
LIBRARY OF
CONGRESS

...THE...

SCHOOL LAW OF INDIANA

...AND THE...

STATE CONSTITUTION,

WITH ANNOTATIONS.

ISSUED BY
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I. INTRODUCTION.

A HISTORY OF THE SCHOOL SYSTEM.

INDIANA COMMON SCHOOL SYSTEM.

It was on the 10th day of October, 1780, that the corner-stone of our Territorial system was laid, by the adoption of a resolution in the Continental Congress, which declares "that all Territorial lands shall be disposed of for the common benefit of the United States, and shall be settled and formed into distinct republican States, which shall become members of the Federal Union, and have the same rights of sovereignty, freedom and independence as the other States."

It was this resolution that Maryland, one of the landless States, had been contending for before she would formally adopt the Articles of Confederation, and thereby become one of the "Original Thirteen States."

Perhaps no single act has so far exceeded the expectations of its promoters as has this act of Maryland's refusing to ratify the Articles of Confederation, which compelled the Congress to invent the Territorial policy, fraught with such results.

In 1783, when a treaty of peace was entered into between the United States and Great Britain, the skillful diplomacy of Jay, Franklin and Adams gave to us the territory conquered through the untiring energy of George Rogers Clark, and the boundary of the United States was made the Mississippi on the West and the great lakes on the north.

In 1783 the Legislature of Virginia passed "an act to authorize the delegates of Virginia in Congress to convey to the United States, in Congress assembled, all the right of this Commonwealth to the territory northwestward of the river Ohio." This deed was signed by Thomas Jefferson, Samuel Hard, Arthur Lee and James Monroe, and the Continental Congress accepted the same. It was Jefferson who had so earnestly supported Clark's efforts, and who had done much to urge Virginia in her magnanimous gift to the United States. He drafted the first ordinance for the government of this territory, and he might have succeeded in having the "ordinance of 1784" adopted had he not been so radical on the slavery question.

In a letter to Madison he wrote: "The curse of slavery must not be allowed to extend to new territory," and he proposed in the "ordinance of 1784" that slavery be prohibited south of the Ohio River as well as north of it, and to this his own State would not accede. But this prepared the way for a greater ordinance, that of 1787, and as Jefferson had been sent abroad there is no evidence that he was in any way interested in its preparation or adoption.

The Continental Congress, with hardly enough vitality left to complete its brief work, was driven into the passage of this famous piece of legislation, the ordinance of 1787, by a few delegates who had remained in session at New York, and which stands out as the most brilliant achievement of that remarkable body,

excepting, perhaps, the Declaration of Independence. The necessity of the passage was revenue for the General Government, but its most memorable provisions were those relating to human rights; ordaining religious freedom, offering security to both person and property, encouraging education, and dedication of the soil to freedom forever. Madison said of it that it was the exercise of national sovereignty without the shadow of constitutional authority. "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged." So familiar have these words become in the Northwest that every State that has been organized since that time felt under obligations to carry out this provision. The principle of reserving one or more sections has been followed by every State since then (excepting West Virginia), and in some very liberal donations have been made looking toward the founding of a large permanent school fund It was not till 1795, when General Wayne made his famous treaty with the Indians, that the lands within the boundaries of Indiana were open to peaceful and permanent settlement.

In 1800 Indiana Territory was formed. In 1804 Congress passed an act entitled "An act making provision for the disposal of the public lands in three land districts, viz.: Detroit, Vincennes and Kaskaskia." In 1805 the Detroit district became the Territory of Michigan; in 1809 Kaskaskia became Illinois, and Indiana assumed her present size.

THE FIRST PUBLIC SCHOOL A UNIVERSITY.

The act of 1804, above referred to, provided for the sale of certain lands "excepting section numbered sixteen, which shall be reserved in each township for the support of schools within the same; also, of an entire township in each of the three districts, to be located by the Secretary of the Treasury for the use of a seminary of learning." Albert Gallatin, then Secretary of the Treasury, located "township 2 south, range 11 east," now in Gibson County, Indiana, for the use of a seminary of learning, as required by this act.

The act that lies at the foundation of our common school system, and therefore vitally important here, is the Territorial act of the First General Assembly of the Territory of Indiana, held at Vincennes, entitled "An act to incorporate a University in the Indiana Territory." This act was approved by Governor William Henry Harrison, November 29, 1806.

The Legislative Council then enacted "that a University to be called and known as the Vincennes University" should be established, and it elected a Board of Trustees, consisting of twenty-three members, of which Governor Harrison was made President.

The act provided that the Trustees were to establish as speedily as possible such University and to appoint a President to govern it, and four professors "for the instruction of youth in Latin, French, Greek and English languages, mathematics, natural philosophy, logic, rhetoric, and the law of Nature and nations."

It was further provided that no particular tenets of religion should be taught in said University, and, whenever the funds of the University permitted, all students were to be educated free of charge.

The establishment of a separate institution for the education of women and the raising of funds through a system of lotteries were also authorized.

Vincennes University was the first institution under the act of the Territorial Assembly, as it was the first institution of learning in Indiana. The seminary township reserved by Congress in 1804 was given to it, and it was also empowered to sell four thousand acres and to receive bequests.

Some time was necessary for the Board of Trustees of Vincennes University to make arrangement for the opening of the school, and it was not until 1810 that the school was ready for students. Samuel Scott was its first President, he having been called to that position unanimously, as he had made somewhat of a reputation in Vincennes as the principal of a private school established two years prior to that time. The University of Vincennes was in continuous existence till 1825, when the Legislature converted it into a county seminary.

The State gave it no support by taxation, and in 1822 passed an act which practically confiscated all the lands belonging to the Vincennes University. Something over 15,000 acres of land in the seminary townships of Gibson and Monroe counties were sold and the proceeds turned into the State Treasury. In 1838 the Legislature resuscitated the old corporation of this University, but inserted a clause intended to prevent a renewal of claims taken from it in 1822. The suit of 1846 covered all the points at which the State and Board of Trustees were at variance. In 1846 the Legislature of Indiana authorized "the Trustees of Vincennes University to bring suit against the State of Indiana" to test the question of the title to lands held by the several purchasers in Gibson and Monroe counties.

The case went to the Supreme Court of the United States, where a judgment favorable to the University was obtained, amounting to a little over $50,000. After the reorganization according to the enabling act of 1838 and the long period of litigation, the year 1853 found Vincennes University again ready to open its doors to students.

FURTHER TERRITORIAL LEGISLATION.

Another Territorial act relating to schools was passed in 1808, and provided that school lands might be leased for a period not to exceed five years, at the discretion of the County Courts. The lessee was required to put under cultivation not less than ten acres in each quarter section.

In 1810 still another Territorial act was passed, in which the County Courts were required to appoint trustees of school lands—one to each Congressional Township—and the lease provided for in the act of 1808 was modified so as to limit the amount of land that any one person might lease to 160 acres, and the destruction of timber was prohibited.

