twelve strokes. It appears that the boy's hand was thereby disabled for some days.

It is alleged by the teacher that the punishment was inflicted for the good of the school, and that it was without malice on his part. We consider the selection of such an instrument for the punishment of a pupil injudicious, unwarrantable, and dangerous, and that consequences might be fraught with the gravest results, and that such selection may serve in some degree, to indicate the animus of the teacher.

Reversed.

ALONZO ABERNETHY,
Superintendent of Public Instruction.

June 6, 1874.

Sanford Harwood v. Independent District of Charles City.

Appeal from Floyd County.

1. Punishment: *Right to inflict upon pupils.* The right of the parent to restrain and coerce obedience in children applies equally to the teacher, or to any one who acts in *loco parentis.*
2. Rules and Regulations. Boards of directors and their agents, the teachers, may establish reasonable rules for the government of schools and the control of pupils.
3. ———. The teacher has the right to require a pupil to answer questions which tend to elicit facts concerning his conduct in school.
4. ———. The pupil is answerable for acts which tend to produce merriment in the school or to degrade the teacher.
5. ———. Open violation of the rules of the school cannot be shielded from investigation under the plea that it invades the rights of conscience.
6. Board of Directors. The board should be sustained in all legitimate and reasonable measures to maintain order and discipline, to uphold the rightful authority of the teacher, and to prevent or suppress insubordination in the school.

This case involves the right of a teacher to require a pupil to answer questions concerning his conduct in school, or to testify against himself.

Burritt Harwood, a member of the high school department, having broken certain rules of the school, was suspended by the superintendent for refusing to answer a question relating thereto. The pupil's father petitioned the board of directors to restore the pupil. The board having investigated the facts adopted the following:

"Resolved, That the school board sustain Prof. Shepard in his suspension of Burritt Harwood, provided Burritt Harwood be reinstated if he answer the question, for the refusal to answer which he was suspended, subject to such further action as may be taken by the principal or school board for making and circulating the caricature." The president and four other members voting for, and one against the resolution. From this action of the board, S. Harwood appealed to the county superintendent, who reversed their action. The board,

through their president, appeal to the superintendent of public instruction.

The power of the parent to restrain and coerce obedience in children cannot be doubted, and it has seldom or never been denied. This principle applies equally to the teacher or to any one who acts *in loco parentis*. Boards of directors and their agents, the teachers, may establish all reasonable and proper rules for the government of schools, and to control the conduct of pupils attending the same. "Any rule of the school not subversive of the rights of the children or parents, or in conflict with humanity and the precepts of divine law, which tends to advance the object of the law in establishing public schools, must be considered reasonable and proper." *Burdick v. Babcock*, 31 Iowa, 562.

The superintendent had occasion to leave the high school in charge of his assistant while he should attend to official duties elsewhere. On his return about 4 P. M., the assistant reported that there had been much disorder on the part of some of the pupils, and that she had required several of the pupils to remain and report their misdemeanors to the superintendent. Burritt Harwood being called upon, said, in substance, I have two misdemeanors to report: I threw snow into the lower hall during recess, and I passed a piece of paper across the aisle to my brother's desk. Both are recognized as violations of the rules of the school. The nature and magnitude of the first are readily discernible, and need no further investigation; not so of the second, much depends upon the character of the "piece of paper," whether simply blank paper, or containing writing or other marks; being asked to state the nature of the paper, he at first answered evasively. Being further questioned, he replied that it was "pictorial" that it was a "burlesque or caricature," that "it represented the school-house and some person or persons," that "the person or persons represented were connected with the school." The further question, "whom he had intended to burlesque," after some hesitation, he declined to answer. For this act of disobedience he was suspended.

The question which he refused to answer appears to differ in no essential feature fron those previously answered. By it the teacher simply sought to discover an additional fact in connection with the case. If he had a right to ask the former he had the latter. If there

is any reason why the pupil had the right or should claim the privilege of declining to answer the last, he should have stated it. Certainly no good reason appears from the nature of the offense, and the degree of punishment which it merited depended upon the information which the teacher sought to obtain by this and the previous question. If the paper contained simply the solution of a problem or something connected with his lesson, it merited one degree of punishment; if its purpose was to create merriment among the pupils, thus diverting their attention from their studies, it required another degree; if by it the pupil sought to bring ridicule upon a teacher, to the prejudice of the good order and government of the school, still another; each would be a violation of the rules, but not each equally punishable. The claim of appellee that it was an attempt to pry into the secrets of the heart, and was a violation of the right of conscience, is scarcely sustained by the facts. The question "whom did you intend to represent," is essentially equivalent to "whom did you represent." Its purpose evidently was not to find out the thought or intent, but the act of the pupil. The question was simply what was the character of the picture drawn and circulation to the disturbance of the school. It does not appear how the rights of conscience would be violated in answering the question. It may be true that the picture itself, if produced, would furnish the best evidence, but the teacher clearly had the right, in its absence, and knowing nothing of its nature beyond what the pupil had already revealed, to seek this information directly and immediately by proper questions. Nor can the pupil shield himself under the provision of the law that a prisoner at the bar cannot be compelled to answer questions which will tend to render him criminally liable or expose him to public ignominy. He is, in no proper sense, accused of crime before a court of law, authorized to sit in judgment under a criminal code.

The picture, which was afterward produced, reveals anything but a right spirit in the pupil. Probably no one who has seen it doubts that it is a coarse caricature of the superintendent and his assistant. His refusal to answer was evidently not that he could not conscientiously do so, nor that it would tend to criminate himself, but was a deliberate act of insubordination. All the attendant circumstances, the evasive and studied replies to the superintendent's questions, the

caricature itself, and its circulation through the school during the absence of the superintendent, together with a previous malicious caricature of the same nature, all reveal a disregard for the regulations of the school, the respectful conduct due from a pupil, and an *animus* toward the teacher anything but proper.

In our opinion unnecessary stress was laid, in the trial before the superintendent, upon the technical ground of of suspension by the superintendent. The board having had the whole subject under investigation, including statements of the offenses from both the superintendent and the pupil, sustained the superintendent, or in other words, suspended the pupil conditionally from the school, as they probably had a right to do for any one of the offenses named. This being a discretionary act, due weight must be given to such action by an appellate tribunal, especially should the board be sustained in all legitimate and reasonable measures to maintain order and discipline, to uphold the rightful authority of the teacher and to prevent or suppress insubordination in the school.

REVERSED.

ALONZO ABERNETHY,
Superintendent of Public Instruction.

June 8, 1874.

T. J. ROOK v. DISTRICT TOWNSHIP OF LIBERTY.

Appeal from Clarke County.

SCHOOL-HOUSE TAX. All taxes voted by the district township meeting must be apportioned among the subdistricts. All taxes voted by the subdistrict meeting which the district township neglects or refuses to grant, must be certified and levied upon the subdistrict. The board have no option but to obey the requirements of the law.

Under the provisions of section 1778, School Laws of 1874, the electors of subdistrict number six, of the above named district township, voted to raise the sum of four hundred dollars for the erection of a school-house; the sum was properly certified to the district township meeting, which refused to grant the request. The board of di-

rectors certified the amount to the board of supervisors to be levied directly upon the subdistrict making the request. From this action appeal was taken to the county superintendent who affirmed the action of the board. T. J. Rook appeals.

The errors alleged to have been committed are:

1. That the township electors neglected or refused to grant the request of the electors of subdistrict number six.

2. That the board refused to apportion the amount voted by the subdistrict among the subdistricts of the township.

It is wholly discretionary with the township electors whether such requests are granted or not; from their action no appeal can be taken. If they vote to grant such request, the amount must be apportioned by the board among the subdistricts of the township; if they neglect or refuse to grant it, the amount must be certified to the board of supervisors, to be levied directly upon the subdistrict making the request. Section 1778, School Laws of 1874.

The board have no option in such case; it is their duty simply to obey the requirements of the law.

AFFIRMED.

ALONZO ABERNETHY,
Superintendent of Public Instruction.

October 5, 1874.

HENRY BREWER *et al.* v. DISTRICT TOWNSHIP OF WASHINGTON.

Appeal from Van Buren County.

REHEARING. The county superintendent may, for sufficient cause, grant a rehearing

The action of the board in refusing to form a new subdistrict, number two, of the above named district township, was affirmed by the county superintendent.

After the rendition of the decision a motion and affidavit were filed by the appellants asking that a new trial be granted, the affiants alleging that the evidence was not properly taken down at the time of the trial; also, that new evidence had been discovered, materially affect-

ing the question at issue. The motion was granted by the county superintendent.

At the subsequent trial the appellee filed a motion to dismiss the case upon the following grounds:

1. That no sufficient affidavit was filed in the first instance, and that the superintendent never acquired jurisdiction.

2. The rehearing was granted without authority of law.

This motion was overruled by the superintendent. The trial resulted as before, in the affirmance of the action of the board. Henry Brewer *et al.* appeal.

At the trial before the superintendent of public instruction the appellee filed a motion to dismiss the case upon the ground:

1. That the county superintendent had no jurisdiction to grant a new trial.

2. That if he had authority to grant a new trial, it could only be for sufficient cause, and that no such cause was shown.

It is held that the county superintendent may, for sufficient cause, grant a new trial, and in so doing should be governed by the principles and rules pertaining to courts of law, so far as the same are applicable. Although some doubts may exist as to the sufficiency of the reasons assigned for granting a new trial in this case, and of the regularity of the proceedings, yet, since the second trial resulted as the first, and was without prejudice to the interests of the appellee, the discretion of the county superintendent will not be interfered with; the case is, therefore, properly before the superintendent of public instruction for a consideration of its merits.

From a careful examination of the evidence, it is found that the injustice complained of is not of such a character as to require any interference with the action of the board, or of the county superintendent.

AFFIRMED.

ALONZO ABERNETHY.

Superintendent of Public Instruction.

February 11, 1875.

John S. David v. Independent District of Burlington.

Appeal from Des Moines County.

1. School. Every person between the ages of five and twenty-one years has the right to attend school in the district in which he resides, regardless of considerations relating to race, nationality, the holding of property, or the payment of taxes.
2. ——— The payment of school taxes does not entitle non-residents to school privileges.
3. ——— The board have authority to determine when, and upon what terms, non-resident pupils may attend the schools of their district.

This appeal is brought to compel the board of the independent district of Burlington to admit into the public schools of said district appellant's children, without payment of tuition, on the ground that he is a large tax-payer in the district; the county superintendent having affirmed the action of the board in refusing to admit them.

The appellant resides about a mile beyond the limits of the independent district of Burlington, and near the school in his own district; but he claims that this school is not of suitable grade for his children.

The law requires the board to provide school facilities for all the children in their own district, and contemplates that they shall, in all cases, determine whether children who are not residents, shall be permitted to attend the schools thereof, and upon what terms. Section 1793.

It is claimed by the appellant that his children are entitled to attend school in the independent district of Burlington without the payment of tuition, for the reason that he owns property in said independent district and pays taxes thereon; and if the payment of taxes could ever entitle a person to such privileges, it doubtless would in this case, as he introduces the certificate of the county auditor to show that his school taxes for 1874 were $406.08. There is, however, no provision of law upon which to base such claim; nor would such provision well accord with the spirit of our laws relating to public schools. These laws are founded upon the broad principle that every

person in the state between the ages of five and twenty-one years, is entitled to the privilege of attending the public schools.

This principle is wholly unencumbered by any consideration relating to race, nationality, the holding of property, or the payment of taxes.

To prevent confusion and the over-crowding of particular schools, it is necessary to point out what school each pupil has the right to attend. A more equitable rule could not have been devised, than that which prescribes that the pupil may attend school in the district in which he resides. The simplicity and equity of this rule are apparent. Every person has one place of residence, and no more; the place of residence is generally determined without difficulty, and is not usually abandoned for trivial causes.

To introduce any conditions into the laws dependent upon property considerations, would be to outrage the fundamental principles of our free school system.

To further promote the convenience of the people, and to give elasticity to the rule, the board may, when circumstances require, permit non-resident pupils to attend the schools of their district.

AFFIRMED.

ALONZO ABERNETHY,
Superintendent of Public Instruction.

February 20, 1875.

A. B. REED *et al.* v. DISTRICT TOWNSHIP OF UNION.

Appeal from Mahaska County.

1. SUBDISTRICTS. Other things being equal, both territory and school population, should be about equally divided among the subdistricts of a district township.

2. ———. One subdistrict should not ordinarily have an excess over the average subdistrict of the district township both in territory and school population, nor should it lack in both.

The action of the board in changing subdistrict boundaries was affirmed by the county superintendent; from this decision A. B. Reed appeals.

A. B. Reed et al. v. District Township of Union.

Previous to the action of the board, from which appeal was taken, subdistrict number seven comprised two sections of land, upon which reside about forty persons of school age. The board added three sections from subdistrict number three, upon which reside some thirty pupils, leaving but three sections and about twenty-two pupils.

It is claimed that by this increase of area in subdistrict number seven to five sections, and the consequent increase of pupils to seventy, a portion of the latter are deprived of school privileges. This leads to a consideration of the proper basis and manner of dividing a district township into subdistricts. It would seem, other things being equal, that both territory and school population should be about equally divided among the subdistricts of the district township. When the population is not uniformly distributed, which is generally the case, it would appear that no one subdistrict should have an excess over the average subdistrict of the district township, both in territory and in school population; nor should any one subdistrict lack both in territory and in school population, unless by reason of some controlling circumstance. The location of public roads, streams or any other obstruction, should always be taken into consideration. In this case, area and school population are the only essential elements. The average area of a subdistrict in the township, is four and one-half sections.

The school population, according to the last annual report of the county superintendent, averages 57.5 to each subdistrict. Hence, we find that subdistrict number seven lacked both in area and school population, and that its boundaries should have been enlarged; but we also find that the subdistrict from which territory was taken, was reduced below the average, both in school population and in area, while the subdistrict thus enlarged, is in excess in both.

We trust that the board will, as soon as practicable, remove these inequalities by a redivision of the entire district township into subdistricts. Questions as to the validity of the action of the board are also raised, but we do not find that they have, in any manner, acted contrary to the requirements of law.

AFFIRMED.

ALONZO ABERNETHY,

Superintendent of Public Instruction.

June 21, 1875.

J. W. Hubbard v. District of Lime Creek.

Appeal from Cerro Gordo County.

1. Appeal. The execution by the board of the vote of the electors upon matters within their control, is mandatory; from such action of the board no appeal can be taken. If such action is tainted with fraud, an application to a court of law is the proper remedy.
2. Board of Directors. The board, though not bound by a vote of the electors directing the precise location of a school-house site, are required to so locate it as to accommodate the people for whom designed.
3. ———. If, in the selection of a site, the board violate law or abuse their discretionary power, their action may be reversed on appeal.

The electors of the district township voted a tax to build a school-house on what is known as the Simons road, near where it crosses the Central railroad. On a separate motion, the board were instructed to sell the school-house known as number three. In accordance with the first mentioned action, the board located a school-house site on said road, fifty feet from said crossing. From this action appeal was taken; the appellant claiming it to be a relocation of the site known as number three; and that such action was with the express intention of selling the school-house and abandoning the site thereof. The county superintendent reversed the action of the board. From this decision the district township appeals.

The district township coincides with a congressional township in boundaries and extent, and is comprised in one subdistrict. It is claimed that the action of the district township meeting did not represent the wishes of the people; that there are ninety-five voters in the district, and but twenty seven were present at such meeting; also, that in the location of the site, the board did not consult the convenience of the people.

Section 1717, School Laws, 1874, provides, that the electors of the district, when legally assembled at the district township meeting, shall have power "to direct the sale, or other disposition to be made of any school house, or the site thereof, and of such other property, personal and real, as may belong to the district."

Section 1723 provides that the board "shall make all contracts, purchases, payments, and sales, necessary to carry out any vote of the district."

Section 1724 provides that the board "shall fix the site for each school-house, taking into consideration the geographical position and convenience of the people of each portion of the subdistrict."

The execution of the vote of the electors by the board is mandatory; from their action in so doing no appeal can be taken. In case such action is in any manner tainted with fraud, an application to a court of law is the proper remedy.

The power to locate school-house sites is vested originally in the board. Although the board have authority to locate school-house sites, yet money legally voted by the electors for a specific purpose, must be expended in accordance with such vote; if voted to erect a school-house in a certain subdistrict, it cannot legally be used to build a school-house in another; while any directions of the voters attempting to locate, precisely, a school-house site, are void, yet the board is bound so to locate it as to accommodate the people for whom designed; in the absence of such instructions the board may exercise more widely their discretion in fixing school-house sites.