When the enabling act of Congress was passed and the State Convention held at Corydon June 10 and 29, 1816, a Constitution was adopted. The ninth article of it requires the General Assembly "to provide by law for the improvements of such lands as are, or hereafter may be, granted by the United States to this State for the use of schools, and to apply any funds which may be raised from such lands, or from any other quarter, to the accomplishment of the grand object to which they are or may be intended."

In section 2 it is made "the duty of the General Assembly to provide by law for a general system of education, ascending in a regular gradation from township schools to a State University, wherein tuition shall be gratis and equally open to

all." The money paid by persons exempt from military duty, except in times of war, was to go to the schools, and so were all fines.

Section 5 is as follows: "The General Assembly at the time it lays off a new county shall cause at least 10 per cent. to be reserved out of the proceeds of the sale of town lots in the seat of justice of such county for the use of a public library for such county; and at the same session they shall incorporate a library company, under such rules and regulations as will best secure its permanence and extend its benefits."

In 1849, when the Legislature had voted to submit the question of a constitutional convention to the people, a new generation had come upon the scene, and a new Constitution was as strongly urged by the friends of education as by those of commercial and political interests. Not so much because the constitutional provision of 1816 was at fault, but because no school system had been perfected under it.

On the 7th of October, 1850, the constitutional convention met, and February 10, 1851, the new Constitution was completed. It was accepted by the people by a vote of three for it to one against it, and on November 1, 1851, it went into effect. It requires "the General Assembly to provide by law for the general and uniform system of common schools, wherein tuition shall be without charge and equally open to all".

The second section of Article 9 is as follows: "The common school fund shall consist of the Congressional township fund and the lands belonging thereto, the surplus revenue fund, the Saline fund and the lands belonging thereto; the bank tax fund, and the fund arising from the 114th section of the charter of the State Bank of Indiana; the fund to be derived from the sale of county seminaries, and the moneys and property heretofore held for such seminaries; from the fines assessed for breaches of the penal laws of the State, and from all forfeitures which may accrue; all lands and other estate which shall escheat to the State for want of heirs or kindred entitled to the inheritance; all lands that have or may hereafter be granted to the State when no special purpose is expressed in the grant, and the proceeds of the sales thereof, including the proceeds of the sales of the swamp lands granted to the State of Indiana by the act of Congress of the 28th of September, 1850, after deducting the expense of selecting and draining the same; taxes on the property of corporations that may be assessed by the General Assembly for common school purposes."

The principal of the common school fund can not be diminished, and the income must go to the schools.

The funds are to be properly invested, the counties are made liable for the moneys intrusted to them, and are responsible for the payment of the annual interest. Trust funds are to be preserved inviolate and devoted exclusively to school purposes. It is made the duty of the Legislature to provide for the election of a Superintendent of Public Instruction.

The first act relating to schools was passed December 24, 1816, and provided "For the appointment of a School Superintendent of the school section in each congressional township." The duty of this officer was to lease the lands for a term of years in order to have them improved, which proved an advantage to the fund when these lands were offered for sale. This same act also provided "that by the petition of twenty householders in any congressional township, there should be an election of three Township Trustees for school purposes." No funds were avail-

able at this time for the use of the schools, so these Trustees could do very little, although the law gave them wide discretionary power.

The legislation so far had awakened an interest that crystallized into a resolution passed January 9, 1821, appointing a committee of seven to prepare "for the next session of the General Assembly a bill providing for a general State public school system."

The report of this committee was not completed till 1824, when it took the form of a bill, which was almost wholly the work of Benjamin Parke.

The act was entitled, "An act to incorporate Congressional Townships, and providing for public schools therein."

The three Township Trustees were continued, who had charge of school lands and school funds, and who were empowered to divide their townships into districts and to appoint sub-trustees in each. They were also authorized to examine teachers, establishing the theory that some sort of a test is necessary for those desiring to teach in the public schools. School buildings were to be erected by the people of the district, and the law levied the tax for that purpose in the shape of manual labor.

The application of this law principle, as established by the courts, gave us a fund now called special school revenue.

Authority to sell the school lands was subsequently obtained from Congress, and in 1831 an act supplemental to the one of 1824 was enacted, adding a School Commissioner to the official list of school officers of each county who was to act as a sort of a financial agent for the local school corporations.

When a school had been opened the voters of a school district were to decide how much local tax, if any, should be levied, the length of school term, but this provision was made absolutely ineffective by providing "that no person shall be liable for tax who does not wish to participate in the benefits of the school fund."

Further encouragement was given the cause of education by Congress in 1832 in removing the restrictions thrown around the grant of the salt lands granted to the State of Indiana in 1816, so that in 1833 the State Legislature proceeded to sell the same, "the proceeds of which shall be appropriated to the support of common schools."

This was the first positive recognition of the principle of State responsibility for the education of its children.

The law of February 2, 1833, was by far the most elaborate that had been enacted, containing 205 sections. The School Commissioner of each county and three trustees in each township were retained, and three sub-trustees in each district were required.

The enumeration of school children was required to be taken, dividing them into three classes: (a) Those under five years of age, (b) those between five and fourteen years of age, (c) those from fourteen to twenty-one.

The local idea prevailed largely throughout this law, as the district trustees might call meetings of the inhabitants for counsel, and upon petition of five householders they were required to do so. Whatever was determined upon by such meeting must be carried out by the district trustees. No discretionary power was allowed them.

Since the provisions were optional, we are led to believe that the State's system of internal improvements of 1831–37 had so burdened the people that the cause of education was greatly neglected, and that the dread of taxation practically made the operation of the school law a nullity.

Incompetent teachers through the so-called examinations held by the district trustees under this law brought reproach upon the Indiana schools at home and distrust abroad. But February 6, 1837, this was, in a measure, remedied by the enactment of another law similar in its main features to the one of 1838, excepting there were three examiners appointed by the Circuit Court, and though this was far from what it should have been, it was a long step in advance, establishing the recognized principle of later years "that any movement toward bettering the schools must primarily regard the improvement of the teachers." It was in this, the examination and employment of teachers, that a school law first became mandatory.

On the 7th of December, 1841, Governor Bigger, in his message to the General Assembly, recommended the appointment of an agent to look into and report the condition of the school funds of the State. In 1843 the Treasurer of State was denominated a Superintendent of Common Schools. He was instructed to prepare a report to the General Assembly embodying the following points: (1) The condition and amount of school funds. (2) The condition of colleges. (3) The condition of county seminaries. (4) The number and condition of common schools. (5) Expenditures of school revenues. (6) Plans for the management of the school funds and the better organization of the common schools, and (7) general recommendations.

As the members of the General Assembly were gathering at the capital in December, 1846, there appeared in the columns of the Indiana State Journal of December 7, a "message" from "One of the People." It took the dignified tone of a Governor's message, and startled all with brilliant rhetoric and attractive array of figures. Its author had come into the State from the East in 1833, and during all these years he had made a careful study of the public school problem, noting that none of the legislative enactments had met the expectations of the friends of popular education.