If, in the performance of this duty, they violate law, act with manifest injustice, or in any manner show an abuse of discretionary power, their action may properly be reversed by the county superintendent.

In this case we do not discover that the board have in any manner failed in the proper performance of their duty.

REVERSED.

ALONZO ABERNETHY,

Superintendent of Public Instruction.

July 7, 1875.

E. Gosting v. District Township of Lincoln.

Appeal from Plymouth County.

1. School-house Site: *Location of.* The action of a committee appointed by the board to locate a site is of no force until officially adopted by the board while in session.
2. ———. Subdistrict boundaries cannot be changed upon an appeal relating solely to the location of a site, nor can a site be located with the expectation that boundaries will be changed, unless such is shown to be the intention of the board.
3. Appeal. The right of appeal is confined to persons injuriously affected by the decision or order complained of. Ordinarily a person living in one subdistrict cannot properly appeal from an action of the board locating a site in another.

A committee appointed by the board of the above named district township to locate a school-house site for the accommodation of the residents of subdistricts numbers seven and nine, reported that they had selected the northwest corner of section ten: and afterward that they had chosen instead, a site about eighty rods east of the northwest corner of section eleven. There is no record showing that any action was taken by the board in relation to these reports.

Subdistrict number nine consists of the east one-half of congressional township number 90, range 45.

E. Gosting, the appellant, resides in subdistrict number seven, which comprises the west one-half of the same congressional township. The decision of the county superintendent is as follows: "After considering the evidence and the plat introduced, I sustain the committee in their first location at the northwest corner of section ten of said township." From this decision D. M. Relyea appeals.

The power to locate school-house sites is vested in the board of directors. Section 1724, School Laws of 1874. The action of a committee appointed by the board to locate a school-house site is of no force until their report is officially adopted by the board while in session.

Section 1725 provides that the board "shall determine where pupils

may attend school; and for this purpose may divide their district into such subdistricts as may by them be deemed necessary." The object of dividing a district township into subdistricts is to determine where pupils shall attend school. While it is frequently the case that pupils may more conveniently attend school in an adjoining subdistrict, it would obviously be improper to locate a school-house site expressly for the accommodation of such pupils, unless with the intention of subsequently making a redivision of the district township. The county superintendent has jurisdiction only of the matter to which the appeal relates. He cannot properly upon an appeal relating to the location of a school-house site change subdistrict boundaries; nor can he locate a school-house site with the expectation that such boundaries will ultimately be changed, unless such is shown to be the intention of the board.

The right to appeal from actions of the board is confined to persons injuriously affected by the decision or order of which complaint is made. Section 1829. Ordinarily, a person living in one subdistrict cannot properly appeal from an action of the board locating a school-house site in another.

The decision of the county superintendent is set aside, and the location of the school-house site is left to the discretion of the board.

REVERSED.

ALONZO ABERNETHY,

Superintendent of Public Instruction.

September 7, 1875.

J. E. Brown v. District Township of Van Meter.

Appeal from Dallas County.

1. Appeal. The adoption of the committee's report in favor of retaining the old school-house site, is an action from which appeal may be taken.
2. Board of Directors. The action of the board cannot be reversed upon the allegations of appellant without proof, or by reason of failure of the board to make defense.
3. ———. The acts of the board are presumed to be regular, legal and just, and should be affirmed on appeal, unless proof is brought to show the contrary.
4. ———: *Discretionary acts of.* The weight which properly attaches to the discretionary actions of a tribunal vested with original jurisdiction, does not apply to the decisions of an inferior appellate tribunal.

The county superintendent reversed the action of the board in selecting the old site in subdistrict number two, upon which to erect a new school-house, and located the site about eighty rods westward of the old one.

From this decision the district township appeals, claiming in substance that the county superintendent erred as follows:

1. That there was no action of the board relative to the selection of a school-house site in subdistrict number two from which an appeal would lie.

2. That the board failed, by reason of a misunderstanding, to appear and defend, and that they were unjustly refused a rehearing.

3. That the old site was suitable, convenient, and at the center of population, both present and prospective; and that the reversal of the action of the board was without sufficient cause, there being no evidence that they abused their discretionary power or acted with injustice.

From the transcript it appears that a committee was appointed to select a site for the erection of a school-house in subdistrict number two; that they reported in favor of the old site, and that their report was adopted by the board. The law provides that an appeal may be taken by any party aggrieved, from any order or decision of the board of directors.

That there was an action of the board, and that the subject-matter to which such action relates is the location of a school-house site in subdistrict number two, there can be no reasonable doubt; hence, the action of the board was subject to appeal, and such appeal gave to the county superintendent jurisdiction in the matter of the location of said school-house site. *Gosting v. District Township of Lincoln.*

It is the duty of the county superintendent to give due notice to all parties directly interested in an appeal from the board of directors, and to afford full opportunity for the presentation of evidence; but the action of the board cannot properly be reversed upon the allegations of the appellant without proof, or by reason of the failure of the board to be present and make defense. The acts of the board are presumed to be regular, legal and just, and should be affirmed by the county superintendent unless proof is brought to show the contrary. *Bacon et al. v. District Township of Liberty.* In this case, however, the board appear to have had due notice and ample opportunity to defend the case. It is not claimed that any additional evidence could be produced that would materially affect the issue; but that the board, understanding through popular report that the case was withdrawn, failed to be present at the trial, and upon this ground ask for a rehearing, which was very properly refused.

The site selected by the county superintendent is nearly central, being eighty rods west of that chosen by the board. Both appear to be suitable. The eastern part of the subdistrict is mostly prairie land, while the western portion is, to a considerable extent, timber land.

The evidence as to which site will better subserve the interests and convenience of the residents of the subdistrict is conflicting. The board is entitled to the benefit of any doubt upon this point. Unless it is clearly proven that they have violated law, abused their discretionary power, or have acted with manifest injustice, their action should be affirmed. *Edwards v. District Township of West Point.*

It is urged by the appellee that the same weight attaches to actions of an inferior appellate tribunal, upon appeal, that is given to tribunals having original jurisdiction. It is held that the action of the

board in matters of which they have original jurisdiction, is alone entitled to this consideration by any superior tribunal upon appeal.

REVERSED.

ALONZO ABERNETHY,
Superintendent of Public Instruction.

September 17, 1875.

D. C. RANDALL *et al.* v. DISTRICT TOWNSHIP OF LINCOLN.

Appeal from Cerro Gordo County.

1. COUNTY SUPERINTENDENT. The county superintendent may reconsider and modify a decision on proof that it does not conform to law.
2. SCHOOL-HOUSE SITE. A site located by the county superintendent cannot be changed by the board, while the condition of the district remains without material change.

The board of the above named district township having located a school-house site in subdistrict number six the county superintendent; on appeal, reversed their action May 4, 1875, selecting a site one-fourth of a mile further west; but upon information being received that said site was not upon a public highway, according to a recent decision of the circuit court, reconsidered the decision, and located the site May 24, 1875, at a point near the northeast corner of the northwest one-fourth of section 15, of said township,. Upon this site a school-house was subsequently erected. The board at their regular meeting in September relocated the site, at the point previously selected at their April meeting. This action was again reversed by the county superintendent on appeal. J. R. Perry, on behalf of the board, appeals to the superintendent of public instruction.

The points involved in this case are, first, the right of the county superintendent to re-open and review a case after the decision has been announced; and secondly, the right of the board to change a site which has been selected by the county superintendent while the condition of the subdistrict remains unchanged.

The county superintendent, upon evidence that the site had not been fixed in accordance with the provisions of the law requiring

school-house sites to be upon a public highway, had authority to recall the decision and select another site.

A school-house site located by the county superintendent on appeal cannot be legally changed by the board while the condition of the subdistrict remains without material change.

The decision of the board of September 20, to attach certain territory to the subdistrict did not so change its condition as to authorize the relocation of the site at that meeting, since, by the provisions of section 1796, School Laws of 1874, such change does not take effect until the next subdistrict election thereafter.

AFFIRMED.

ALONZO ABERNETHY,
Superintendent of Public Instruction.

February 10, 1876.

JOSEPH HAYS v. DISTRICT TOWNSHIP OF CHESTER.

Appeal from Poweshiek County.

1. APPEAL. Appeal may be taken from the action of the board in laying the subject-matter of a petition on the table.
2. EVIDENCE. Sufficient latitude should be allowed in the introduction of testimony to permit a full presentation of the issues involved, even if irrelevant testimony is occasionally admitted.

Subdistrict number one, district township of Chester, is composed of sections 1, 2, 11, 12, 13 and 14; and subdistrict number six of said district township is composed of sections 23, 24, 25, 26, 27, 34, 35 and 36.

A petition was presented to the board of directors praying that sections 1, 2, 11 and 12 be made a subdistrict. The board being in session, a motion was made to form one subdistrict, to be composed of said sections 1, 2, 11 and 12, and another subdistrict to be composed of sections 13, 14, 23 and 24. This motion was lost, reconsidered, and again lost, when, on motion, the whole subject was laid on the table.

Upon appeal the county superintendent made an order for the for-

mation of two subdistricts as follows: subdistrict number one to consist of sections 1, 2, 11 and 12; subdistrict number six to consist of sections 13, 14, 23 and 24. Winchester Stockwell, on behalf of the board, appeals to the superintendent of public instruction.

At the hearing before the county superintendent the appellee moved to dismiss the case for the reason that the secretary's transcript shows the subject-matter complained of to be still pending before the board, and that no final decision or order had been made in relation to the case.

From the transcript it appears that the board had twice refused by direct vote to form the subdistricts in question. The subsequent motion to lay the whole matter on the table was a convenient method of preventing further discussion.

The motion was properly overruled.

One of the errors assigned in the affidavit is, that the superintendent permitted the introduction of testimony pertaining to matters outside of those presented by the appeal. If this were true, which is not apparent from the record, it would not form a valid ground for reversal.

Considerable latitude should be allowed in the introduction of testimony, to make a full presentation of the issues of the case, even if irrelevant testimony is occasionally admitted.

Some of the residents upon the territory in question have an unreasonable distance to send to school. The change made by the superintendent establishes two subdistricts of uniform size and shape, and will probably permit the erection of school-houses on permanent sites, convenient of access for all; and, it is believed, will eventually prove to be for the best interests of the district.

AFFIRMED.

ALONZO ABERNETHY,
Superintendent of Public Instruction.

April 15, 1876.

Mary M. Thompson v. District Township of Jasper.

Appeal from Adams County.

1. Teacher. When a teacher is dismissed, in violation of his contract, an action in the courts of law, on the contract, will afford him a speedy and adequate remedy; when discharged for incompetency, dereliction of duty, or other cause affecting his qualifications as a teacher, he has the right of appeal.
2. ———. The teacher is entitled to the counsel and co-operation of the subdirector and board in all matters pertaining to the conduct and welfare of the school.

The board discharged Miss Mary M. Thompson for dereliction of duty as teacher in one of the public schools of the district. She appealed to the county superintendent who reversed their decision; from this action, the board, through their president, John McDevon, appealed to the superintendent of public instruction.

At the hearing before the county superintendent, the board filed a motion to dismiss the case, for want of jurisdiction, insisting that the teacher, having been dismissed in accordance with the provisions of section 1734, Code, her proper remedy was an action at law for damages.

When a teacher is dismissed, in violation of his contract, an action in the courts of law, on the contract, will afford him a speedy and adequate remedy; when discharged for incompetency, dereliction of duty, or other cause affecting his qualifications as a teacher, he has the right of appeal to the county superintendent, who is the proper officer to review questions of this character, and to determine whether the board have in the exercise of their authority violated the law or abused their discretionary power. Questions concerning the validity of contracts, the right to recover for services performed, and the interpretation of law, belong especially to judicial tribunals. Questions concerning the character and qualifications of the teacher, and his management of the school, are, by appeal, within the jurisdiction of the county superintendent.

The motion to dismiss was properly overruled.

The charges of dereliction were, want of promptness in commencing school in the morning, and an occasional refusal to hear the recitation of one or more of her pupils. For this dereliction there appears to have been some extenuating circumstances. Under the contract it was the subdirector's duty to have fires built. The boy employed to do this work often failed to have the school-house in comfortable condition at nine o'clock; the teacher usually made up lost time by teaching after four o'clock, and there is no evidence that the subdirector or board ever advised her with regard to the performance of her duties. The board convened at the school-house without previous notice to the teacher, and after taking the testimony of some of her pupils, unanimously voted to discharge her.

AFFIRMED.

ALONZO ABERNETHY,
Superintendent of Public Instruction.

May 8, 1876.

M. M. CROOKSHANK v. DISTRICT TOWNSHIP OF MAINE.

Appeal from Linn County.

1. APPEAL: *When an adequate remedy.* From the exercise of ordinary discretion in the performance of an official duty, enjoined by law upon the board, appeal may be taken to the county superintendent; but from a refusal to act, or from an action thereon clearly designed to defeat the purpose of the law, an application to the courts of law to compel the performance of the enjoined duty will afford the most speedy, and in some cases the only adequate, remedy.

A petition purporting to be signed by one-third of the legal voters of the district township of Maine was presented to the board March 20, 1876, asking that a meeting of the electors be called to vote upon the question of independent organizations.

The board ordered that the meeting be held on the day for the next presidential election. On appeal this action was reversed as not being in compliance with the law, and designed to defeat the purpose for which it was intended, and the board was ordered to call the

meeting in time to permit the formation of independent districts if so determined by vote of the electors. H. O. Bishop appeals to the superintendent of public instruction.

The action of the board in deferring the vote to determine the question of independent district organizations until the November election, was evidently for the purpose of defeating the measure, since by the provisions of section 1804, Code, the organization of such independent districts shall be completed on or before the first day of August of the year in which said organization is attempted.

From the exercise of ordinary discretion in the performance of an official duty enjoined by law upon the board appeal may be taken to the county superintendent; but from a refusal to act or from an action thereon clearly designed to defeat the purpose of the law, an application to the courts of law to compel the performance of the enjoined duty will afford the most speedy and in some cases the only adequate remedy.

The examination of the issues involved in the case can be of no avail, since the opportunity to vote upon the question of independent district organizations no longer exists, the law authorizing the formation of such districts having been repealed, to take effect July 4, 1876. Chapter 155, laws of the sixteenth general assembly.

The decision of the county superintendent is, therefore, reversed and the case dismissed.

REVERSED.

ALONZO ABERNETHY,

Superintendent of Public Instruction.

July 21, 1876.

S. W. Woods *et al.* v. District Township of Brighton.

Appeal from Cass County.

1. Board of Directors. The acts of the board are presumed to be regular, legal and just; and should be affirmed on appeal unless proof is brought to show the contrary.
2. School-house Site. The prospective wants of a subdistrict may properly have weight in determining the selection of a site, when such selection becomes necessary; but not in securing the removal of a school-house, conveniently located for the present.
3. ———. To make a distinction between the children of freeholders and those of tenants in determining the proper location for a school-house, is contrary to the spirit and intent of our laws.

The board of directors, by a vote of five to two, rejected a petition asking the removal of the school-house in subdistrict number eight. On appeal, the county superintendent reversed the action of the board, and ordered the removal of the school-house to the place named in the petition. Wm. F. Altig appeals to the superintendent of public instruction.

Subdistrict number eight contains sections 27, 28, 33, 34, and sixty acres lying in section 32, and has a good, commodious school-house, erected three years ago, one-half mile west of the center, on a public road passing east and west through the center of the subdistrict.

There are about thirty children of school age in the subdistrict, twenty-two of whom reside in the western half, and nineteen west of the present site. All those residing east of the present site, except one child, are within a mile and a half of the school-house, while by the proposed removal, a large number would be at a greater distance.

The action of the board in refusing to remove a school-house should not be interfered with on appeal, except upon evidence of violation of law, or abuse of discretionary power. In this case there is no evidence of such abuse.

The prospective wants of a subdistrict may properly have weight in determining the selection of a site upon which to build a school-

house, when such a selection becomes necessary, but not in determining the removal of a house, located conveniently for the present wants of the subdistrict.

It appears that a considerable portion of the school population consists of the children of tenants, and much stress is laid upon the assumed distinction that should be made between the children of tenants and those of freeholders, in determining the proper location of the school-house. Distinctions based upon the ownership of property, or permanence of residence are not made in the law, would not well comport with the fundamental principles upon which our public school system is based, and should not have weight in determining the location of school-house sites.