So full of helpful suggestions was the paper that Governor Whitcomb voiced its sentiments in his official communication.

The author was Prof. Caleb Mills, and in this "message" and the five which followed he discussed the educational needs of Indiana, emphasizing: (1) Want of competent teachers. (2) Need of suitable texts. (3) Lack of interest throughout the community. (4) Want of funds. And recommending: (1) General taxation for the support of the school. (2) Distribution of funds according to the school census. (3) Intelligent supervision.

"In May, 1847, a public meeting of the citizens of Indianapolis was held, at which a committee was appointed, consisting of Ovid Butler, Henry Ward Beecher and John Coburn, to provide for a general convention of the State's educators and the friends of education," says Professor Boone in his "History of Education in Indiana." "A circular was issued, including extracts from the recent report of the Superintendents of Common Schools, and a call for a meeting on May 26, 1847. This was the first of a series of 'State common school conventions,' without an understanding of whose influence any study of the next ten years of school agitation would be only superficial. Their deliberation determined legislation, educated public sentiment, conducted campaigns, and generally reformed the system as no individual could have done," continues Professor Boone. "The convention of 1847 was presided over by the Hon. Isaac Blackford, continued its session for three days and represented in its attendance of three hundred the best thought

and the philanthropy of the State. Two committees were appointed—one to lay before the Legislature a typical bill, the other to prepare an address to be published and distributed to the people. The committee on legislation, at a convention of educators and members of the Assembly, held in the House of Representatives December 8, 1847, made, through Judge Kinney, a statement of its general provisions." The convention in discussing the provisions of this bill agreed upon a suggestion that an election should be held and a vote taken upon the question of free schools, to be in connection with the Presidential election of 1848. Instead of passing the bill recommended by the committee on legislation, one referring the question of free schools to a vote of the people was enacted.

A vigorous campaign was made by the friends of education, in spite of the many issues of a somewhat remarkable Presidential campaign, and the act was adopted by a large majority.

On January 16, 1849, the fifth general school law had passed the General Assembly, and on the 17th the Governor's signature was attached. The forward steps taken in the law were the recognition of public taxation for the support of schools; making the township the unit for the distribution of the funds and the length of term, both of which are retained in our school law of to-day—the latter a phase distinctively Indianian, and of which we are justly proud.

The errors of that law are shown in section 29, making the public schools subordinate to private schools, and section 31, where a ratification of the law was necessary to make it binding upon counties. After the question had once been submitted to the people and by a large majority, an expression was given authorizing the General Assembly to enact certain laws, why that body did not have the courage to enforce such acts is a question that can not be fully answered, but it shows an utter want of courage on the part of our law-making body.

The whole question had to be opened up, and the friends of education were active, aggressive, and in the end successful, but the adoption did not depend upon the vote of the State, but of counties, some of which never assented to the law of 1849, but worked under the old law.

The difficulties that would have arisen out of such an anomaly can not now be approximated, but relief came soon. Two days prior to the passage of the educational bill, the Legislature voted to submit the question of a constitutional convention to the people. The constitutional convention met, and in it were many friends of education, whose work has been mentioned before, and whose success is manifest in the Constitution which they framed. It was at this time that Professor Mills' sixth "message" was issued, and the only one that received official recognition. Five thousand copies were ordered by the State Senate to be printed for distribution, thereby extending the influence of this helpful agent throughout the State.

The new Constitution having now gone into effect, a radical change had been made in the educational provisions. To solve the problem was the great difficulty with which the Legislature of 1852 had to wrestle. After the enactment of the law of 1852 came the interpretation of it by the courts as to the constitutionality of certain sections. This required time, and for some years little, if any, advance was made along the line of a permanent educational policy of the State.

The agitation of the slavery question and the Civil War still farther delayed matters, but the law of 1852, remodeled in the light of the several decisions of the courts, was embodied in the act of 1865, the last exhaustive statute on the subject

of education. This, as amended to date, with a few supplemental sections and acts, the most important of which are the act establishing the State Normal School (1865), and that creating the county superintendency (1873), and the school text-book law (1889) constitute the school law of Indiana.

INDIANA'S ANCESTRY.

A close analysis of civilization will reveal the fact that there are four fundamental institutions through which the development of any people has been made, viz.: *The family, the church, society* and *the State*. Every fact of history bears directly upon one or more of these, and a study of history is simply a study of the development of these factors of civilization. Even in literature, where the author's ideal more nearly approaches the truth, perhaps, we see in the "plot" simply a development of one or more of these same essential elements. The growth of the Indiana school system follows closely these same fundamentals, and we shall now attempt to trace them from the conception to the present time. In discussing any historical fact connected with any State we must begin with the two typical colonies of Revolutionary fame.

The two leading States of the American confederation, in population and force of ideas, were without question the two oldest—Virginia and Massachusetts. Situated so far apart, and with coördinate rather than conflicting material interests, they came together without a serious thought of rivalry. Both were drained heavily for the cost of the Revolutionary War, but both remained steadfast to the American cause and to one another. The soil of the one State drank the blood of the Revolution, and that of the other the last. The social conditions of these two commonwealths were very different.

THE NEW ENGLAND CHARACTER.

In Massachusetts appeared the fullest type of the New Englander, or "Yankee," already far renowned as sharp, clever, tenacious, energetic, and of an encroaching disposition. Here flourished a republic founded on equal rights, the most successful experiment of the kind then known. The Legislature of Massachusetts was an aggregate of towns acting through town representatives. To this town system it was largely owing that the political machinery ran so smoothly. Town meetings, the unit of self-government, brought men together for a primary education in affairs, and the neighborly association of citizens gave a powerful impulse to public spirit. Boston was the abode of commerce and refinement. And yet the town was not so populous that the public operations which most concerned him might elude the keen eye of the private taxpayer. Wealth was not monopolized, but nearly all toiled for a living. Climate and soil alike favored energy of character, while each inhabitant found a great diversity of pursuits to chose from. Public schools had long flourished. Religious discipline was universally strict. Though family attachments were strong, aristocracy had no deep root. The New England character, strong in wrestling with imperfect opportunities and disputations, became busy with the concerns of a petty existence; the Yankee was a narrow interpreter of writings, because he reverenced ink and parchment; and saving, often niggardly in his economies, because, with harsh soil and climate, it was not easy to make a living. But the New Englander had backbone, audacity, habits of industry and a conscientious

disposition. Experience and travel would widen his vision; increasing wealth foster a more generous sentiment. Under slight reservation Massachusetts was liberalized New England; Boston was liberalized Massachusetts, and liberalized Boston carried the heaviest brains in America.

THE VIRGINIAN.

Viginia had very different advantages to boast of. Notwithstanding the liberal politics of her most enlightened sons, her institutions were at this time essentially aristocratic.

This was owing partly to the circumstances under which the State had been colonized, partly to the enervating climate and spontaneous fertility of the land, which tempted those who could afford it to leave work to others and take their ease, and partly, of course, to the long continuance of slavery as part of the agricultural and social system. Virginia was colonized by gentlemen, and often helpless ones at that: blood and pedigree always ruled in her affairs. Tobacco was the great staple of a State given over to agriculture, whose great mineral resources had been scarcely developed, and whose manufactures and commerce were always insignificant. So few were the skilled mechanics in this populous State in the early days that a rich planter, who could make lavish display of costly furniture and imported plate and linen, lodged not uncommonly in a rickety house, with smoky chimneys, broken window panes and doors which the ever-welcome guest had to claw open. There was a dash of chivalry, frankness and generosity about the true-blooded Virginian which made his leadership irresistible. And what more prolific mother of a nobility was there in the eighteenth century than the Old Dominion? Here Randolphs, Masons and Lees were men of ability, men of progress. * * * The poor white of Virginia was not an interesting personage. The humbler native, leading a vagabond life and subsisting miserably, accepted the low estate to which he was born with little ambition to improve it. If a mechanic, his skill rarely went beyond patching a shoe or stopping a leaky roof; as a farmer, he left his corn and tobacco to scratch their way upward through the ill-dressed ground, while he sauntered idly about with his gun. He was, however, good natured, generous according to his means, and as hospitable, in a poor way, as the best gentleman he patterned after. He was fond of his State and its great men, and loyal to some one of the families who contended for the honor of pocketing the borough in which he voted. He liked political excitement: elequence, of which Virginia had a copious supply, made his wild eyes glisten, and when his own candidate gave a sharp thrust, he slapped his long shanks and showed his yellow teeth from ear to ear. He, like his superiors, had a turn for dissipation and low sports. * * * But Virginia character had always the same bold lines; its best development was invariably in the patrician rank, whose vices, as often happens under like conditions, the plebians copied more faithfully than their virtues. The Virginian was a born politician. He commonly received a good education; yet wedded little to books, and growing up in an out-of-door atmosphere, he led not so much from force of scholarly attainments as from his capacity for profound convictions, his tact and sympathetic acquaintance with human nature. He did not domineer so offensively nor lose his temper so readily as his brethren of a lower latitude. To men of his calibre, some special incentive is needful to inspire heroic effort. Such was found in the effort to coerce the colonies into tributaries of George III.

CAVALIER AND PURITAN IN INDIANA.

From the New England colonies, Virginia, Kentucky and the Carolinas, of which Massachusetts and Virginia were typical, came the early settlers of Indiana. Draw a line from east to west through Indiana, the line touching the southern part of Marion County, and you find the settlers south of this line from Virginia and the other southern colonies, and north of it from New England, each bringing with them their peculiar ideas, customs and local laws.

In the northern part of Indiana we find those who favor a strong local government, and if at any time they had contemplated centralized State government, the conduct of the mother country during the American Revolution had engendered such an intense dislike for a strong centralized government, that the principle of such, applied to our public school system, was entirely out of the question. A new generation had to be educated, liberalized and driven to see the prime necessity of a State-controlled system of schools before a law similar to the one of 1852 would be countenanced.

In the southern part of Indiana there existed the social inequality of the parent colonies. To place all on an equal footing before the law meant the breaking down of those social lines that had so long separated the poor from the rich; the gentleman from his more humble white neighbor. Not that these people were so much opposed to education as to the idea of admitting all to equal privileges before the law. Here again was needed "a campaign of education," and in the course of time the first settlers had yielded the soil to those more liberal in their views, and who were fully persuaded that the State was responsible for the education of all its citizens. Under these conditions the local school system of the Constitution of 1816 was all that could be expected.

TRIUMPH OF THE NEW ENGLAND IDEA.

A fair and impartial trial of this system for forty years, where its weakness was easily shown, proved that good arguments were all on the side of a centralized system, supported by general taxation, and in which tuition should be free and equally open to all. Our Supreme Court understood this when in 1857 Judge Perkins rendered his decision in the case of *City of Lafayette* v. *Jenners* 10 Ind. 76), when he says: "Under our former Constitution we had two systems of common schools, the general and the local (the local predominating), and the local had broken down the general, and neither had flourished. This was an evil distinctively in view of the convention that framed the new Constitution, and it was determined that the two systems should no longer co-exist; that the general system should continue, strenghtened by additional aids, and that the counteracting local system should go out of existence—should cease."

THE DIFFICULTIES IT HAD TO OVERCOME.

Thus, after the adoption of the Constitution of 1852, there was a strong antagonism against the new system, and the courts after long and many delays decided against the prevalent idea, that local systems were superior to the general system, as unconstitutional. The Civil War came, and the theory "that all men are created equal" became a fact—a great advance toward political equality—while

the advance toward social equality was equally great, as shown by the general and very liberal school law of 1865 that was enacted, and which, with a few changes, is still the law whose workings have attracted the attention of school men and legal minds of all our new States and many of the older States, particularly Michigan, whose State Superintendent of Public Instruction has recommended the abolition of the district system and the adoption of the township system instead.

No greater social problem has ever come to a people of a State for solution than that of Indiana in the perfecting of her unique common school-system; and no State has ever had more difficulties, inherent in the people, than those erroneous ideas of society, which took deep root, extending even to the third and fourth generations, and which died with the opposition to the school laws of 1865 and 1873.

LEGAL CONSTRUCTION OF THE SCHOOL LAW.

During the years 1854–65 many friends of education thought that the courts of Indiana were antagonistic to the common school system inaugurated by the acts of 1852 under the new Constitution, but a careful study of these laws will show that they were general laws in appearance only, but local in their application, and the courts interpreted the Constitution correctly, requiring all laws to be general, and unmistakably so.

One erroneous idea, that the local corporations owned the school property, prevailed for a long time after the adoption of the new Constitution, but in November, 1882, the Supreme Court in an opinion by Judge Niblack, took the contrary view. Thus we see clearly the school property is the property of the State, and that trustees of corporations are agents of the State in managing the same. Another decision of our Supreme Court, in an opinion written by Judge Elliott, and found in 102 Ind. p. 367, is one in every way worthy of exhaustive study. The court assumed the constitutionality of the law authorizing the common councils of cities to levy a school tax to be applied to the payment of teachers.

We see here how clearly the courts have established the fact that in our system of common schools the local conditions established by law are simply instrumentalities in the administration of the general or State system, and not distinct corporations.

One more very important decision upon this line of argument must be referred to, viz.: that found in 122 Indiana, page 462, and relating to the constitutionality of the text-book law of 1889. In the argument before the court it was held by the attorneys attacking the law that our school system began as a distinct local system, and that any law which abridged the rights of local self-government was unconstitutional and void.