It is the duty of the board to provide equal school facilities for the youth of the district as far as practicable, regardless of considerations relating to permanence of residence.

The school-house may properly be removed whenever the conditions of the subdistrict require it, but unnecessary expense should not be incurred in such removal in anticipation of possible, or even probable, changes of this character.

REVERSED.

ALONZO ABERNETHY,

Superintendent of Public Instruction.

July 31, 1876.

BAPTIST HARDY v. DISTRICT TOWNSHIP OF WYACONDAH.

Appeal from Davis County.

JURISDICTION. In cases involving the validity of district organization no appeal will lie. The remedy is a writ in the nature of *quo warranto*.

On the third day of April, 1876, at a special meeting of the five members of the board of directors, a petition from one-third of the voters was received in favor of organizing independent districts, and an election was ordered for the 15th of April, to submit the question of changing the district township organization to that of independent districts under the provisions of sections 1815–1818, Code.

The election was held and a majority of fourteen decided in favor of separate organization. The board, at a special meeting on the 27th of May, called meetings in each subdistrict for the election of officers according to law.

On the 10th of June, the day designated by the board for said election, five subdistricts elected officers and by implication the others did not.

From the last order Baptist Hardy appealed to the county superintendent, because all the several acts or steps by which this last action was reached were resting upon an illegal act or in fact on no act at all, since the special meeting claimed to have been held on April 3, was not a meeting of said board, but only the action of five members of the board who met accidentally.

The county superintendent dismissed the case for want of jurisdiction, and Mr. Hardy appeals to the superintendent of public instruction.

While the alleged irregularities in this case differ, the main issue is the same as that in *N. T. Bowen v. District Township of Lafayette*, p. 124, School Law Decisions of 1876, and since all the essential features are there disposed of, it is unnecessary to review them. Side issues might be decided by this department; but it is deemed useless to do so, as the want of jurisdiction in cases involving the validity of district organizations, gives us no power over the main issue. The decision of the county superintendent is

AFFIRMED.

C. W. VON COELLN,

Superintendent of Public Instruction.

September 27, 1876.

J. N. Arthur *et al.* v. Independent District of Fairway.

Appeal from Adams County.

1. School-house Sites: *Location of.* The necessities of the present must be observed in locating school-house sites, in preference to the probabilities of the future.
2. New Evidence. New evidence can be introduced only when the facts materially affecting the case could not have been known before the trial.
3. Remanding of Cases. When the evidence discloses that the action of the board was an unwise one, and the facts are not sufficiently shown to determine what should be done, the case should be remanded to the board.

In this case the board of the independent district of Fairway, number three, made an order on the 26th of April relocating the school-house site; from this order John N. Arthur, John Weller and others, residents of the district, appealed to the county superintendent, and upon his affirming the action of the board, to the superintendent of public instruction.

The district consists of sections one, two, eleven, twelve, thirteen and fourteen, and the old school-house stands near the southwest corner of the southeast quarter of section one. The proposed new site is in the northwest corner of the southwest quarter of the northwest quarter of section twelve, on a public highway, and one quarter of a mile north of the geographical center of said district.

The grounds of objection by the appellants to the removal are substantially, that the new site is on low bottom lands and subject to overflow, not accessible at all times of the year; and that it is not as near the center of school population as the old site. They also suggest, that a location at the cross-roads one-half mile east of new site is better ground and more convenient to the people. In fixing the school-house site, the geographical position and the convenience of the people of each portion of the district should be considered. Section 1724, School Laws of 1876.

From the large amount of testimony it is evident that the new site chosen is in a low place, and an affidavit sent to this office, and signed

by a number of residents, proves beyond question that the site has been overflowed for several days of the last month. By a close comparison it is found that the number of residents who will have their distance to school increased by choosing the new site, is greater than of those who will have their distance diminished. By locating the school-house at the cross-roads, one-half a mile east of the proposed new site, which is claimed to be higher, and, therefore, less liable to overflow, three-fourths of the residents will have their distance diminished by forty to one hundred and sixty rods.

Although it may be true, as is affirmed in the testimony, that the western part of the district is as capable of settlement as the eastern part, the necessities of the present must be observed in locating school-house sites, in preference to the probabilities of the future. While it is the rule of this department to sustain discretionary acts of the board, it seems that in this case the true interest of all concerned, and justice to a large portion of the people, demands that the school-house should not be moved to the new site chosen.

To what extent the high waters of last month did affect the other locations under consideration, is not known to this department; it is, therefore, best to let the matter come up anew before the county superintendent for a rehearing.

The decision of the county superintendent is, therefore, reversed, and the case remanded for a rehearing, with the direction from this department, that the proposed new site is an unsuitable one for school purposes.

REVERSED.

C. W. VON COELLN,

Superintendent of Public Instruction.

October 31, 1876.

R. Buzzard v. Independent District of Liberty.

Appeal from Monroe County.

Quo Warranto. The only proper means of affirming the right to exercise the privilege of an office, or to contest the illegal exercise of the same, is set forth in sections 3345-3352, Code of 1873.

This is an action brought to compel the board of the independent district of Liberty to recognize R. Buzzard as a member elect.

The evidence in the case seems to show that the appellant was duly elected and qualified. On presenting himself at the meeting of the board, he was, by vote of the board, debarred from acting, and another person admitted as a member.

From this order of the board, he appealed to the county superintendent, who dismissed the case for want of jurisdiction.

From this action, R. Buzzard appeals to the superintendent of public instruction.

It has been the uniform decision of this department that the right or title to office cannot be determined by any authority other than a court of law.

We are compelled to agree with former opinions, by supreme court decisions, 16 Iowa, 371; 17 Iowa, 368; 22 Iowa, 75, in which the fact that an information, *quo warranto*, is the only proper means legally to affirm the right to exercise the privileges of an office, or to contest the illegal exercise of the same, is clearly set forth.

In all cases over which we have jurisdiction, our decision is final; hence, if for no other reason, we cannot assume jurisdiction in this matter, as both parties have access to the courts, as provided by sections 3345-3352 of the Code.

The county superintendent, therefore, very properly decided to dismiss the appeal, and his order in the case is hereby

Affirmed.

C. W. von COELLN,

Superintendent of Public Instruction.

July 2, 1877.

William Hays v. District Township of Jefferson.

Appeal from Butler County.

Highway. Since the law requires a school-house site to be located on a public highway, such public highway must be fully established by law before the location can be made.

In this case, the board relocated the site for a school-house in subdistrict number three, changing it from the northeast corner of section 35 to the center of the district, one-half mile farther north.

Appeal was taken to the county superintendent, who, on trial, affirmed the action of the board. From his decision, Wm. Hays appeals to this department.

Subdistrict number three is three sections in length and two in width, comprising sections 23, 24, 25, 26, 35 and 36. The school-house stands on the northeast corner of section 35, or in the center of the four sections, 25, 26, 35 and 36. The large size of the district and the fact that sections 25 and 26 have a number of wide sloughs running through them, have caused great dissatisfaction to a portion of the residents. To compromise the matter an effort was made to locate a road connecting the two roads running east and west through the district and passing by the center. The road would be one and one-half miles long. The supervisors, probably at their September meeting, ordered a part of this road, one mile commencing at the quarter post between sections 23 and 24 and running south, to be opened on certain conditions which were to be fulfilled before their January session. The record shows that these conditions were not fulfilled by that time, and does not show any final action as provided by section 947 of the Code. Hence the road has not been established by law, neither does the evidence show that it has been established in fact, unless the hauling of a few loads of hay along the prairie makes a road of the wagon track. Hence, if for no other reason, the action of the board violated the law by locating the house away from a public highway, and the county superintendent erred in affirming said action.

It is the duty of the superintendent to satisfy himself that all the

conditions of the law are strictly observed in the location of a school-house. We are strongly in favor of supporting boards in their exercise of discretionary power; but an appeal is made for the purpose of testing the equity of the case.

To remove a school-house from the center of a four section district to accommodate a larger district which must sooner or later be reduced, is, to say the least, unwise.

Besides, equity in this case is utterly disregarded, when persons are obliged to travel five miles by the road, to a school-house situated in a *cul de sac*, or at the end of the road. This is not bettered by the fact that this location is the center of the district. Would it be wise to locate in such center, provided it was a duck pond? From the evidence, this is but little better, because surrounded by sloughs on all sides.

In a district three miles long and two miles wide, there is great probability that some will be deprived of the privileges of school by reason of distance. It is suggested that if the requisite number of children is not lacking, the board redistricts subdistricts three and five, making three subdistricts of four sections each instead of two with six each. This would seem to remove all difficulty of location of school-house sites.

As the action of the board violated law in not establishing the school-house site upon a public highway, and since the county superintendent sustained the order, his decision is hereby

REVERSED.

C. W. VON COELLN,

Superintendent of Public Instruction.

July 6, 1877.

J. J. Wilson *et al.* v. District Township of Monroe.

Appeal from Mahaska County.

1. County Superintendent: *Jurisdiction of.* The county superintendent is not limited to a reversal or affirmance of the action of the board, but he determines the same questions which they had determined.
2. School-house Site: *Location of.* The location of a school-house can be dependent upon a change of boundaries only when it is shown in evidence that it is the intention to make such change.
3. Conditional Ruling. A county superintendent may make a conditional ruling, by which his own decision is governed.

On the 14th day of April, 1877, the board of the above named district township located the site for a school-house.

From their action J. J. Wilson and others appealed to the county superintendent, alleging that the board had erred in making the location, in that, by reason of distance owing to the location of the roads, the location as made effectually deprived many of the subdistrict of the privilege of attendance at school. On trial, the county superintendent reversed the action of the board and located a new site. From his decision the board appealed to this department, claiming that the county superintendent erred in selecting a site entirely different from those with reference to which testimony was taken; that it is on the extreme east line of said subdistrict, and hence cannot be called at all central; that the board took into account in making the location the possibility of a change in the northern boundary of the subdistrict, which would make the situation chosen a suitable one for the remaining subdistrict; that a portion of his decision was conditional and void; and that the board did not abuse the discretion vested in them by making the location as they did.

The assumption that the county superintendent did not have the right to locate a school house site differing in location from the one made by the board, or the one petitioned for by the appellants, is a mistake. See *John Clark v. District Township of Wayne*, School Law Decisions, 1876, page 47; also opinion of the attorney general in

Iowa School Journal for April, 1866, in which the following ruling was made:

"The county superintendent is not limited to a reversal or affirmance of the action of the board, but he determines the same questions which it had determined." The nature of the subdistrict is peculiar. It is long and narrow, and its western boundary, the North Skunk river, which also makes nearly all its southern boundary, is a disturbing element when we attempt to locate the site of a school-house to accommodate all the people.

While under ordinary circumstances a site near the boundary of a subdistrict would be unadvisable, in this case it seems necessary, unless additional road facilities can be secured.

The site selected by the county superintendent is clearly the one best calculated to accommodate the whole subdistrict as constituted at present.

The location of a school-house site can be dependent upon a change of boundaries only when it is shown in evidence that it is the intention of the board, or boards, to make such change. See *E. Gosting v. District Township of Lincoln*, School Law Decisions, page 80. In this case, it is not claimed that any change is actually intended or expected. The limit, as made provisionally by the county superintendent, of thirty days for such changes of roads as would make a more central location feasible and desirable, was too short a time, under the provisions of law, to effect the result. For that reason we shall extend the time for the establishment of a road to ninety days from the date of his decision, or to such time as the board of directors may show to be necessary to establish the road, provided, that immediate steps shall be taken to bring about the result, if desired.

The discretion of the board was evidently abused in not providing equal school facilities for those living in the northern portion of the subdistrict, by their location of the school-house site.

In case the road contemplated is secured, the board may locate the site thereon, as near the center of the district as good and suitable ground can be found. If no steps are taken to secure such a road, or in case the road cannot be procured, the location last chosen by the

county superintendent is to be regarded as the site, and his decision is hereby

AFFIRMED.

C. W. VON COELLN,

Superintendent of Public Instruction.

August 7, 1877.

KENNON, ORME, BULLOCK *et al.* v. INDEPENDENT DISTRICT NUMBER FOUR, NODAWAY TOWNSHIP.

Appeal from Adams County.

1. SCHOOL HOUSE SITE. The choice of a school-house site by the electors has no binding force.
2. DISCRETIONARY ACTS. Since the board have original jurisdiction, their discretionary acts should not be interfered with by an appellate tribunal, although not agreeing with their judgment, unless they violated law, showed prejudice or malice, or abused their discretion in such a manner as to require interference.

At the annual meeting in March, 1877, the electors of independent district number four, Nodaway township, voted to issue bonds to build a school-house, not specifying where to build said house. The board called an informal meeting of the electors, which was held May 12, to give expression to their views as to the location they would prefer. On the second of June the board made a location differing from the one which a majority of the electors had indicated as their choice. From this order of the board, Kennon, Orme, Bullock *et al.*, appealed to the county superintendent, who on trial, reversed the order of the board, and selected the site chosen by the electors at the special meeting. David Shipley and Joseph Landes, members of the board, appeal to the superintendent of public instruction.

The evidence in the case discloses a desire on the part of the board to determine without prejudice, the best site. The expression of the electors, as given, was only suggestive, and not of binding force. If the site had been fixed by them at the time of, and in connection

with, the voting of the bonds, the board would have been compelled to follow those instructions. See *Hubbard v. District Township of Lime Creek*, School Law Decisions, page 78, first division of syllabus. But there is no provision in law for an extra or special meeting of electors to instruct a board with regard to the location of a site, nor are such suggestions of any force except as an expression of opinion, since the board are by law invested with the power to locate sites.

The fact that one member of the board changed his mind with regard to the best location, shows, that on further consideration, his judgment led him to favor the site best adapted to the needs of the district, since we may not question his motives, but must regard his action as based upon proper grounds.

The site chosen by the board is near the geographical center of the district; and the location of the roads, as shown by the plat in evidence, is such as would not warrant us in reversing the discretionary act of the board. And even though an appellate tribunal does not fully coincide with the decision of the board, it is compelled to sustain their action, unless it is proved conclusively that they violated law, acted with passion or prejudice, or with manifest injustice, since boards of directors are invested by law with large discretionary powers, and, having original jurisdiction, their acts are entitled to great consideration, and should not be reversed without the clearest reasons. The board are entitled to the benefit of every doubt. See *Bacon v. District Township of Liberty*, School Law Decisions of 1876, page 150; *Edwards v. District Township of West Point*, School Law Decisions, page 35; also *Brown v. District Township of Van Meter*, School Law Decisions, page 82.

Because we do not believe that the discretionary power of the board has been abused to such an extent as to require a reversal, the county superintendent should have affirmed the action of the board, and his decision is hereby

REVERSED.

C. W. VON COELLN,
Superintendent of Public Instruction.

November 13, 1877.

T. J. Dunlavy v. O. M. Klinginsmith.

Appeal from Davis County.

1. Punishment. The use of the rod is allowable as a last resort.
2. Certificate: *Revocation of.* The inability to govern is sufficient reason for withholding a certificate and for the revocation of the same.
3. ————————: A certificate which has expired by limitation cannot be revoked.

In this case of T. J. Dunlavy brought charges against O. M. Klinginsmith, the teacher of his children, for brutal treatment, the specification being that said Klinginsmith whipped Dunlavy's step son cruelly and excessively. Other charges were first prepared, but finally withdrawn. The county superintendent decided that the charges were not sustained, and Mr. Dunlavy appeals to this department.

The claim made by appellant's counsel, that all whipping is now nearly frowned down by the people, if not by the courts, does not seem to be well founded, when we consider the strong position taken by our own court in 45 Iowa, 250. That the use of the rod is the last resort of a good teacher, and is seldom used, we all admit; but scarcely an experienced educator will say that the use of the rod should be absolutely discontinued. On the other hand, the counsel for appellee mistakes the jurisdiction of the county superintendent, when he claims that such a case as this one cannot affect the withholding or revocation of a certificate.

Although the general character of the teacher may be good, if he should fail to be able to govern a school without the constant use of the rod, and govern but poorly at that, it is the duty of the county superintendent to protect the people from abuse by refusing to grant a certificate, or if he has granted it, he may revoke.

In the case before us, it is undoubtedly true that the boy who received the whipping had provoked the teacher and deserved by his persistent small offenses a severe punishment. That the punishment was severe, and perhaps too severe, is apparent from the evidence. There is, however, no good proof to show that the teacher punished with malice or intent to injure beyond a reasonable correction.