The Supreme Court, Judge Elliott speaking in substance, said: "The control of schools and school affairs is vested in the law-making power of the State, upon the principle that schools are intrinsically matters of State concern, and not of a local nature. Both by the Constitution and the intrinsic nature of the duty and the power, the authority is exclusively legislative, and the matter over which it is to be exercised solely of State concern."

The court went to the fullest length and said: "These schools are owned and maintained by the State, and the State may prescribe the terms and conditions upon which pupils may enter them, except that it can not disregard the constitutional injunction that 'tuition shall be without charge, and equally open to all.'"

These opinions clearly show that they have been written in the light of history, and that these Judges speak from experience when discussing the constitutional provisions, knowing, as they do, the failure of a distinctively local system to become general in practice as was provided for by the Constitution of 1816.

It seems clear that our courts now stand favoring a strong centralized system of common schools, which gives a feeling of security not before enjoyed by the friends of education in our State.

The acts of 1865 and later years have so fully expressed the constitutional intent that there is little left for a place of attack by those who still feel opposed to the present system through this strong centralizing tendency.

IMPORTANT ENACTMENTS.

In 1824, the prolific mind of Benjamin Parke saw the need of teachers who were qualified to teach in our public schools, and a law was enacted then, requiring all applicants for positions in the common schools to pass an examination to prove their fitness for the work they desired to undertake.

At that time all other school laws were merely directory, but these relating to the examination of teachers were mandatory—the first instance of such a school law in the great West. By means of this crude, and in many respects, then imperfect law, the public mind has been constantly reminded of the importance of some kind of preparation for teachers.

Out of necessity has grown the county and township institutes, the State Normal School, the State Board of Education, the several teachers' associations and the Teachers' Reading Circle. In the development of this question, State Superintendent Harvey M. LaFollette, in his report of 1887–8 (p. 86), says: "There has been a steady and very satisfactory improvement in the technical qualifications, standard of general education, and in the culture and general intelligence of the common school teachers of the State. The invaluable influence of the work of our State Normal School, and of the philosophical study of pedagogical science in our State University, has done much to direct the course of study and reading, and to determine the ideal standards of professional culture throughout the State. The Indiana Teachers' Reading Circle has been a powerful influence in securing the cultivation of a general taste for the reading of good literature, and for the study of historical and practical educational methods, and has been of incalculable benefit to the school teachers of the State." The establishment of these several institutions had in view the betterment of the common schools. The State Normal School was established December 20, 1865. The county institutes followed March 6, 1865; township institutes, March 2, 1889; State Board of Education, August 24, 1875; State Teachers' Association (voluntary), November, 1854; Indiana Teachers' Reading Circle (voluntary), December, 1883.

The next important enactment, and the one still in force, was the one of 1883, requiring the enumeration of school children, and apportioning the school revenue according to this population. When the new Constitution was adopted this

principle of distribution had been found so practicable under local school governments that it was made the basis for the State.

On the 6th of March, 1865, an act defining the school funds in accordance with the decision of our Supreme Court, in which it held "that the income from the sale of the land in section numbered sixteen shall be exclusively for the use of the inhabitants thereof," and naming the annual levy of sixteen cents on the hundred dollars' valuation and fifty cents poll to be denominated a State school revenue and apportioned as other revenues are apportioned.

This act did not give an equal amount of revenue to each school corporation of the State, owing to great inequalities in the Congressional Township funds held by the several counties. This was removed by the act of March 11, 1873.

A peculiar application of this law is found in Vanderburgh County, where the income of the Congressional Township fund is greater per capita than the per capita of the county, so the inhabitants of this Congressional Township have received none of the State's common school revenues for years, but their income from their Congressional fund is sufficient to give them a ten months' term of school in the year, and to pay good salaries as well. This is the only instance of the kind in the State, and this is owing to the fact that the land has never been sold, advancing in price rapidly on account of its location.

THE STATE BOARD OF EDUCATION.

The State Board of Education, a board of professional educators, has been one of the most valuable agents in our educational progress. The board, as first constituted in 1852, consisted of State officers. In 1855 the Attorney-General was made a member and legal adviser, but this board exerted no appreciable influence on educational affairs until 1865, when its membership was made largely professional, consisting of the Governor, Superintendent of Public Instruction, the Presidents of the State University, the State Normal School and the Superintendents of the largest three city schools in the State. In 1875 the President of Purdue University was added. The large discretionary powers given this board by statute make it one of the most potent agents in our educational system. The duties of this board have been fully set forth in another part of this paper. The County Superintendent is required by law to carry out the orders and instructions of this board.

COUNTY MANAGEMENT OF SCHOOLS.

In June, 1873, the present system of county management of schools in Indiana came into existence. It was not an accident of random legislation, but the legitimate and natural result of circumstances—the proper answer to a universal and popular demand. Our State had provided liberally for the establishment and maintenance of public schools, so far as money alone would accomplish the result. There was in our statutes a general provision for a system of public schools, but the system, so far as one had been evolved, lacked in several particulars the elements and conditions necessary to growth, vigor and effectiveness. So the new law sought to gather up the fragments and to co-ordinate them into as many organs, giving them certain functions to perform, and the various parts prescribed powers and duties. The county organization is so arranged that its utility depends upon the individual work of its members. The responsibility of

setting in motion and rendering effective these implements was placed in the hands of a County Superintendent. The crisis in the educational affairs of the State had been reached. Further progress would depend upon the work of this officer. The powers and duties conferred upon him, although not very specific, were not guessed at, but were based upon an experience which had witnessed the defects and abuses of the old order of things and had shown the necessity for their elimination. Trustees had made serious mistakes in the building of school houses, in the purchase of apparatus and in the management of their finances, and must, therefore, have a helper and counselor; public officers, prompted by avarice, had withheld funds due the public for school purposes, or had diverted them from their proper channel. Somebody must correct this evil and secure the sacred funds. An army of teachers was at work, costing the State two millions of dollars a year, without any one whose business it was to look after the progress of their work, the sanitary condition of the schools, methods of teaching and discipline, etc., so that improvements of a practical nature might be made, all proving conclusively that there must be a supervision of this work, or at least an inspection of the same.

With these duties before him, the County Superintendent began work twenty years ago. Compare the organization and work of the county boards of to-day with that of the primitive ones. Through committees especially qualified for the work assigned them we have improved the character of our school buildings, and instead of erecting buildings without any conveniences, we have been rapidly supplying the places of the old frame and log houses with substantial brick ones, adapted in every respect to the needs of a school, as well as ornamental to the neighborhood, because of the elegant design. In the supply of furniture and apparatus great advance has been made. The absolute necessity for these auxiliaries had long been recognized, but a systematic and economic method of selection and purchase, and of utilizing them in the schools, remained for us to consummate.

The progress in another direction has been even greater. Out of the statutory edict, "He shall visit the schools," has grown a system of supervision that has never been equaled in extent and thoroughness and in beneficial results. By the Superintendent's visitations and personal observations of the work in progress in the school rooms, evils growing out of defective teaching and management have, to a great extent, been eliminated. In the work of organizing the unorganized schools, the idea of uniformity in classification had its birth.

Under the stimulus of our system of gradation and graduation our schools have progressed from a mechanical, listless, careless, irregular manner of working, that never accomplished any definite results, to that prompt, energetic, business-like method of taking up a task or line of work, and fully completing the same: The county superintendency has run the gauntlet of ten successive Legislatures successfully, through its strong appeal to the people as to its nature, purposes and utility, convincing them of its absolute necessity in the school administration.

THE TEXT-BOOK QUESTION.

State text-books—the first experiment in the West is found in Indiana. In November, 1853, the State Board of Education adopted, according to law, a series of text-books for use in the common schools of the State.

The recommendations of the State Board were for the purpose of encouraging uniformity. In the records of this body (1857) we find the following concerning these recommendations: "Time has exhibited the wisdom of our choice. In no State of the Union have efforts for the introduction of a uniform series of text-books for schools been so successful as in Indiana, of which we may well feel proud."

Local school officers who had the selection of the books were only too glad to find some guide in making their adoptions for townships, and in a large per cent. of the school corporations we find the series recommended by the State Board of Education very generally used in the State from 1853 to 1865. Text-books on the common school branches had so rapidly multiplied that local officers felt competent to select suitable books without the aid of the State Board of Education. The Legislature, in the session of 1865, relieved the Board of this responsibility, and placed the authority of this selection into the hands of the Township Trustees, where it remained till 1873. At the time of the organization of our county system the selection of text-books for the use of schools rested with the County Board of Education. Cities were exempt from the provisions of this act, but incorporated towns were subject to its provision the same as townships. This law remained in force sixteen years.

STATE TEXT-BOOKS.

In 1889 the General Assembly believed that school books should be furnished more cheaply, and accordingly a maximum price was fixed for the fifteen books provided for. The State Board of Education was to act as a Board of Text-book Commissioners for the State and to contract with the publishers, or authors, or compilers of books, to be bought outright, or published by the Commission. The law encountered bitter opposition, but the Supreme Court held it to be both constitutional and mandatory.

A full series of common school text-books has been adopted under this, and a contract entered into between the Indiana Board of Text-book Commissioners and the publishers for a period of five years from the date of adoption. Requisitions are made by the local school officers for books to the County Superintendent, who in turn makes them upon the Superintendent of Public Instruction, who again forwards them to the publishers. Reports of sales are made quarterly by the local school officers to the County Superintendent, who again reports to the publishers. Patrons of the public or private schools obtain these books from their respective local school officers upon the payment of the following prices in cash:

Spellers, 10 cents; first readers, 10 cents; second readers, 15 cents; third readers, 25 cents; fourth readers, 30 cents; fifth readers, 40 cents; complete arithmetic, 45 cents; elementary arithmetic, 35 cents; complete geography, 75 cents; elementary geography, 20 cents; complete English grammar, 40 cents; elementary English grammar, 25 cents; complete physiology, 60 cents; elementary physiology, 30 cents; history of the United States, 65 cents; copy-books, 5 cents each.

PRESENT TENDENCIES.

The tendency of our present school system is worthy of careful study. Looking at the school laws of Indiana, reinforced by the rules and regulations of County Boards of Education, and School Boards of cities and incorporated towns, which our Supreme Court has decided may be enforced, we see an ideal system with the power of the State behind it. Is the system doing all it should for the development of the child? Rosenkrantz says "That education is the means by which man seeks to realize in man his possibilities—to develop the possibilities of the race in the individual." Again, he says "That education is the emancipation of the youth." To my mind a system of popular education should be worked out in harmony with the spirit of the above quotations.

The possibility of raising the standard of instruction, at present, lies chiefly with the teacher, and in order to do the most for the children he must be guided by intelligent supervision; or, to state it differently, he should be encouraged by the Superintendent to be himself in the presentation of his subject matter to his pupils, and hold the pupils to the work in such a way as to make each one feel through such effort a strength that he has acquired by the proper exercise of his own faculties. We believe, that while there is much in the administration of school systems that falls short of what we would have it, yet we have a large army of faithful, conscientious teachers and superintendents striving to impress upon the minds of their fellows the fact that whatever will make a man a better man will make him a better teacher.

The various departments of our school system have taken such a stride forward during the past few years that all friends of education should be greatly encouraged. The very rapid growth is due largely to the increased attendance in our high schools, normals and colleges; to the careful study of the *professional* work as outlined and studied in the courses of study, township and county institutes and associations, and to the teachers' and young people's reading circles. The schools are more fully meeting the needs of the children now than ever before. Our system is ideal, embracing as it does the three great divisions, viz.: Primary education, represented by the country and grade schools; secondary education, represented by the high schools, and higher education, represented by the universities and colleges. The schools for the primary and secondary education of the youth of the State are constantly growing in efficiency, and are thereby making a broader and more solid foundation for the higher education. The university and colleges are in turn making more efficient the teaching force of our secondary schools, while the State Normal School is being felt more and more each year in supplying professionally trained teachers for the primary schools. Each supplements the other, and by means of all the schools will finally reach the ideal as set forth in the system.

The public standards of morality and virtue, of industry and patriotism, have been elevated through the influence of the common schools, and through the unselfish devotion of an army of teachers we expect to see the word Hoosier, so long a synonym for verdancy and a low state of civilization, stand for all that is best in good citizenship.

LEGAL DUTIES OF SCHOOL OFFICIALS.

CONSTITUTIONAL PROVISIONS.

ARTICLE VIII.

EDUCATION.

[In force November 1, 1851.]

1. Knowledge and learning generally diffused throughout a community being essential to the preservation of a free government, it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific and agricultural improvement, and to provide by law for a general and uniform system of common schools, wherein tuition shall be without charge and equally open to all.

2. The Common School Fund shall consist of the Congressional Township Fund, and the lands belonging thereto;

The Surplus Revenue Fund;

The Saline Fund, and the lands belonging thereto;

The Bank Tax Fund, and the fund arising from the one hundred and fourteenth section of the Charter of the State Bank of Indiana;

The fund to be derived from the sale of county seminaries, and the moneys and property heretofore held for such seminaries; from the fines assesssed for breaches of the penal laws of the State, and from all forfeitures which may accrue;

All lands and other estate which shall escheat to the State for want of heirs or kindred entitled to the inheritance;

All lands that have been or may hereafter be granted to the State when no special purpose is expressed in the grant, and the proceeds of the sales thereof, including the proceeds of the sales of the swamp lands granted to the State of Indiana by the act of Congress of the twenty-eighth of September, one thousand eight hundred and fifty, after deducting the expense of selecting and draining the same;

Taxes on the property of corporations that may be assessed by the General Assembly for Common School purposes.