The case itself ought to have been dismissed by the county superintendent, because, if there was any object in the charges, it was for the purpose of revoking the certificate; but a certificate expiring by limitation on the 6th of January could not be revoked on the 22d of January.

As long as the case was decided on its merits, we feel obliged to sustain the discretionary act of the county superintendent.

The decision of the county superintendent is hereby

AFFIRMED.

C. W. VON COELLN,
Superintendent of Public Instruction.

April 22, 1878.

Z. DARNELL V. INDEPENDENT DISTRICT OF AMITY.

Appeal from Lucas County.

1. SUSPENSION OR EXPULSION. Suspension or expulsion of a scholar, in an independent district, requires the action of the board by a majority, and the concurrence of the president.
2. RECORD. The record of the secretary must be considered as evidence, unless there is proof of fraud or falsehood.

The majority of the board of the independent district of Amity, expelled Z. Darnell from their school for refusing to obey a rule of the teacher. The said Darnell appealed to the county superintendent, who affirmed the action of the board, and an appeal is taken to the superintendent of public instruction.

Section 1735 requires a majority of the board with the concurrence of the president in order to suspend or expel a scholar for gross immorality or persistent violation of the regulations or rules of the school.

This we interpret to mean, that the board, in regular or special session, can by a majority of the board, with the concurrence of the president, suspend or expel.

While there is some doubt in this case whether there really was a meeting of the board, we must accept the record of the secretary as correct so long as there is no proof of fraud or falsehood.

Counsel for appellant seems to think that the law requires a regular trial and defense.

The law makes no such demand. The remedy for an aggrieved party is an appeal before the county superintendent, where a trial is had and a defense can be made.

The case in controversy shows on the trial that the young man, Darnell, had not obeyed the command of his teacher, who inflicted a slight punishment upon him and others; for a disturbance in which both he and other boys had participated.

If this refusal to obey was persisted in, the board, under section 1735, had the right to suspend or expel the said Darnell.

The offense for which the punishment was given was perhaps of trivial character, but the refusal to obey on the part of a young man capable of reasoning, was a serious offense, and must be treated as such.

The expulsion of the young man was undoubtedly a severe measure, and if the case had been tried by us *de novo*, we should have substituted a conditional suspension until obedience was secured. But the discretionary act of the board is not tainted by malice nor passion, and there is sufficient reason for sustaining the action of the board. The decision of the county superintendent is, therefore,

AFFIRMED.

C. W. VON COELLN,
Superintendent of Public Instruction.

June 10, 1878.

JAMES JACOBY *et al.* v. INDEPENDENT DISTRICT OF NODAWAY.

Appeal from Adams County.

SCHOOL-HOUSE SITE. A school-house site fixed by county or state superintendent affirming the discretionary act of the board, allows the board to exercise their discretion again, especially if material changes have occurred.

In the summer of 1877, the board of the independent district of Nodaway located a school-house site.

They selected one not desired by a large majority of the electors, as expressed at an informal meeting called by the board. An appeal was taken to the county superintendent, who reversed the action of the board, and in turn to the superintendent of public instruction, who reversed the decision of the county superintendent, thereby sustaining the action of the board on the ground that abuse of the discretion given by the law to the board, as charged, was not proved.

Since the decision above referred to was rendered, a dwelling has been erected within twenty rods of the site chosen.

Also, a material addition has been made to the district on its east side of a strip of land three miles in length and one-half mile in width. At a meeting of the board of directors held April 22, 1878, they relocated the school-house site, choosing the old site in place of the one selected by them last year. From their action James Jacoby and others appealed to the county superintendent, who affirmed the order of the board. From his decision D. Shipley and Ed. Kennedy appeal to the superintendent of public instruction.

This case was before us last year and we affirmed the action of the board in selecting the new site, sustaining the discretionary act of the board. Hence, the principle that a site selected by the county or state superintendent cannot be changed unless there have been material changes in the district, does not apply. There have been changes by the addition of new territory and a dwelling being erected within less than forty rods of the proposed site. The choice of the old site is in conformity with the wish of a majority of the electors, and does not prove any abuse of discretion, much less a violation of law. The action of the board is therefore sustained; and the decision of the county superintendent

AFFIRMED.

C. W. VON COELLN,

Superintendent of Public Instruction.

August 26, 1878.

L. E. Cormack v. District Township of Lincoln.

Appeal from Adams County.

1. Contracts. An appeal will not lie to enforce a contract.
2. Janitorial Services. If a teacher serves as janitor in sweeping the room and building fires, he should be paid from the contingent fund for such services.

Mr. Vandyke, a subdirector in the district township of Lincoln, contracted with Mrs. L. E. Cormack as teacher for the winter term of school. The terms of the contract included that the teacher was to receive twenty-five dollars per month for teaching and one dollar and twenty-five cents a month for building the fires and sweeping the school-house. The board refused to audit the full account, which would give the teacher pay for janitor's work, claiming that said subdirector exceeded his authority in so contracting. Mrs. Cormack appealed to the county superintendent who reversed the action of the board. W. C. Potter, president of the board, appeals to the superintendent of public instruction.

This case has evidently for its object the securing of money on contract and as section 1836 prevents county and state superintendents from rendering a judgment for money, it has been the common custom to refuse to entertain any appeal in which a contract is to be decided by such appeal; for this reason the county superintendent should have dismissed the case for want of jurisdiction.

It may not be out of place here to state, that unless a contract with the teacher provides that building fires and sweeping the house is included, the board cannot require such service of the teacher. The payment for such services should come from the contingent fund and should be specifically mentioned. The teachers' fund is not to be used for paying for janitorial services.

Without deciding any question at issue, we are of the opinion that the subdirector did not exceed his authority given him by section 1753 when he agreed to pay a reasonable sum for janitorial services beside the twenty-five dollars paid under instruction from the board for teacher's services. But since we do not consider the case within

our jurisdiction the decision of the county superintendent is reversed and the case dismissed.

REVERSED.

C. W. VON COELLN,
Superintendent of Public Instruction.

March 1, 1879.

NOTE.—We have since learned that the teacher recovered in a suit in the courts at law.

DISTRICT NO. 2, HARLAN TOWNSHIP, v. DISTRICT NO. 1, HARLAN TOWNSHIP.

Appeal from Page County.

1. AFFIDAVIT. The lack of an affidavit is sufficient ground to refuse a hearing.
2. ARBITRATION. If the county superintendent is asked to arbitrate no appeal will lie.
3. TUITION. Collection of tuition under section 1793 cannot be done by appeal to the county superintendent, but must be settled through the courts.

We fail to find in this case the affidavit of appeal from an action of the board of number one. This of itself is such an irregularity as to invalidate the whole proceeding. From the secretary's transcript and the evidence we learn that district number two presented a bill of tuition to district number one, and that the latter refused to pay the same, whereupon the two boards agreed to an arbitration by the county superintendent. If this is the transaction we have no right to meddle with such arbitration, and it should be adhered to by both parties. If the case had been regularly before the county superintendent on appeal based upon proper affidavit our opinion is that the county superintendent should have dismissed the case, as it was indirectly a judgment for money, which neither county nor state superintendent can decide. Section 1836, Code of 1873. The manner of deciding such cases is indicated in section 1793. The account, if refused, should have been presented to the county auditor, and by

him be paid from the next semi-annual apportionment. The other board has a remedy by injunction upon the auditor.

We would add here that we have held that such a notice by a secretary holds good only for the term, or for such longer time as the board may agree upon.

At present, with the amendment made by the seventeenth general assembly, chapter 41, no such account can be made except by consent of the county superintendent, in which case no appeal will lie.

With these explanations we feel obliged to dismiss the case as not within our jurisdiction.

DISMISSED.

C. W. VON COELLN,
Superintendent of Public Instruction.

April 24, 1879.

W. F. RANKIN v. DISTRICT TOWNSHIP OF LODOMILLO.

Appeal from Clayton County.

1. RECORDS. The record of the secretary shall be considered as evidence, and not be invalidated by parol evidence unless there is proof of fraud or falsehood.
2. TERRITORY: *Transfer of.* Where territory is to be transferred by concurrent action of two boards to the district to which it geographically belonged, a majority of the members elect is not necessary, as required for the change of subdistrict boundaries.

This appeal relates to the transfer of territory in the civil township of Cass, which has belonged to the district township of Lodomillo since 1856, to the township to which it geographically belongs.

The board of the district township of Cass appointed a committee to meet a committee chosen by the Lodomillo board, to agree upon terms of transfer. The district township of Lodomillo also appointed a committee. The joint committee agreed upon a report, which the board of Cass adopted September 16, 1878. On the 12th day of October, 1878, the Lodomillo board, by a vote of four of the six members present of a board of ten, also adopted the report and accepted the proposition agreed to by the board of Cass.

W. F. Rankin v. District Township of Lodomillo.

From the action of the Lodomillo board Wm. F. Rankin appealed to the county superintendent, who dismissed the case for want of jurisdiction, and stated that the action of the board was plainly in violation of law, since the law, section 1738, requires a majority of the board to change the boundaries of subdistricts. From this decision W. F. Rankin appeals to the superintendent of public instruction.

The secretary's transcript of the transactions of the meeting of the board of Lodomillo, held October 12, 1878, does not show any irregularity in the transaction; does not show the number of members present, nor the number of votes cast by which the motion was carried.

According to a well established principle of law the records of any public or private corporation must be considered as regular, and cannot be set aside by parol evidence, except under an allegation of fraud. Based upon the evidence of the transcript the whole transaction was carried on in conformity with law, and we can see no reason to interfere with the action of the board.

If we admitted the testimony of M. E. Axtel, showing that only six members of a board of ten were present, and that four of these six voted for the transfer, we would still hold that said transfer was legally made.

The action of the board was not a change of boundaries of subdistricts, but a transfer under section 1798. The territory transferred, being part of districts organized before the law of 1858 took effect, could be transferred by concurrent action of the boards to the district to which it geographically belongs, and the limitation of section 1738, requiring a majority of the board to change subdistrict boundaries, is not applicable to this case.

The appeal is brought from the action of the board, which concurred, and is therefore taken in a proper manner. For the reason set forth the action of the board is sustained and the decision of the county superintendent is

REVERSED.

C. W. VON COELLN,
Superintendent of Public Instruction.

May 28, 1879.

L. B. Colburn *et al.* v. District Township of Silver Lake.

Appeal from Palo Alto County.

1. Evidence. To establish malice or prejudice on the part of the board, positive evidence must be introduced.
2. County Superintendents. A county superintendent should not ask the state superintendent to decide a case on appeal for him, but may ask for an interpretation of law, either by the state superintendent, or through him, by the attorney general.

On the 25th day of August, 1879, the board of the district township of Silver Lake fixed the location of a school house on the old site.

From this order of the board, L. B. Colburn and others appealed to the county superintendent, who affirmed the action of the board, and from this decision the same parties appeal to the superintendent of public instruction.

Among the errors enumerated, the appellants urge that the county superintendent erred in holding that the board was not actuated by passion or prejudice.

We fail to find any evidence establishing the existence of such malice or prejudice on the part of the board. Appellants also claim that the county superintendent erred in basing his decision on the verbal opinion of the state superintendent, given prior to the hearing of the case.

This gives us an opportunity of censuring a practice quite common among county superintendents to ask the superintendent of public instruction for his opinion in an appeal which is pending. I have made it a universal practice to refuse answers upon the questions involved in the particular case, and have given only the general principles which should govern county superintendents in determining cases of appeal. These general principles are so well established that an intelligent county superintendent ought to be familiar with them.

I believe that I advised the county superintendent in this case not to measure the respective distances of the different locations from the geographical center, before the trial of the appeal.

It is proper for a county superintendent to ascertain the interpretation of points of law, by securing an opinion from this department, or from the attorney general, through this department.

Without fully determining the merits of the respective locations, we must hold that the board did not abuse their discretion sufficiently to warrant interference. The appellants failing to prove malice or prejudice on the part of the board, their order should stand, and the decision of the county superintendent affirming their action is

AFFIRMED.

C. W. VON COELLN,
Superintendent of Public Instruction.

March 30, 1880.

WM. BARTLETT V. DISTRICT TOWNSHIP OF SPENCER.

Appeal from Clay County.

1. APPEAL. May be taken by any resident elector of the district, aggrieved by action of the board
2. BOUNDARIES. Must conform to congressional divisions of land.
3. SCHOOL-HOUSE SITES: *Proper location of.* Depends upon form of districts.

On the 22d day of October, 1881, the board of the above named district township adopted the report of a committee locating a site for a school-house in subdistrict number nine, on the southeast corner of the southeast quarter of section twenty-one.

From their order, Wm. Bartlett appealed to the county superintendent, who reversed the action of the board and located the site on the northwest corner of the northeast quarter of the southeast quarter of section twenty-one.

From this decision of the county superintendent, C. F. Archer and D. A. Davis appeal to the superintendent of public instruction.

The counsel for the appellants files a motion to dismiss the appeal on the ground that persons not parties to the hearing below are debarred from appealing to the superintendent of public instruction.

It has been repeatedly held that any person aggrieved may prose-

cute an appeal from the decision of the county superintendent, unless the right of appeal has been waived by previous agreement. See case of *Edwards et al. v. District Township of West Point*, page 35, School Law Decisions, 1888. Also, case of *Gosting v. District Township of Lincoln*, page 80, same.

The subdistrict in which the location was made was formed by action of the board at their regular meeting in last September. The boundaries fixed by the board at that time, as shown by the plats in evidence, are the Little Sioux river and Prairie creek on the north, east and south, and the half section line running north and south through sections eighteen, nineteen, thirty and thirty-one, as the western boundary.

It is shown by the plat, that the half mile strip on the western side of the subdistrict is supposed not to belong to subdistrict number nine, and it is stated by the county superintendent that this territory is supposed to be temporarily attached to the adjoining township for school purposes. We are compelled to notice this irregularity of boundaries, since the proper location of any school-house obviously depends largely upon the form and extent of the territory for which the house is designed. Section 1796, providing for the creation of subdistricts and for subsequent alterations in their boundaries, contains the following: Provided, That the boundaries of subdistricts shall conform to the lines of congressional divisions of land.

When government lines follow large streams, or other bodies of water, a division is sometimes formed containing less than forty acres, but unless such exception applies, the smallest congressional division is the one-sixteenth of a section, or forty acres in a square form.

In fixing the boundaries of subdistricts no smaller subdivision can be made, and a forty acre tract must be included in the subdistrict, or excluded, as a whole.

The only provision of law by which the half mile strip could be attached to the adjoining district township, is found in section 1797. The transfer can be made only when natural obstacles intervene.

It is apparent from the plats in evidence that no large unbridged stream, or any other natural obstacle, exists. Hence we must conclude that it is the duty of the board of directors of the district township of Spencer to provide that the strip in question shall be a part

of some subdistrict. It seems probable that a portion of the territory referred to will naturally fall to subdistrict number nine.

The county superintendent appears to have presumed that the subdistrict would ultimately include all the territory to the township line.

That the territory does belong to the district township of Spencer, unless it has been attached to the adjoining township in accordance with section 1797, there can be no question.

Such being the facts in this case, and the evidence disclosing that the board did not exercise that care in selecting a site which is desirable when so many interests are involved, we are disposed to remand the case to the board, with the suggestion that they adjust the boundaries of the subdistrict, and determine upon some other site than the one chosen by them, with the intention to furnish the best accommodation to all parties.

REVERSED AND REMANDED.

J. W. AKERS,

Superintendent of Public Instruction.

February 15, 1882.

E. H. COLCORD v. INDEPENDENT DISTRICT OF VINTON.

Appeal from Benton County.

SCHOOL PRIVILEGES. Determined by the residence of the child.

The board of the above named district refused Ola Penine, a girl living in the family of Mr. Colcord, admission to school unless tuition was paid, the board regarding her as a non-resident scholar. Mr. Colcord appealed from their order to the county superintendent, who affirmed the action of the board, and Mr. Colcord appeals to the superintendent of public instruction.

The leading question to be determined in this case is the residence, for school purposes, of Ola Penine. It appears from the evidence that she has been living in the family of Mr. Colcord for the last seven years, and that she was placed there by her father with the

understanding that she should make that her home and be sent to school.

There is nothing to show any understanding as to the time she was to remain, but her father testifies that he had not surrendered control of her, and that she was subject to be called to his home at any time.

While her residence within the independent district of Vinton may be, in the meaning of the school law, of such a character as to entitle her to school privileges, this fact has not been clearly established, and we cannot find that the county superintendent erred in affirming the order of the board.