3. The principal of the Common School Fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of Common Schools, and to no other purpose whatever.

4. The General Assembly shall invest, in some safe and profitable manner, all such portions of the Common School Fund as have not heretofore been entrusted to the several counties, and shall make provision, by law, for the distribution among the several counties of the interest thereof.

5. If any county shall fail to demand its proportion of such interest, for Common School purposes, the same shall be reinvested for the benefit of such county.

6. The several counties shall be held liable for the preservation of so much of said fund as may be entrusted to them, and for the payment of the annual interest thereon.

7. All trust funds held by the State shall remain inviolate, and be faithfully and exclusively applied to the purposes for which the trust was created.

8. The General Assembly shall provide for the election, by the vote of the State, of a State Superintendent of Public Instruction, who shall hold his office for two years, and whose duties and compensation shall be prescribed by law.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

There shall be elected by the qualified voters of the State, at a general election, a State Superintendent of Public Instruction, who shall hold his office for two years.

Commencement of Term—Oath. His office term shall commence on the fifteenth day of March succeeding his election. He shall take and subscribe the oath prescribed by law, which proceeding shall in all things conform to the law relative to the oaths of public officers.

Duties. The Superintendent shall be charged with the administration of the system of public instruction and a general superintendence of the business relating to the common schools of the State, and of the school funds and school revenues set apart and appropriated for their support. He shall render an opinion, in writing, to any school officer asking the same, touching the administration or construction of the school law.

Report to Governor. In the month of January in each year in which there is no regular session of the General Assembly, he shall make a brief report, in writing, to the Governor, indicating, in general terms, the enumeration of the children of the State for common school purposes, the additions to the permanent school fund within the year, the amount of school revenue collected within the year, and the amounts proportioned and distributed to the schools.

Report to General Assembly. At each regular session of the General Assembly, on or before the fifteenth day of January, said Superintendent shall present a biennial report of his administration of the system of public instruction, in which he shall furnish a brief exhibit—

First. Of his labors, the results of his experience and observation as to the operation of said system, and suggest the remedy for observed imperfections.

Second. Of the amount of the permanent school funds, and their general condition as to safety of manner of investment; the amount of revenue annually derived therefrom, and from other sources; estimates for the following two years, and the estimated value of all other property set apart or appropriated for school purposes.

Third. Of such plans as he may have matured for the better organization of the schools, and for the increase, safe investment, and better preservation and management of the permanent school funds, and for the increase and more economical expenditure of the revenue for tuition.

Fourth. He shall present a comparison of the results of the year then closing with those of the year next preceding, and, if deemed expedient, of years preceding that, so as to indicate the progress made in the business of public instruction.

Fifth. He shall furnish such other information relative to the system of public instruction – the schools, their permanent funds, annual revenues, etc.—as he may think to be of interest to the General Assembly.

He shall append to his report statistical tables, compiled from the materials transmitted to his office by the proper officers, with proper summaries, averages and totals appended thereto. He shall append a statement of the semi-annual collections of school revenue, and his apportionment thereof; and when he deems it of sufficient interest to do so, he shall append extracts from the correspondence of school officers, tending to show either the salutary or defective operation of the system or of any of its parts; and shall cause ten thousand copies to be printed and distributed to the several counties of the State.

Duties. He shall visit each county in the State at least once during his term of office, and examine the Auditor's books and records relative to the school funds and revenues, with a view to ascertain the amount and the safety and preservation of said funds and revenues; and, for that purpose, he shall have access to, and full power to require for inspection the use of the books and papers of the Auditor's office. Whenever he may discover that any of the school funds are unsafely invested and unproductive of school revenue, or that any of the school revenues have been diverted from their proper objects, he shall report the same to the General Assembly. He shall meet with such school officers as may attend his appointment, counseling with the teachers, and lecturing upon topics calculated to subserve the interests of popular education.

Traveling expenses. He shall receive, for traveling and other expenses while traveling on the business of the department, a sum not exceeding six hundred dollars per annum; and an appropriation of that amount is hereby made for that purpose, annually.

Supervision of school funds. He shall exercise such supervision over the school funds and revenues as may be necessary to ascertain their safety, and secure their preservation and application to the proper object; and cause to be instituted, in the name of the State of Indiana, for the use of the proper fund or revenue, all suits necessary for the recovery of any portion of said funds or revenues. It is hereby made the duty of the proper Circuit Prosecuting Attorney to prosecute all such suits at the instance of the Superintendent, and without charge against said funds or revenue.

May require reports. He may require of the County Auditors, County Superintendents, County Treasurers, Trustees, Clerks and Treasurers, copies of all reports required to be made by them, and all such other information in relation to the duties of their respective offices, so far as they relate to the condition of the school funds, revenues and property of the common schools and the condition and management of such schools, as he may deem important.

Blanks and forms. He may prepare, and transmit to the proper officers, suitable forms and regulations for making all reports, and the necessary blanks

therefor, and all necessary instructions for the better organization and government of common schools, and conducting all necessary proceedings under this act.

Forms of book-keeping. Forms and modes of book-keeping shall, from time to time, be prescribed for County Auditors and County Treasurers by the State Superintendent of Public Instruction.

Shall publish school laws. He shall cause as many copies of the acts of the General Assembly in relation to the common schools or the school funds, with necessary forms, instructions and regulations, to be from time to time printed, and distributed among the school townships, as he shall deem the public good requires.

Journals, etc., to libraries. He shall supply each common school library with the Legislative and Documentary Journals, and the acts of each session of the General Assembly, and his own annual reports. At the expiration of his term of office, he shall deliver to his successor possession of the office and all books, records, documents, papers and other articles pertaining or belonging to his office.

STATE BOARD OF EDUCATION.

The Governor of the State, the State Superintendent of Public Instruction, the President of the State University, the President of Purdue University, the President of the State Normal School, and Superintendents of Common Schools of the three largest cities in the State, shall constitute a Board to be denominated the Indiana State Board of Education. The size of the cities shall, for this purpose, be determined by the enumeration of children for school purposes, annually reported by County Superintendents to the Superintendent of Public Instruction. The Superintendent of Public Instruction shall, *ex officio*, be President of the Board; and in his absence the members present shall elect a President *pro tempore*. The Board shall elect one of its members Secretary and Treasurer, who shall have the custody of its records, papers and effects, and shall keep minutes of its proceedings: *Provided*, That such records, papers, effects and minutes shall be kept at the office of the Superintendent, and shall be open for his inspection. The said Board shall meet, upon the call of the President or a majority of its members, at such place in the State as may be designated in the call; and shall devise, adopt and procure a seal, on the face of which shall be the words, "Indiana State Board of Education," and such other device or motto as the Board may direct—an impression and written description of which shall be recorded on the minutes of the Board and filed in the office of the Secretary of State; which seal shall be used for the authentication of the acts of the Board and the important acts of the Superintendent of Public Instruction.