It is the presumption of law that every child is entitled to the privileges of the public schools in some district, and the first part of section 1794 very clearly makes the actual residence of the pupil the test by which to determine where he may attend school. We are of the opinion that the affidavit of Mr. Colcord, that Ola Penine is a member of his family and a resident of the independent district of Vinton, would entitle her to attend the schools free of tuition. If such an affidavit had been presented, and the board had refused permission, we think the county superintendent would then have erred in sustaining the board.

Under the circumstances the decision of the county superintendent is

AFFIRMED.

J. W. AKERS,

Superintendent of Public Instruction.

March 31, 1882.

J. D. Handersheldt v. District Township of Des Moines.

Appeal from Jefferson County.

1. Discretion: *Abuse of.* Is not established by evidence showing that a different action on the part of the board would have been preferred by electors.
2. District: *Validity of Organization.* The county superintendent has no jurisdiction to determine the validity of district organization.

A petition was presented to the board of the above-named district township, asking that certain territory in Des Moines township be set aside to form, in connection with territory to be obtained from the independent district of Liberty, number eight, a new subdistrict to be known as subdistrict number nine, Des Moines township, Jefferson county, Iowa.

The board acted on this petition and made the following order: "In the matter of the petition of John Handersheldt and Silas Pearson, asking for the formation of a new subdistrict to be known as number nine, in the district township of Des Moines, Jefferson county, Iowa. All the territory within the boundary lines therein described, is hereby granted, provided sufficient territory be granted by the independent school district of Liberty, number eight, to make a suitable and convenient subdistrict as to the amount of territory and the number of children of school age; and provided, that in case the territory is not granted by said independent district of Liberty number eight, then said territory hereby granted shall remain and be a part of subdistrict number five, of the district township of Des Moines, Jefferson county, Iowa."

On the 28th day of April, 1882, the board of the district township of Des Moines, at a special meeting, adopted the following resolution:

"It is hereby ordered that all action heretofore taken by the board of the district township of Des Moines, Jefferson county, Iowa, in the formation and organization of subdistrict number nine, in the above-named township, is hereby rescinded."

From this action of the board, Mr. J. D. Handersheldt appealed to

the county superintendent, who upon hearing the case on appeal rendered the following decision: "A resolution passed rescinding an action which has not as yet taken effect, is legal, but so far as it concerns formation and organization which is already completed, it is illegal."

From the action or decision of the county superintendent, J. D. Handersheldt appeals to the superintendent of public instruction.

It appears from the transcript of the county superintendent that the witnesses were not sworn, as required by law. See note (*d*) under section 1834, School Laws 1880.

According to the uniform holding of this department, a failure to take evidence under oath is fatal to the case, even though from its nature it came properly before the county superintendent on appeal.

A brief examination will be sufficient, we think, to show that this action should have been dismissed by the county superintendent for want of jurisdiction. "No appeal will lie when the validity of district organization is involved." See case of *N. T. Bowen v. District Township of Lafayette*, page 124, School Laws 1876."

This appeal was taken from the action of the board to the superintendent, for the purpose of determining whether or not the board erred in rescinding their former action creating subdistrict number nine. There was very little evidence bearing on this, the sole issue in the case. Witnesses simply stated that they were or were not in favor of subdistrict number nine.

Such testimony can have no bearing in an action to establish error on the part of the board. Appellants set forth in their affidavit that the county superintendent erred, in that he refused to admit testimoney to show that there never had been any legal organization of subdistrict number nine. We think such evidence was properly excluded, and yet it is necessary, to enable any tribunal to arrive at a decision of the case; for if the district was organized according to law, then the board committed error in making an order which operated to discontinue it, and hence to change the boundaries of subdistricts at a time of year in which, according to our holding, it cannot be done.

Upon this presumption, viz.: that the district was legally organized, they committed error by making a change of subdistrict bound-

aries without a majority of the whole board. Section 1738, note (*b*), School Laws 1880.

It must therefore be determined whether the conditions upon which the board of Des Moines township granted the territory, were fulfilled, or, in other words, it must be known whether or not the independent district number eight, of Liberty, concurred in the transfer of the territory.

But neither the county superintendent nor this department is competent to determine the legality of a district organization, and it is therefore impossible to decide whether or not the board committed error.

The remedy is an application to a court of law for mandamus to compel the board to recognize the director of subdistrict number nine, as a school officer and member of the board of the district township of Des Moines, Jefferson county, Iowa.

Were the issues involved within our jurisdiction, we would not hesitate to consider them, but as no questions of such nature are connected with the case it is

DISMISSED.

J. W. AKERS,

Superintendent of Public Instruction.

November 2, 1882.

GEORGE HANSEL *et al.* v. DISTRICT TOWNSHIP OF MALLORY.

Appeal from Clayton County.

1. TAXES. Must be certified in accordance with vote of the electors.
2. SCHOOL-HOUSE SITE: *Location of.* A vote of the electors to select the precise location of a school-house is not mandatory on the board.
3. ———. Must be selected with reference to convenience of the people.

By this action it is sought to set aside an order of the board of the above named district township locating a school-house in subdistrict No. 5.

At their regular meeting on the first Monday of March, 1881, the

electors of the above named subdistrict voted a tax of $600 for the purpose of building a school-house.

On the second Monday of March, 1881, the electors of said district township voted a tax of $1,200, to be apportioned as follows:

To subdistrict No. 2, $400.
To subdistrict No. 3, $400.
To subdistrict No. 5, $400.

On the 26th day of March, 1881, the board held a special meeting for the purpose of apportioning the tax as voted by the electors.

On motion, as amended by J. Cree, the tax of $400, as voted by the electors for the benefit of subdistrict No. 3, was stricken out. On motion of R. B. Flenniken the tax of $75 voted by the electors for subdistrict No. 8, was also striken out, leaving a total tax of $900.

The secretary of the board then certified this amount to the board of supervisors, as the tax voted by the electors and apportioned by the board as follows:

Subdistrict No. 2, $300.
Subdistrict No. 5, $300; and,
District township at large, $300.

On the 15th of July the board held a called meeting for the purpose of locating the school-house in subdistrict No. 5.

At this meeting an order was made locating the house about one mile from the town of Osterdock, on the northeast corner of NE¼ of SE¼ of Sec. 2, T. 91, R. 3.

From this action of the board George Hansel *et al.* appealed to the county superintendent, who affirmed the action of the board.

E. A. Bush and S. W. Shaffer appeal to the superintendent of public instruction.

We have stated the case at some length for the purpose of calling attention to a flagrant violation of law on the part of the district township board in certifying to the township trustees a tax wholly different from the levy voted by the electors.

The tax as certified by the secretary was $900, to be apportioned as stated above, whereas $1,200 was voted by the electors, $400 of which was for the purpose of building the school-house in subdistrict No. 5. The board is bound to certify the tax, and to employ the funds raised in strict accordance with the vote of the electors.

Where the law is so plain it is difficult to understand how such an abuse of power could have been allowed to pass unchallenged.

Counsel for appellant assigns error on the part of the board, in that they violated law in selecting a site different from that chosen by the electors, and in support of this position refers to the case of *Kennon et al. v. Independent District of Nodaway No. 4*, School Law Decisions, 1888, page 100.

It is there stated that "If the site had been fixed by them (the electors) at the time of and in connection with the voting of the bonds, the board would have been compelled to follow those instructions."

In this opinion we cannot concur, and we think it does not follow from the case of *Hubbard v. District Township of Lime Creek*, School Law Decisions, page 78, on which it appears to rest. It was there held that money voted to build a house in one subdistrict could not be used to build a house in another subdistrict, but that any attempt on the part of the electors to locate, precisely, a school-house site was void and of no binding force.

The power to locate sites is vested by law in the board of directors —Sec. 1724, School Laws, 1880—and the county superintendent very properly refused to sustain a charge of error on this ground.

But while the board may not be restricted by the electors, the law requires that they so locate sites as to serve the convenience of the people, and if they refuse to do so their action may be set aside on the ground that a manifest injustice has been done.

We cannot avoid the conviction that in the present case an injustice, sufficient to warrant a reversal, has been done the people of Osterdock and vicinity. In order to make this clear it will be necessary to consider the case at some length.

The county superintendent relies upon the principle, so frequently, stated by this department, that one strong school is more to be desired than two schools not largely attended; and since it is shown in evidence that it is the intention of the board to discontinue the school at the old site, and unite the two schools at the site as proposed, their action should be affirmed.

As a rule this is correct, but in the case of a subdistrict, composed of very broken country, there may and ought to be exceptions.

The town of Osterdock is situated in the valley of the Turkey river, on the extreme north line of the district. The bluff passing up to the elevated country adjacent is steep and difficult of ascent when muddy and slippery, or when covered with snow and ice. The district is of considerable length, and if the convenience of the people is consulted it would seem that two schools should be provided.

It also appears in evidence that many children residing out of the town of Osterdock will be compelled to pass through the town on their way to the school-house, as located by the board.

It is with extreme reluctance that we set aside the action of the board and the county superintendent, but believing that a manifest injustice has been done the people of Osterdock and vicinity, we are compelled to hold that the board should have selected a site at or near Osterdock, and the decision of the county superintendent is therefore

REVERSED.

J. W. AKERS,

Superintendent of Public Instruction.

November 22, 1882.

APPLETON PARK v. INDEPENDENT DISTRICT OF PLEASANT GROVE.

Appeal from Des Moines County.

1. RECORD: *Impeachment of:* Parol evidence cannot be admitted in impeachment of a record if made and certified to by the proper officers as required by law.
2. ———. Not so made and certified to is defective and may be impeached by collateral evidence.
3. CHARGES. Must be clearly sustained by evidence.
4. TEACHER. The law provides that a teacher shall have a fair and impartial trial, with sufficient notice to enable him to rebut the charges of his accusers.

Appleton Park, a school teacher of Des Moines county, was duly engaged and contracted with to teach the school in the independent district of Pleasant Grove.

He began teaching on the 4th day of September, 1882; after some ten or eleven days had expired, during which time he had taught the school, he was waited upon by the entire board of said district, called to the door and informed that certain rumors were being circulated, to the effect that he had been guilty of using obscene and vulgar language in the presence of his pupils, and during regular school hours. The board called at the school-house again about the hour for closing the school in the afternoon, and, the school having been dismissed, they proceeded to examine three of the boys as to the truth of the charges above referred to.

The result of this action was that the teacher left the school and board employed another teacher.

Mr. Park appealed to the county superintendent, who reversed the action of the board, whereupon D. L. Portlock, president of the board, appeals to the superintendent of public instruction.

The principal difficulty presented in this case seems to be to determine just what that action, or order of the board, was from which appeal was taken.

The transcript filed by the secretary of the board, is as follows:

"Complaint being made by some of the scholars to the school board, in regard to the teacher, Appleton Park, using indecent, rough and insulting language during school time, the board met at the school-house to make an investigation. The board stated the above charges, to the teacher, Appleton Park, who, after reflecting upon the matter, proposed his resignation to the board.

The board, after due consideration, accepted the same. The question being settled in the above way, and no other business before the board, the board then adjourned."

D. L. Portlock, *President.*
F. M. Stucker,
H. Fleenor,

F. A. Frideman, *Secretary.*

The parol evidence of Appleton Park was admitted to offset and impeach the record.

This was clearly in violation of well established law, if the record was really what it purported to be, a true and authenticated copy of the proceedings of the meeting of the board referred to.

Starkie on evidence, says: "Where written instruments are appointed, either by the immediate authority of law, or by the compact of the parties, to be the permanent repositories and testimony of truth, it is a matter both of principle and of policy, to exclude any inferior evidence from being used, either as a substitute for such instruments, or to contradict or alter them; of principle, because such instruments are in their own nature and origin entitled to a much higher degree of credit than that which appertains to parol evidence; of policy, because it would be attended with great mischief and inconvenience if those instruments upon which men's rights depend were liable to be impeached and controverted by loose collateral evidence." Starkie, part IV, p. 995, Vol. III, 3d Amer. Ed.

The fact that the transcript referred to is not certified to by the secretary, and the further fact that he was not present at the board meeting in question, and wrote the minutes as dictated from memory by the president of the board, three days after the meeting, fully justified the superintendent in ruling it out and in admitting parol evidence.

We come now to consider whether the trial before the board was such a proceeding as is required by section 1734.

The board called in the morning and informed the teacher of the charges preferred to them, against him; whereupon he offered to resign. They instructed him to proceed with his school and stated that they would return in the evening. During the day the board worked up their case against the teacher, while he was so employed as to prevent him from giving thought or attention to the charges, or to the preparation of any adequate defense.

We must sustain the superintendent in finding that the trial and opportunity to defend was not what the law intends every teacher shall have. Every teacher is entitled to the sympathy and support of the school board, and where there is any reasonable doubt as to the truth of stories circulated by school children, the teacher should have the benefit of such doubt.

We believe that had the board been in sympathy with their teacher in this instance, they would have decided that the charges were not sustained by the evidence, at least by any evidence which appears of record.

That the teacher offered to resign in the evening does not appear from the evidence offered in behalf of the board, while it does appear that at least one member of the board told him "he had better quit."

We are compelled to hold that the teacher was dismissed, and that in doing so for no sufficient reason the board erred, and the decision of the county superintendent is therefore

AFFIRMED.

J. W. AKERS,

Superintendent of Public Instruction.

February 16, 1883.

H. D. FISHER v. DISTRICT TOWNSHIP OF TIPTON.

Appeal from Hardin County.

1. SCHOOL-HOUSE SITE. When purchased by board not subject to the provisions of section 1825.
2. LOCATION. May be within less than forty rods, when obtained by purchase.

On the 28th day of March, 1884, the board of the above named district township ordered the purchase of an acre of ground for a school-house site on the corner of section 15, township 87 north, range 21 west.

H. D. Fisher, who is the owner of land immediately adjoining said site, objected to the location, on the ground that the site was within less than forty rods of his residence.

The board adhered to their decision in disregard of his objection, whereupon H. D. Fisher appealed to the county superintendent, who affirmed the action of the board.

H. D. Fisher appeals to the superintendent of public instruction.

Affiant alleges that the board violated law in purchasing a site within less than forty rods of his residence, against his will and without his consent. This was the only error assigned in his affidavit of appeal to the county superintendent, and the same is the only error

assigned in the affidavit of appeal to the superintendent of public instruction.

The case will therefore be confined to a consideration of the alleged grievance, and all argument of counsel and all evidence taken to establish an abuse of discretion in changing the location of the house need not be considered.

On trial before the county superintendent, defendant filed a motion to dismiss the action for want of jurisdiction. This motion to dismiss was over-ruled, and defendant excepted.

The motion to dismiss was filed on the ground that there had been no order or decision of the district township board from which an appeal could be taken, and no action taken as shown by the transcript of the record, upon any matter affecting the rights of H. D. Fisher.

The transcript of the secretary states that on the 29th of March the board located the new site on a piece of ground bought of Ferdinand Beckman.

This was an action from which any person aggrieved might appeal. The appeal was based on a charge that the board had violated law, and it was proper for the county superintendent to hear the case in order to determine whether the law had been violated or not.

Counsel urges that the case should have been dismissed because affiant made no objection to the location until after the purchase of the land and until after he was estopped for so objecting. But even through the neglect to object in season would bar affiant from subsequent interference, it was the duty of the county superintendent to proceed with the trial in order to determined by evidence when and how objection was made.

We think that the county superintendent had jurisdiction, and that the motion to dismiss was properly over-ruled.

In the eighth count of defendant's argument it is urged that the county superintendent had not original jurisdiction to try or to adjudicate a matter not acted upon by the board.

But the removal of the school-house to its proposed location was determined by the board, and from that action appeal was taken, and not from their refusal to consider the objection of affiant.

The ground of the defense is the delay of H. D. Fisher to make known his objection to the location of the school-house within forty rods of his dwelling.

The county superintendent sustains the action of the board for the reason that the site was purchased, affiant knowing of the intention of the board to purchase the ground and to locate the house, and making no objection until after the contract to move the house had been let by the board.

Whether the decision of the county superintendent should be affirmed, for the reasons assigned, need not be considered, as the case will be determined upon the construction of the statute prohibiting the location of a school-house within less than forty rods of a dwelling, the owner whereof objects.

The case was tried by the county superintendent and argued by counsel on both sides as coming under the act authorizing boards to condemn, and to take and to hold school-house sites.

We think this point worthy of a careful examination. Chapter 124, laws of 1870, first authorized boards to take and hold land for school-house sites.

Recognizing that they were conferring a dangerous power upon such boards, they prudently enacted certain restrictions to govern such boards in the exercise of that power. But it was not intended, we think, to so restrict boards, except when exercising the power therein conferred.

This chapter was subsequently embodied in the Code, and is now found to be contained in sections 1825, 1826, 1827 and 1828, School Laws 1880.

Section 1825 says: "It shall be lawful for any district townhip, or independent district, to take and hold, under the provisions contained in this chapter," etc.

The provisions contained in this chapter, or in the following sections, are as follows:

That the real estate so taken shall not exceed one acre.

The site "so taken" must be on some public highway, at least forty rods from any residence the owner (of the residence) whereof objects to its being placed nearer.

And not in an orchard, garden or public park.

It is perfectly clear that ground cannot be condemned in disregard of any one of these provisions. But the site in question was not condemned and taken, but it was purchased of a third party and a

good and sufficient deed made over to the district township of Tipton.

Do the provisions above quoted apply in cases where sites are purchased? If any one of them does, they all do.

First, "the land so taken shall not exceed one acre." No one would hold that boards may not buy, and districts hold, more than one acre of land for school-house purposes, provided they are limited to a reasonable amount.

This restriction then, is of no force except in cases where sites are condemned.

Again, " and not in any orchard, garden or public park."

Does it follow, therefore, that boards cannot purchase an orchard, garden, or park, for a school-house site if they desire it, and the owner is willing to sell ?

We think not, by any means. And, "at least forty rods from any dwelling, the owner whereof objects," etc.

This limitation has exactly the same force and application, and no other. Land within forty rods of a residence cannot be condemned if the owner objects; but if a third party is willing to sell a school-house site, and the district purchases and pays for it, it is not competent for the owner of a dwelling to restrain the location on the ground that it is within forty rods of such dwelling.

We think this interpretation of the law borne out both by its evident meaning and its phraseology.

We are aware that it has for many years been the holding of this department that a school-house site, whether obtained by purchase or otherwise, could not be placed nearer than forty rods to any residence the owner objecting, and it is with regret that we must reverse a ruling of so long standing; but from the fact that in many thickly settled communities our school-houses are being crowded into sloughs and out of the way places, and the further fact that it is not warranted by the law, we are compelled to do so.

We must, therefore, hold that the board of the district township of Tipton violated no law in purchasing the site and in ordering the removal of the school-house thereon.

The decision of the county superintendent is therefore

AFFIRMED.

J. W. AKERS,

Superintendent of Public Instruction.

July 7, 1884.

Ezra Koontz v. District Township of Liscomb.

Appeal from Marshall County.

1. Subdistricts: *Form of.* It is very important that subdistricts should be regular in form, and that where it is possible, school-houses should be located at or near geographical centers.
2. School-house Site: *Location of.* The condition of matters within the subdistrict should govern the location of the house. The attendance of parties from an adjoining subdistrict should not determine change of site.

A petition was presented to the board of the above named district township, asking that certain changes be made in subdistrict boundaries, viz.: That the southwest quarter of section eighteen be detached from subdistrict number four, and attached to subdistrict number five; also, that the south half of section twenty one be detached from subdistrict number five, and attached to subdistrict number six.

On the 16th day of February, 1884, the board granted the prayer of petitioners and ordered the plat of subdistrict boundaries to be so altered as to agree with the above changes.

Ezra Koontz appealed to the county superintendent, who reversed the order of the board.

P. T. Beatch, president of said board, appeals to the superintendent of public instruction.

Subdistrict number five contains a little more than five sections of land, and if the order of the board is sustained it will contain a little more than four and one-half sections. The south half of section twenty-one formerly belonged to subdistrict number six, but was transferred to subdistrict number five in order to create better school facilities for the children of Ezra Koontz, who lives on the extreme south line of subdistrict number six, while the school-house is at the geographical center, and no public road leading to it.

The electors of the district township voted $1,000 to procure a highway for the accommodation of Mr. Koontz; but this fund was subsequently transferred to the teachers' fund, and the movement to secure the highway was indefinitely postponed.

Mr. Koontz is unfortunately located, but it appears from the en-

tire proceedings that there is a disposition to remove the obstacles in his way. This is shown both by the efforts to secure a highway at the cost of $1,000 and in the former action of the board in breaking up the regular form of subdistricts, in order to include him in number five.

We think it very important that subdistrict boundaries should be regular, and that where it is possible school-houses should be located at geographical centers.

The action of the board in transferring the south half of section twenty-one, to subdistrict number six, and the southwest quarter of section eighteen to number five, was wise, and should have been sustained. Mr. Koontz must seek to secure proper accommodations in number six, and if this proves to be impossible, he must charge it to the account of an unfavorable location.

It cannot reasonably be demanded that his property should be included in number five, and the school-house in that district be moved away from the center and taken to the south line of the district, and away from families living in the north of number five, in order to accommodate others not living in the subdistrict, especially when it is considered that those living in the north will be compelled to send out of their own subdistrict, in such case.

We are compelled to hold that the action of the board should have been sustained, and the decision of the county superintendent is therefore

REVERSED.

J. W. AKERS,

Superintendent of Public Instruction.

July 21, 1884.

J. L. MARSHALL *et al.* v. DISTRICT TOWNSHIP OF MARSHALL.

Appeal from Louisa County.

SUBDISTRICT. The board may not redistrict so as to abolish a subdistrict, with intent to prevent the building of a house provided for by the electors.

TAXES: *School-House.* Must be certified, collected and expended, in accordance with vote of the electors.

On the 22d day of February, 1886, the board of the above named district township abandoned subdistrict number four, of said district township, and transferred its territory in parcels to adjoining subdistricts.

J. L. Marshall *et al.* appealed to the county superintendent, who reversed the order of the board.

N. W. Mackay, president of the board of directors, appeals to the superintendent of public instruction.

It is unnecessary to consider the real merits of this case. The board must be reversed upon the ground that at the meeting of the electors of subdistrict number four, held in March, 1885, a tax of $300 was voted to build a school-house in said subdistrict number four.

It appears in evidence that this tax was voted, properly certified by the district board and levied by the board of supervisors, and that a portion, at least, has been collected.

It is not competent for the board to defeat a vote of this kind by districting the subdistrict out of existence. The money must be expended in accordance with the vote, and the house must be built. Whether or not any of the tax has been collected is not material. It must be collected and expended by the board as directed by the people.

The case of *Benjamin v. District Township of Malaka et al.*, 50 Iowa, page 648, is applicable here. The only point of difference being that in the case cited, the tax had been collected before action was had by the board.

In this case a part only of the tax has been collected, but as stated

above this is not material. The equities of this case may be with the board, but the action of the electors, in voting to build a house in subdistrict number four, and in providing the means, will bar the board, and any act calculated to avoid their mandatory duty, is a violation of law.

AFFIRMED.

J. W. AKERS,

Superintendent of Public Instruction.

September 16, 1886.

J. B. B. BAKER v. INDEPENDENT DISTRICT OF WAUKON.

Appeal from Allamakee County.

RULES AND REGULATIONS. In establishing and enforcing regulations for the government of scholars, the board have a large discretion.

On the 7th day of June, 1886, Maud Baker, the daughter of the plaintiff in the above entitled case, was suspended from the public school in the above named independent district, for repeated violation of a rule of the board, known as rule five, which reads as follows: "Any scholar who shall be absent five half-days in four consecutive weeks, without any excuse from parent or guardian satisfactory to the teacher that the absence was caused by said pupil's sickness, or by sickness in the family, or, in the primary grades, by severity of the weather, shall forthwith be suspended. No pupil so suspended shall be reinstated without a permit from the principal."

Rule twelve provides that the principal of the school may suspend pupils temporarily, and that he shall immediately notify the parent or guardian of a suspended child of such suspension, the notice to be in writing, and, furthermore, that he shall immediately inform the board of his action.

Maud Baker was absent, without excuse, and when called to account for her absence, stated that she had gone on a fishing excursion, and expected to go the week following.

Having failed to render a satisfactory excuse, she was suspended, as above stated. Notice in writing was sent to the parent, as re-

quired by rule five, and the board informed of the suspension. The board approved the action of the principal.

J. B. B. Baker appealed to the county superintendent, who reversed the action of the board.

D. W. Reed appeals to the superintendent of public instruction.

The facts in the case are not controverted.

It appears in evidence that the suspension of Maud Baker was reported to the board, and that a special meeting of the board was held for the consideration of the act of the principal. Maud Baker was present at this meeting of the board, and the president testifies that he read to her the rule under which she had been suspended, and asked her to give the board some promise of amendment in the future, as a condition of reinstatement, and she replied that she would not make any promise for the future, and expected to go fishing the following week.

The county superintendent finds that the suspension was made in compliance with the rules of the board for the government and regulation of their schools, and that the act of the principal in suspending, and of the board in approving his action, was without prejudice or malice.

The board was reversed on the ground that the law does not confer upon the principal, or the board, power to suspend for the cause for which Maud Baker was suspended.

The case turns, therefore, upon the power of the board to establish and enforce a rule providing for the suspension of pupils, who are absent a given number of days, or half-days, without a satisfactory excuse.

This point has been fully discussed and settled by our supreme court in the case of *Burdick v. Babcock*, 31 Iowa, page 562, and need not be considered here. *Murphy v. Independent District of Marengo* has been cited, but does not apply, as in that case it is stated that the offense for which the pupil was dismissed was not in violation of any rule or regulation.

We are compelled to overrule the decision of the county superintendent, and to sustain the action of the board.

REVERSED.

J. W. AKERS,

Superintendent of Public Instruction.

October 23, 1886.

E. G. Lewis v. District Township of Woolstock.

Appeal from Wright County.

School-house Site: *Location of.* A village in a subdistrict has special claims favoring the selection of a site within its limits. The element of distance to be traveled by some is largely overcome by the advantages of a location in the town.

The board of the above named district township were petitioned to remove the school-house in subdistrict number three to a site at, or near, the village of Woolstock, which is situated on the western half of the said subdistrict.

The petition was denied. E. G. Lewis, *et al.*, appealed to the county superintendent.

The decision of the board was reversed. B. Watkins appeals to the superintendent of public instruction.

The school-house in subdistrict number three is now centrally located, and nearly one mile from the village by traveled highway.

There are about fifty-three children of school age in the district, and it appears from the evidence that forty-five of these live within one-half mile of the proposed new site. The removal of the house may increase the distance now traveled by the children of a few families, but it appears that in such cases accommodations may be had within about one and one-half mile at other schools.

If the nature of the case is such as to require some changes in boundary lines, we think such changes should be made, and the school-house located in the village, and for the following reasons:

The children from the rural portions of the district can travel to and from the village much more conveniently than those from the village can attend in the country. The course of trade brings the parent to the market in the morning, and the movement of conveyances will therefore afford many conveniences toward reaching the school from the country, and of returning in the evening.

But, on the other hand, there is no regularity of travel to the country in the forenoon, so that when walking is bad, or impossible, conveyances would be required for the sole purpose of taking chil-

dren to the school. Besides, the great majority of those who live in the village have no means of carrying their children a distance to school, while the farmer is seldom, if ever, without them.

There is a reason why the school should be convenient for children in the village, which does not exist as to children of the country. The village has many evil resorts, where children are led into vice, which are not incident to the country. All children should be kept regularly in school, but the reasons for this, as applied to village and town children, are much stronger than as applied to those of the country.

The village must be supplied with a school, and in the case before us, if the house is not located at the village, the result in the near future will be two schools for this subdistrict.

We are compelled to hold that the board erred in refusing to grant the petition.

The decision of the county superintendent is

AFFIRMED.

J. W. AKERS,

Superintendent of Public Instruction.

September 14, 1887.

J. A. COUSINS v. INDEPENDENT DISTRICT TOWNSHIP OF SPIRIT LAKE.

Appeal from Dickinson County.

SCHOOL-HOUSE: *Removal of.* The removal of an old house away from the geographical center and away from the center of population, without special and strong reasons therefor, is an abuse of the discretionary power of the board.

On the 6th day of April, 1887, the board of the above named district passed an order to move the school-house, known as the Swailes school-house, to a point one-half mile west of its present location.

From this order J. A. Cousins appealed to the county superintendent. The action of the board was sustained.

J. A. Cousins appeals.

The district borders on Spirit and adjacent smaller lakes, and is very irregular in its boundaries.

There are about fifty children of school age living in the district, most of whom are favorably or adversely affected by the change. But, considering both locations, there is no material change in the distance traveled by all.

The present site is at the junction of an east and west road, known as the Diamond Lake road, with a north and south road known as the Emmet County road. The school-house is old and has recently been repaired at a cost of $60.

As now located there are seven children two miles from the school-house. Twelve children will be two miles from the new site. We are unable to find in this case any good and substantial reason for this change of location.

The present site is central and nearer the center of population, so far as we can determine from the map submitted as a part of the transcript. It is at a cross-roads which is very desirable. The lease to the present site expires in about five years. By that time the old house will in all probability be worthless and a new one will be needed to take its place.

The electors at their last March meeting voted to build a new house on section nineteen, the site of which is one-half mile west and one and three-fourth miles north of the present site.

We cannot avoid the conviction that in moving an old house one-half mile at an expense of ninety dollars, away from the geographical center, and away from the center of population, without special and strong reasons therefor, is an abuse of discretionary power.

The decision of the county superintendent is

REVERSED.

J. W. AKERS,

Superintendent of Public Instruction.

September 19, 1887.

D. A. Boyer *et al.* v. Independent District Number Two, Dutch Township.

Appeal from Washington County.

1. Board: *Discretionary power of.* In the absence of proof that the board have abused the authority given them by the law, their orders will not be set aside, although another decision might to many seem preferable.
2. School-house Site: *Location of.* When purchased, the provisions of section 1825 do not apply. The district stands in the same relation to the public and to individuals, in this respect, as do other corporations, and may purchase and convey real estate accordingly.

On the 23d day of July, 1887, the board of the above named district made an order that the school-house site of said independent district should be changed from its present site, which is near the southwest corner of the northwest quarter of the northwest quarter of section ten, to the southeast corner of section four, and about ninety rods due north. It was also ordered that a new school-house should be built on the new site.

From this order of the board, David A. Boyer and others appealed to the county superintendent.

The order of the board was reversed, on condition that appellants should secure the opening of a public road from the present site of the school-house to the public road running east and west through the southern portion of the district, and along the south line of sections nine and ten.

William Stevenson and S. D. Carris appeal.

The independent district in question is composed of sections thirty-three, thirty-four, three, four, and the north half of sections fifteen and sixteen. Public roads enter east and west along the north line of sections three and four, and along the south line of the same sections. On this latter highway the new site is located. From the new site a road extends due south to the old site. This is the road, the extension of which is made a condition in the decision of the county superintendent.

D. A. Boyer et al. v. Independent District Number Two, Dutch Township.

The population of the district is mostly along the last named east and west highway, and in sections nine and ten lying immediately south of said highway. At the annual meeting, or election of the independent district in question, held March, 1887, a motion was made to vote a tax of $600 for the purpose of building a school house on the old site. This motion was lost.

A motion was then made and carried that a tax be levied to build a school-house, no site being specified. This was followed by a motion to build the house on the present site, which motion was lost.

At a special meeting held June 18, 1887, a motion was made and carried to procure a new site, and at another special meeting held July 23, 1887, the site of the new house was finally located on the southeast corner of section four.

It appears that the electors were very much divided in opinion as to the location of the new house, and the majority attending the March election were opposed to locating it upon the old site.

If the house was to be moved to the north, the site selected by the board is as near, or practically so, as the board could have selected. There is a slough just north of the present site, and if moved at all the house must be placed to the north of this, which would compel the selection of a site within a few rods of the new site.

The present site is practically central both as to geographical center and center of population, and it would seem that the presumption was in favor of the present site, while the one selected by the board is not objectionable on account of its location, unless the fact that it it is not exactly central constitutes an objection.

Boards are given large discretion in such matters, and it has been a rule of long standing in this department not to over rule the order of boards, except in cases where an abuse of discretion is clearly established. While the old site may be equally good and even better, we cannot set their order aside, in the absence of evidence going to show that they have abused the authority which the law gives them.

The county superintendent held that the board had violated the provision of Section 1826, School Laws 1884, in locating the new site nearer than forty rods to a dwelling, the owner whereof objects. The board in this case, located the site within eighteen rods of a residence and it is conceded that said owner refuses her consent to such location.

Section 1826 provides that a site taken, as provided in section 1825 must be at least forty rods from any residence, the owner whereof objects to its being placed nearer.

Section 1825 provides: "It shall be lawful for any district township, or independent district to take and hold, under the provisions of this chapter, so much real estate as may be necessary for the location and construction of a school-house and convenient use of the school; provided, that the real estate so taken, otherwise than by the consent of the owner or owners, shall not exceed one acre."

In the case of H. D. Fisher v. District Township of Tipton, School Law Decisions 1884, p. 163, it was held that the provisions of the act authorizing boards of directors to "take and hold" land for a school-house site, do not apply when the land has been obtained by purchase.

Counsel for the appellee argues that the language of the statute, viz.: the words "take and hold," includes acquiring title by purchase as well as by condemnation, and that section 1825 is the only provision of law we have authorizing school districts to purchase and own school-house sites; and that the restriction that a school-house shall not be placed nearer than forty rods to a dwelling, the owner objecting, applies no matter how the site is obtained.

We cannot concur in this opinion. A school district is a corporate body—4 G. Greene, 428—the nature and powers of which are well and clearly defined in the statute which created it.

If land, sufficient for a sshool-house site, is necessary to enable a district to establish and maintain schools it needs no argument to establish their authority to purchase such land. 44 Iowa, 564; 69 Iowa, 533. That it was the intention of the law makers to confer this power upon school districts is evident from the fact that in section 1717 the electors were given the power to vote a tax for the purchase of grounds, etc. And this law was enacted many years before the law empowering boards of directors to "take and hold" school-house sites.

Counsel for appellee will hardly insist that previous to the enactment of the condemnation law, all school-house sites were acquired and owned without authority of law.

There appears to be two ways by which school districts may acquire title to land for school-house sites:

D. A. Boyer et al. v. Independent District Number Two, Dutch Township.

The statute gives to every school district, as a general and corporate power, the right to buy land for school purposes, and when land has been so purchased, the title or the fee is in the corporate name of the district, and even though it ceases to be used for school purposes, it remains the property of the school district until sold by the board of directors, in obedience to the instructions of the electors. They may sell to any one, and for any purpose whatever.

By condemnation by the board of directors, under section 1825 of the Code.

The title to land acquired under this law is for school purposes only. It cannot be sold at all. When the district ceases to use it for school purposes, it reverts by operation of law to the owner of the fee, etc. Section 1828, Code.

It appears that the fee to land obtained by condemnation is not in the school district, but simply the right to hold it for school purposes, while the fee remains in the original owner, and may be conveyed subject to the title of the district.

Sites obtained by purchase never revert, and the district so purchasing owns the fee and may transfer it, as has been said, to any person and for any purpose.

It is clear to us that the four restrictions or limitations, viz.:

That the real estate "so taken" shall not exceed one acre,

That the site must be on a public highway,

That the site must be forty rods from the residence, etc.,

That the site must not be in any orchard, garden or public park,

Apply only to sites obtained by condemnation, under sections 1825–1828; inclusive, and that they do not apply to sites obtained by purchase.

The reasons for this position are fully set forth in *Fisher v. District Township of Tipton*, to which reference is had.

We are unable to discover any violation of law, or abuse of discretion, which would warrant us in setting aside the order of the board.

REVERSED.

J. W. AKERS,
Superintendent of Public Instruction.

November 18, 1887.

Jacob Deck *et al.* v. District Township of Eden.

Appeal From Decatur County.

1. Subdistrict Boundaries. *Change of.* A case involving a change of subdistrict boundaries, having been adjudicated by the county superintendent, reversing the action of the board, and being affirmed by the superintendent of public instruction, cannot again be brought upon appeal, unless it can be shown that some change materially affecting the conditions of the case has taken place since the date of the former decision.

2. ——— ——————— A subdistrict long established, embracing a territory having a sufficient number of scholars to maintain a good school, should not be abolished, unless the general school facilities of the township will be improved thereby.

On the 19th day of September, 1887, the board of directors of the district township of Eden, voted to abolish subdistrict number eight. Jacob Deck and others appealed to the county superintendent, who, on the 5th day of December, rendered a decision reversing the action of the township board.

The directors of said district township appeal to the superintendent of public instruction.

The counsel for the directors urged in their written argument that the county superintendent should be required to send up to this department all the evidence taken in the trial before her.

It was certainly the duty of the county superintendent to send up all the evidence upon which she based her decision. In the absence of any proof to the contrary, the presumption is that the transcript furnished by her contains all the testimony on file in her office. There is no proof offered that she has not complied with the law in all respects.

On the 26th day of December, 1885, the county superintendent rendered a decision reversing the action of the board, in abolishing subdistrict number eight. As no material changes have taken place since then, in the condition of the township, does that former decision act as a bar to any further proceedings in this case? We think not.

The principle enunciated here is undoubtedly correct.

Jacob Deck et al. v. District Township of Eden.

A case involving a change of subdistrict boundaries, having been adjudicated by the county superintendent, reversing the action of the board, and being affirmed by the superintendent of public instruction, cannot again be brought upon appeal, unless it can be shown that some change materially affecting the conditions of the case has taken place since the date of the former decision.

In this case, however, the decision of the county superintendent cannot act as a bar to further proceedings, because the district board did not take an appeal to the superintendent of public instruction.

Such proceedings cannot be considered as final until they have been affirmed by the superintendent of public instruction.

It is urged that the county superintendent erred in taking into consideration the distance whith many of the pupils must travel in order to reach their school, if the action of the township board abolishing subdistrict number eight, is affirmed.

The law does not contemplate that one and one-half miles is in all cases an unreasonable distance. It depends largely upon the age of the pupil and upon the condition of the roads. In the case before us a natural obstacle, the Little Turkey river, must be taken into consideration.

The opening of additional roads and the construction of a bridge would simplify matters somewhat, but no steps have been taken to accomplish this. Until this is done, to abolish the school in number eight would impose an undue hardship upon a large number of pupils.

What are the conditions of the school as at present constituted?

The report of the secretary of the district township of Eden, put in evidence, shows that the school in number eight will average with other subdistricts in the number of pupils enrolled; it is above the average in daily attendance, and below the average in cost of tuition.

The board fail to show that reduced numbers render it expedient to abolish this subdistrict; nor do they show that the township is excessively taxed to support their schools.

This department has already ruled that subdistrict lines, which have been long established, embracing a territory having a sufficient number of pupils to maintain a good school, should not be disturbed, unless it can be proved that the general school facilities of the township will be improved by the change.

The board do not show that there is any general benefit to be expected from the proposed change of boundaries, nor do they prove that any existing necessity makes it desirable.

The board undoubtedly intended to act fairly toward all; but we think they failed to properly consider all the circumstances involved in their action.

The decision of the county superintendent is therefore

AFFIRMED.

HENRY SABIN,

Superintendent of Public Instruction.

March 16, 1888.

J. S. FOLSOM *et al.* v. DISTRICT TOWNSHIP OF CENTER.

Appeal from Cedar County.

1. REHEARING. To warrant a rehearing, some valid reason must be urged.
2. SCHOOL-HOUSE SITE: *Relocation of.* When it is the evident intention of the board to relocate the site as near as possible in the center of the subdistrict, in order to furnish equal school facilities to all the residents, their action should not be materially interfered with.

The transcript in this case shows that on the 21st day of March, 1887, at a meeting of the board, a committee was appointed to investigate the needs of subdistrict number two, and report at the meeting in September. It further shows that on the 19th day of September, 1887, such committee reported, recommending that the new house be built for said subdistrict, to be located at the center of the district. The report was received and the committee discharged. The report was also upon motion laid upon the table.

On the 19th of March, 1888, at a meeting of the directors the above report was finally adopted, and a building committee was appointed to confer with the county superintendent in regard to plans and specifications. From this decision of the board Folsom *et al.* appealed to the county superintendent, and the case was heard at Tipton, on the 9th day of April, 1888. The records in the county superintendent's office show that the appellee consented to the filing of an amendment

to the affidavit by appellant, and that the appellee filed a motion to modify the decision of the board, and the trial then proceeded. On the 11th day of April the county superintendent filed a decision reversing the action of the board. On the 17th day of April, 1888, a motion was filed for a rehearing, within the time given by the county superintendent. On the 19th day of April, 1888, the motion for a rehearing was argued before the county superintendent and overruled.

From the decision of the county superintendent the board appealed to the superintendent of public instruction, and the whole case came up on a hearing before him on the 5th day of June, 1888.

The first question to be decided is, did the county superintendent err in overruling the motion for a rehearing. A rehearing of such a case can be granted only when it can be shown that some injustice has been done, or some mistake has been made which can be corrected by a new trial; or when some additional evidence has been discovered which is in favor of the party applying, but which could not have been presented before by reasonable diligence. The affidavit upon which the motion for a rehearing was based failed to show any such reasons.

All the main points alleged therein had already been ruled upon by the county superintendent, and we think she did not commit any error in overruling the motion. This also disposes of all the testimony sent up in support of the motion for a rehearing; these affidavits will not be taken into account in the final decision of the case.

It is not necessary here to determine the legal residence of William Busier. His own testimony is that the distance from his residence to the site selected by the board is one and one-fourth miles. The fact that Mrs. Morgan does not desire to send to school is not material. It is not the individual but the residence that is to be considered. Some other person living at the same place may hereafter desire school privileges.

We are now free to approach the main question upon which issue is joined. The testimony shows that the directors desired to relocate the school-house in subdistrict number two in a more central location; no other reason is assigned for the contemplated removal. There is nothing which shows that the present site is unsuitable, except that it does not well accommodate the pupils from the northern

part of the district. In this determination to relocate the site near the center, there is no evidence of any abuse of discretion on the part of the directors, and we think their action should not be interfered with.

There is, however, evidence which shows that the exact acre which the committee staked out, is not a desirable site for a building.

The board themselves acknowledge this in their amended order by which the site is removed ten rods farther north.

The county superintendent, in her decision, locates the site upon a piece of ground known as the "grave-yard site." It is urged that the county superintendent has only appellate jurisdiction, and must, therefore, confine her decision to the two sites upon which the parties joined issue. She seems to have entertained some such idea, as she sustained a motion to rule out all evidence in regard to the unsuitableness of the grave-yard site when such evidence was offered on the original trial.

We think she erred, and that such evidence should have been admitted.

In April, 1866, the Hon. O. Faville, then superintendent of public instruction, obtained this opinion from Hon. F. E. Bissell, then attorney general, upon this point: "The case does not come before him (the county superintendent), merely to correct an error of the board of directors, but to hear and decide the same matter that the board had decided. The county superintendent is not limited to an affirmance or reversal of the action of the board, but he determines the same question that the board determined." See also, *John Clark v. District Township of Wayne*, page 47, School Law Decisions, 1876.

To this opinion the decisions of this department have always conformed. The county superintendent, therefore, did not go beyond her jurisdiction in selecting a site different from any which had been considered by the board.

We cannot see, however, that the grave-yard site has any advantage over the old site. It is irregular in shape, and is about as far north of the center of the subdistrict as the present site is south.

In fact, its selection as a site for the new building defeats the very end which the directors had in view in their action locating the site in the center of the subdistrict.

The case is remanded to the board of directors of Center township, with instructions not to build upon the site selected by the committee, but to select the best site possible within a distance not more than forty rods from the center of the site staked out by the committee; the south corner of said site, however, to be at least fifteen rods north of the south corner of the committee's site; said site also to contain not less than an acre, and to be as nearly square in form as the circumstances will admit.

The decision of the county superintendent is

REVERSED.

HENRY SABIN,

Superintendent of Public Instruction.

June 7, 1888.

INDEX TO APPEAL CASES.

PAGE

AFFIDAVIT—

The affidavit may be amended when such action is not prejudicial to the rights of any party interested..... 39

An affidavit is a statement in writing, signed and made upon oath before an authorized magistrate..... 41

The lack of an affidavit is sufficient ground to refuse a hearing ... 107

APPEAL—

An appeal will not lie from an order of a board initiating a change in the boundaries of the district township, where the concurrence of the board of an adjoining district township is necessary to effect the change..... 24

The right of appeal is not limited to cases of personal grievance.. 35

Where changes are effected in district boundaries by the concurrent action of two boards, appeal may be taken from the order of the board concurring or refusing to concur, but not from the order of the board taking action first..... 58

Appeal may be taken from an action of the board which authorizes the making of a contract, but not from a subsequent action or order complying with the terms of a contract previously made; nor from an action authorizing the issuance of an order in payment of a debt contracted by previous action of the board..... 65

A case whose sole purpose is to determine the validity of an order on the district treasury, or the equity of a claim, cannot be entertained on appeal to the county superintendent; the courts of law alone can furnish an adequate remedy..... 65

Appeal will not be entertained from the action of the board in rescinding a previous illegal action..... 67

The execution by the board of the vote of the electors upon matters within their control, is mandatory; from such action of the board no appeal can be taken. If such action is tainted with fraud, an application to a court of law is the proper remedy.... 78

PAGE

APPEAL—CONTINUED—

The right of appeal is confined to persons injuriously affected by the decision or order complained of. Ordinarily a person living in one subdistrict cannot properly appeal from an action of the board locating a site in another 80

The adoption of the committee's report in favor of retaining the old school-house site, is an action from which appeal may be taken 82

Appeal may be taken from the action of the board in laying the subject-matter of a petition on the table 85

When an adequate remedy. From the exercise of ordinary discretion in the performance of an official duty, enjoined by law upon the board, appeal may be taken to the county superintendent; but from a refusal to act, or from an action thereon clearly designed to defeat the purpose of the law, an application to the courts of law to compel the performance of the enjoined duty will afford the most speedy, and in some cases the only adequate remedy ... 88

May be taken by any resident elector of the district, aggrieved by action of the board 111

ARBITRATION—

If the county superintendent is asked to arbitrate no appeal will lie 107

BOARD OF DIRECTORS—

The board should be sustained in all legitimate and reasonable measures, to maintain order and discipline, to uphold the rightful authority of the teacher, and to prevent or suppress insubordination in the school 69

Have authority. The board have authority to determine when, and upon what terms, non-resident pupils may attend the schools of their district 75

The board, though not bound by a vote of the electors directing the precise location of a school-house site, are required to so locate it as to accommodate the people for whom designed 78

If, in the selection of a site, the board violate law or abuse their discretionary power, their action may be reversed on appeal 78

The action of the board cannot be reversed upon the allegations of appellant without proof, or by reason of failure of the board to make defense 82

The acts of the board are presumed to be regular, legal, and just, and should be affirmed on appeal, unless proof is brought to show the contrary 82

Discretionary acts of. The weight which properly attaches to the discretionary actions of a tribunal vested with original jurisdiction, does not apply to the decisions of an inferior appellate tribunal 82

PAGE

BOARD OF DIRECTORS—CONTINUED—

The acts of the board are presumed to be regular, legal and just; and should be affirmed on appeal, unless proof is brought to show the contrary 90

Discretionary power of. In the absence of proof that the board have abused the authority given them by the law, their orders will not be set aside, although another decision might to many seem preferable 135

BOUNDARIES—

Must conform to congressional divisions of land 111

CERTIFICATE, TEACHER'S—

Revocation of. The order of a county superintendent revoking a certificate will not be interfered with on appeal, unless it appears that he acted from passion or prejudice 29

A teacher's certificate can be legally revoked only upon proof of charges of which he has had personal notice, and against which he has had the opportunity to make his defense 62

A person addicted to the use of intoxicating liquors, who even occasionally becomes intoxicated, is not likely to promote correct moral teaching in the public schools by his example, nor to possess such moral character as to entitle him to a teacher's certificate 62

A certificate which has expired by limitation cannot be revoked .. 102

Revocation of. The inability to govern is sufficient reason for withholding a certificate and for the revocation of the same 102

CHARGES—

Must be clearly sustained by the evidence 120

CLAIMS—

Just claims against the district can be enforced only in the courts of law 60

CONDITIONAL RULING—

A county superintendent may make a conditional ruling, by which his own decision is governed 98

CONTESTED ELECTION—

Jurisdiction. The proper method of determining a contested election for school director is by an action brought in the district court 51

CONTRACTS—

Contracts for the erection of school-houses, made by a subdirector or committee, require the approval of the board 60

The district township is bound by the contract of the subdirector when made according to instructions of the board 64

If a subdirector enter into a contract on behalf of the district, without authority of the board, he does so at his own risk; such contract is not binding upon the district unless approved by the board 64

An appeal will not lie to enforce a contract 106

PAGE

COUNTY SUPERINTENDENT—

Jurisdiction of. The superintendent's jurisdiction on appeal is not greater than that of the board from whose action the appeal is taken..... 24

Discretionary acts. The county superintendent having only appellate jurisdiction, should not reverse discretionary acts of the board, without explicit and clearly stated proof of the abuse of such discretion, even though not fully approving their action... 35

The county superintendent may upon appeal create subdistrict... 39

The county superintendent has no jurisdiction of an appeal until an affidavit is filed 41

Should not reverse an action of the board which is in accordance with instructions of the superintendent of public instruction... 43

At the hearing of an appeal before the county superintendent it is competent for him, upon his own motion, to call additional witnesses to give testimony 46

The county superintendent has no jurisdiction of cases involving money demand..... 57

The county superintendent may, for sufficient cause, grant a rehearing..... 73

The county superintendent may reconsider and modify a decision on proof that it does not conform to law 84

Jurisdiction of. The county superintendent is not limited to a reversal or affirmance of the action of the board, but he determines the same questions which they had determined..... 98

The county superintendent should not ask the state superintendent to decide a case on appeal for him, but may ask for an interpretation of law, either by the state superintendent or through him, by the attorney general..... 110

The county superintendent has no jurisdiction to determine the validity of district organization..... 115

DISCRETION—

Abuse of. Is not established by evidence showing that a different action on the part of the board would have been preferred by electors..... 115

DISCRETIONARY ACTS—

The county superintendent having only appellate jurisdiction, should not reverse discretionary acts of the board, without explicit and clearly stated proof of the abuse of such discretion, even though not fully approving their action 35

Discretionary acts may be reversed on appeal, but should not be disturbed except upon evidence of unjust exercise or abuse.... 41

Since the board have original jurisdiction, their discretionary acts should not be interfered with by an appellate tribunal, although not agreeing with their judgment, unless they violated law, showed prejudice or malice, or abused their discretion in such a manner as to require interference..... 100

PAGE

DISCRETIONARY ACTS—CONTINUED—
In the absence of proof that the board abused the authority given them by the law, their orders will not be set aside, although another decision might to many seem preferable 135

DISTRICT—
Validity of Organization. The county superintendent has no jurisdiction to determine the validity of district organization 115

DISTRICT TOWNSHIP—
Should not ordinarily contain more than nine subdistricts..... 43

ELECTION—
Evidence of. The certificate of the officers of the annual subdistrict meeting is the legal evidence of election as subdirector, and as a general rule the board are justified in declining to recognize a person as a member of the board until he produces such certificate 51
Contested. The proper method of determining a contested election for school director, is by an action brought in the district court. 51

EVIDENCE—
Parol. Cannot be received in the absence of allegations of fraud, to contradict or impeach the validity of school district records.... 46
Where the law requires the evidence of a transaction to be in writing, oral evidence can be substituted for it only when the writing cannot be produced 51
Sufficient latitude should be allowed in the introduction of testimony to permit a full presentation of the issues involved, even if irrelevant testimony is occasionally admitted 85
New. New evidence can be introduced only when the facts materially affecting the case could not have been known before the trial..... 93
To establish malice or prejudice on the part of the board, positive evidence must be introduced 110

EXPLANATORY NOTES—
Force of. Notes to the school law, while proper aids to school officers, have not the binding force of law, and a non-compliance with them is not necessarily a violation of law..... 33

EXPULSION—
Suspension or expulsion. Suspension or expulsion of a scholar in an independent district requires the action of the board by a majority, and the concurrence of the president..... 103

HIGHWAY—
Since the law requires a school-house site to be located on a public highway, such public highway must be fully established by law before the location can be made..... 96

PAGE

JANITORIAL SERVICES—
If a teacher serves as janitor in sweeping the room and building fires, he should be paid from the contingent fund for such services 106

JURISDICTION—
The superintendent's jurisdiction on appeal is not greater than that of the board from whose action the appeal is taken..... 24
The county superintendent has no jurisdiction of an appeal until an affidavit is filed..... 41
An application for an appeal filed within thirty days from the act of the board complained of, will not give the county superintendent jurisdiction of the case. The appeal must be taken by affidavit..... 53
The county superintendent has no jurisdiction of cases involving a money demand 57
In cases involving the validity of district organization no appeal will lie. The remedy is a writ in the nature of *quo warranto*.... 91
The county superintendent has no jurisdiction to determine the validity of district organization 115

LOCATION—
Of school-house site. May be within less than forty rods, when obtained by purchase 123
When purchased, the provisions of section 1825 do not apply. The district stands in the same relation to the public and to individuals, in this respect, as do other corporations, and may purchase and convey real estate accordingly..... 135

NEW EVIDENCE—
New evidence can be introduced only when the facts materially affecting the case could not have been known before the trial..... 93

NOTICE—
The county superintendent should not issue notice of final hearing until both the affidavit and transcript of the district secretary have been filed in his office..... 41
The want of notice is waived by the voluntary appearance of the party for any purpose connected with the case..... 55

OPINIONS—
Unsupported by facts, cannot be received as satisfactory evidence of prejudice..... 29

PRIVILEGES—
School privileges are determined by the residence of the child . .. 113

PROCEEDINGS—
In the absence of proof to the contrary, the legal presumption is that the proceedings before the county superintendent were entirely regular..... 33

PAGE

PUNISHMENT—
The punishment of a pupil with undue severity, or with an improper instrument is unwarrantable, and may serve, in some degree, to indicate the animus of the teacher..... 68
Right to inflict upon pupils. The right of the parent to restrain and coerce obedience in children applies equally to the teacher, or to any one who acts *in loco parentis*. 69
The use of the rod is allowable as a last resort..... 102

QUO WARRANTO—
In cases involving the validity of district organization no appeal will lie. The remedy is a writ in the nature of *quo warranto*.... 91
The only proper means of affirming the right to exercise the privilege of an office, or to contest the illegal exercise of the same, is set forth in sections 3345-3352, Code of 1873 95

RECORDS—
Defective. May be amended 21
The board may at any time amend the record of the district, when necessary to correct mistakes or supply omissions; and may, upon proper showing, be compelled, by mandamus, to make such corrections 46
The record of the secretary must be considered as evidence, unless there is proof of fraud or falsehood..... 103
The record of the secretary should be considered as evidence, and not be invalidated by parol evidence unless there is proof of fraud or falsehood..... 108
Impeachment of. Parol evidence cannot be admitted in impeachment of a record if made and certified to by the proper officers as required by law..... 120
Not so made and certified to is defective and may be impeached by collateral evidence..... 120

REHEARING—
The county superintendent may, for sufficient cause, grant a rehearing 73
To warrant a rehearing, some valid reason must be urged 141

REMANDING OF CASES—
When evidence discloses that the action of the board was an unwise one, and the facts are not sufficiently shown to determine what should be done, the case should be remanded to the board. 93

REVOCATION OF TEACHER'S CERTIFICATE—
The order of a county superintendent revoking a certificate will not be interfered with on appeal, unless it appears that he acted from passion or prejudice 29
Opinions unsupported by facts cannot be received as satisfactory evidence of prejudice..... 29

PAGE

REVOCATION OF TEACHER'S CERTIFICATE—CONTINUED—

A teacher's certificate can be legally revoked only upon proof of charges of which he has had personal notice, and against which he has had the opportunity to make his defense..... 62

A person addicted to the use of intoxicating liquors who even occasionally becomes intoxicated is not likely to promote correct moral teaching in the public schools by his example, nor to possess such moral character as to entitle him to a teacher's certificate..... 62

A certificate which has expired by limitation cannot be revoked.. 102

RULES AND REGULATIONS—

The power to prescribe rules and regulations for the government of the board is not a function of the electors. A rule adopted by the board, and not a provision of law, may be modified at the option of the board..... 64

Boards of directors and their agents, the teachers, may establish reasonable rules for the government of schools and the control of pupils..... 69

The teacher has the right to require a pupil to answer questions which tend to elicit facts concerning his conduct in school..... 69

The pupil is answerable for acts which tend to produce merriment in the school or to degrade the teacher..... 69

Open violation of the rules of the school cannot be shielded from investigation under the plea that it invades the rights of conscience..... 69

In establishing and enforcing regulations for the government of scholars, the board have a large discretion..... 130

SCHOOLS—

Every person between the ages of five and twenty-one years has the right to attend school in the district in which he resides, regardless to considerations relating to race, nationality, the holding of property, or the payment of taxes..... 75

The payment of school taxes does not entitle non-residents to school privileges..... 75

The board have authority to determine when, and upon what terms, non-resident pupils may attend the schools of their district..... 75

SCHOOL FUNDS—

Disbursement of. The treasurer is the proper custodian of all funds belonging to the district, and can legally pay them out only upon orders specifying the fund on which they are drawn and the specific use to which they are applied. The board cannot authorize the subdirector to use the public funds for any purpose..... 60

SCHOOL-HOUSE—

Power of the board to build. If in their judgment the wants of a subdistrict require, the board are empowered to erect a schoolhouse without action on the part of the electors of the subdistrict..... 22

PAGE

SCHOOL-HOUSE—CONTINUED—

Removal of. A vote of the electors of a subdistrict to remove a school-house, will not compel the board to act affirmatively in relation thereto 53

Removal of. The removal of an old house away from the geographical center and away from the center of population, without special and strong reasons therefor, is an abuse of the discretionary power of the board 133

SCHOOL-HOUSE SITE—

The board though not bound by a vote of the electors directing the precise location of a school-house site, are required to so locate it as to accommodate the people for whom designed 78

If in the selection of a site, the board violate law or abuse their discretionary power their action may be reversed on appeal 78

Location of. The action of a committee appointed by the board to locate a site is of no force until officially adopted by the board while in session 80

Subdistrict boundaries cannot be changed upon an appeal relating solely to the location of a site, nor can a site be located with the expectation that boundaries will be changed, unless such is shown to be the intention of the board 80

A site located by the county superintendent cannot be changed by the board, while the condition of the district remains without material change 84

The prospective wants of a subdistrict may properly have weight in determining the selection of a site, when such selection becomes necessary; but not in securing the removal of a school-house, conveniently located for the present 90

To make a distinction between the children of freeholders and those of tenants in determining the proper location for a school-house, is contrary to the spirit and intent of our laws 90

Location of. The necessities of the present must be observed in locating school-house sites, in preference to the probabilities of the future 93

Location of. The location of a school-house can be dependent upon a change of boundaries, only when it is shown in evidence that it is the intention to make such change 98

The choice of a school-house site by the electors has no binding force 100

A school-house site fixed by county or state superintendent affirming the discretionary act of the board, allows the board to exercise their discretion again, especially if material changes have occurred 104

Proper location of school-house sites depends upon the form of districts 111

PAGE

SCHOOL-HOUSE SITE—CONTINUED—

A vote of the electors to select the precise location of a school-house is not mandatory on the board..... 117

Location of. Must be selected with reference to convenience of the people 117

When purchased by board, not subject to the provisions of section 1825 123

Location of. The condition of matters within the subdistrict should govern the location of the house. The attendance of parties from an adjoining subdistrict should not determine change of site..... 127

Location of. A village in a subdistrict has special claims favoring the selection of a site within its limits. The element of distance to be traveled by some is largely overcome by the advantages of a location in the town..... 132

Location of. When purchased, the provisions of section 1825 do not apply. The district stands in the same relation to the public and to individuals, in this respect, as do other corporations, and may purchase and convey real estate accordingly..... 135

Relocation of. When it the evident intention of the board to relocate the site as near as possible in the center of the subdistrict in orner to furnish equal school facilities to all the residents, their action should not be materially interfered with 141

SCHOOL-HOUSE TAX—

Where it has been the uniform custom to apportion the school-house tax among the several subdistricts, the board are not governed by a vote of the electors instructing them to levy the tax directly upon the property of a subdistrict..... 25

All taxes voted by the district township meeting must be apportioned among the subdistricts. All taxes voted by the subdistrict meeting which the district township neglects or refuses to grant, must be certified and levied upon the subdistrict. The board have no option but to obey the requirements of the law.. 72

SCHOOL ORDERS—

When improperly issued by the board the proper remedy is an injunction from the civil courts..... 57

SCHOOL PRIVILEGES—

Are determined by the residence of the child..... 113

SUBDISTRICTS—

Size of. It is better to have large subdistricts with good school-houses well furnished, than small subdistricts with small and poorly furnished school-houses..... 17

Size of. There are serious objections to the formation of small subdistricts 43

The practice of cutting district townships into numerous subdistricts of small size, is detrimental to the educational progress of the state, and will not be sustained on appeal..... 55

PAGE

SUBDISTRICTS—CONTINUED—

A subdistrict is not a corporate body, and has no control of any public fund 60

Other things being equal, both territory and school population should be about equally divided among the subdistricts of a district township 76

One subdistrict should not ordinarily have an excess over the average subdistrict of the district township both in territory and school population, nor should it lack in both..... 76

Form of. It is very important that subdistricts should be regular in form, and where it is possible, school-houses should be located at or near geographical centers..... 127

The board may not redistrict so as to abolish a subdistrict, with intent to prevent the building of a house provided for by the electors 129

SUBDISTRICT BOUNDARIES—

Change of. In changing subdistrict boundaries, both the present and the future welfare of the district should be considered..... 17

Change of. The county superintendent may, on appeal, redistrict. A refusal by the board to act upon a petition to redistrict is an act from which an appeal will lie..... 26

Change of. The acts of a board changing subdistrict boundaries and locating school-houses are so far discretionary that they should be affirmed on appeal, unless it is shown that there has been an abuse of discretion..... 35

Change of. At the hearing of an appeal before the county superintendent, it is competent for him, upon his own motion, to call additional witnesses to give testimony..... 46

Subdistrict boundaries can be changed only by affirmative vote of a majority of all the members of the board..... 67

The boundaries of subdistricts must conform to the lines of congressional divisions of land..... 111

Change of. A subdistrict long established, embracing a territory having a sufficient number of scholars to maintain a good school, should not be abolished, unless the general school facilities of the township will be improved thereby..... 139

Change of. A case involving a change of subdistrict boundaries, having been adjudicated by the county superintendent, reversing the action of the board, and being affirmed by the superintendent of public instruction, cannot again be brought upon appeal, unless it can be shown that some change materially affecting the conditions of the case has taken place since the date of the former decision..... 139

PAGE

SUPERINTENDENT—

The superintendent's jurisdiction on appeal is not greater than that of the board from whose action the appeal is taken..... 24

The county superintendent, having only appellate jurisdiction, should not reverse discretionary acts of the board, without explicit and clearly stated proof of the abuse of such discretion, even though not fully approving their action..... 35

The county superintendent should not reverse an action of the board which is in accordance with instructions of the superintendent of public instruction..... 43

SUSPENSION OR EXPULSION—

Suspension or expulsion of a scholar in an independent district requires the action of the board by a majority, and the concurrence of the president..... 103

TAXES—

School-house. Where it has been the uniform custom to apportion the school-house tax among the several subdistricts, the board are not governed by a vote of the electors instructing them to levy the tax directly upon the property of a subdistrict..... 25

Must be certified in accordance with vote of the electors..... 117

Must be certified, collected and expended, in accordance with vote of the electors..... 129

TEACHERS—

Right of, to inflict punishment upon their pupils. A school-master who stands in *loco parentis* may, in proper cases, inflict moderate and reasonable chastisement. The law confides to teachers a discretionary power in the infliction of punishment upon their pupils, and will not hold them responsible criminally, unless the punishment be such as to occasion permanent injury to the child, or be inflicted merely to gratify their own evil passions..... 18

When a teacher is dismissed, in violation of his contract, an action in the courts of law, on the contract, will afford him a speedy and adequate remedy; when discharged for incompetency, dereliction of duty, or other cause affecting his qualifications as a teacher, he has the right of appeal..... 87

The teacher is entitled to the counsel and co-operation of the subdirector and board in all matters pertaining to the conduct and welfare of the school..... 87

The law provides that a teacher shall have a fair and impartial trial, with sufficient notice to enable him to rebut the charges of his accusers..... 120

PAGE

TERRITORY—

Transfer of. Where territory is to be transferred by concurrent action of two boards to the district to which it geographically belonged, a majority of the members elect is not necessary, as required for the change of subdistrict boundaries..... 108

TUITION—

Collection of tuition under section 1793 cannot be done by appeal to the county superintendent, but must be settled through the courts..... 107