Duties and powers. Said Board, at its meeting, shall perform such duties as are prescribed by law, and may make and adopt such rules, by-laws and regulations as may be necessary for its own government, and for the complete carrying into effect the provisions of the next section of this act, and not in conflict with the laws of the State; and shall take cognizance of such questions as may arise in the practical administration of the school system not otherwise provided for, and duly consider, discuss and determine the same.

Traffic in questions. Whosoever shall sell, barter, or give away to applicants for license, or to any other person, the questions prepared by the State

Board of Education, to be used by County Superintendents in the examination of teachers, or in any way dispose of said questions contrary to the rules prescribed by said State Board of Education, shall be deemed guilty of a misdemeanor; and on conviction shall be fined in any sum not less than ten, nor more than two hundred dollars.

STATE CERTIFICATES. Said Board may grant State certificates of qualification to such teachers as may, upon a thorough and critical examination, be found to possess eminent scholarship and professional ability, and shall furnish satisfactory evidence of good moral character. They shall hold stated meetings, at which they shall examine all applicants, and those found to possess the qualifications herein above named shall receive such certificate, signed by the President of the Board, and impressed with the seal thereof; and the said certificate shall entitle the holder to teach in any of the schools of the State without further examination, and shall also be valid during the lifetime of said holder, unless revoked by said Board. Each applicant for examination shall, on making application, pay to the Treasurer of the Board five dollars as a fee.

PAY AND MILEAGE OF BOARD. The members of said Board, other than the Governor and State Superintendent of Public Instruction, shall be entitled to receive for their services, while actually engaged in the duties of their office, five dollars per day and five cents per mile necessarily traveled while so engaged; which amount shall be certified by the Board to the Auditor of the State, who shall draw his warrant therefor, payable out of the general fund, which sum shall be reimbursed to the general fund by the Treasurer of the Board paying into it that amount out of the money received by him as fees for certificates; and if there be any residue of money received as such fees, it shall be expended by the Superintendent of Public Instruction in the purchase of suitable books for an office library. Said Board shall be allowed the necessary expenses incurred in the discharge of the duties required of the same, for clerk hire, postage, etc., which expenses shall be paid as the expenses of the members of the Board are paid.

COUNTY SUPERINTENDENT. The Township Trustees of the several townships of each county shall meet at the office of the County Auditor of such county, on the first Monday of June, 1873, and biennially thereafter, and appoint a County Superintendent, who shall be a citizen of such county, whose official term shall expire as soon as his successor is appointed and qualified; who, before entering upon the duties of his office, shall take and subscribe an oath that he will faithfully perform his duties as such officer according to law, which oath shall be filed with the County Auditor. He shall execute a bond, with freehold surety to the approval of the County Auditor, payable to the State of Indiana, in the penal sum of one thousand dollars, conditioned that he will faithfully discharge his duties according to law, and faithfully account for and pay over to the proper persons all moneys which may come into his hands by reason of such office; and, thereupon, the County Auditor shall report the name and postoffice address of the person appointed to the Superintendent of Public Instruction: *Provided, however*, That the Board of County Commissioners shall have power to dismiss any County Superintendent for immorality, incompetency or general neglect of duty, or for acting as agent for the sale of any text-book, school furniture or maps; but no County Superintendent shall be dismissed without giving him written notice, under the hand and seal of the Auditor, ten days before the first day of the term of the Court of Commissioners at which the cause is to be heard; and the said

notice shall state the charges preferred against the Superintendent, the character of the instrument in which they are preferred (whether a petition, complaint or other writing), and the names of those preferring the same. The duties required of the School Examiner by any act shall hereafter be performed by the County Superintendent. Whenever a vacancy shall occur in the office of County Superintendent, by death, resignation or removal, the said Trustees, on the notice of the County Auditor, shall assemble at the office of such Auditor, and fill such vacancy for the unexpired portion of the term, in the manner herein provided; and the County Auditor shall be clerk of such election in all cases, and give the casting vote in case of a tie, and shall keep the record of such election in a book to be kept for that purpose.

DUTIES OF THE COUNTY BOARD OF EDUCATION.

The Board shall meet semi-annually at the office of the County Superintendent on the first days of May and September (unless the said days be Sunday, and if so on the day following), a majority of whom shall constitute a quorum.

RULES CONCERNING THE COUNTY BOARD.

The Board having met on the first day of September, they have a right to adjourn from day to day until the business before them is completed. But if they adjourn *sine die* they have no right to meet any more until the first day in May.

In the absence of the County Superintendent the Board may appoint one of its members President *pro tem.* No action can be taken by the Board unless a majority of all the members are present. Some questions require a majority vote, and others a unanimous vote of all members of the Board.

It is very important that school officers and County Boards should make a careful record of their proceedings. If a Board takes any legal action, and fails to record it, and makes an incorrect record, the record can be amended by order of the Board at a subsequent meeting.

The County Board of Trustees have the right to make such rules and regulations, according to law, as will tend to promote the good of the public schools; and it is the duty of the teachers to carry out such rules in good faith.

The County Board of Education has no power to make contracts; but all or any number of the Trustees may join together in purchasing or contracting for supplies; and such action may often be advisable. It is not, however, the action of the Board.

The graded schools of incorporated towns are under the same control of the County Board as any of the schools of the township. Cities alone are excepted.

Each Trustee should give full force and effect to the Rules, Regulations and Course of Study adopted by the County Board, by adopting them himself and by requiring his teachers' contracts to conform to them, so far as they may be in accordance with the law.

The Rules and Regulations adopted by County Boards and by Trustees should be of a very general character, applicable to all schools alike, and not such as would trespass upon the rights of the teacher or embarrass him in his work.

DUTIES OF THE COUNTY SUPERINTENDENT.

1. The County Superintendent shall have the general superintendence of the schools of the county.

2. He shall attend each Township Institute at least once in each year, when he shall preside at the same and conduct its exercises.

3. He shall visit each school of the county at least once a year, for the purpose of increasing its usefulness and elevating, as far as practicable, the poorest schools to the best.

4. He shall encourage Teachers' Institutes and Associations, and shall labor in every practicable way to elevate the standard of teaching and to improve the condition of the schools of the county.

5. The County Superintendent shall hold at least one public examination in each month in the year in his county; and in no case shall he grant a license upon a private examination; and all licenses granted by him shall be limited to the county in which they are granted.

6. The County Superintendent shall have power to revoke licenses granted by him or his predecessors, for incompetency, immorality, cruelty, or general neglect of the business of the school; and the revocation of the license of any teacher shall terminate his employment in the school which such teacher may have been employed to teach.

7. When any Trustee shall neglect to file with the County Superintendent an enumeration of the children of the township, town or city, the County Superintendent shall, immediately after the first day of May in each year, employ a competent person to take the same, and allow a reasonable compensation for such service, payable from the special school revenue of the township.

8. The County Superintendents are required to hold, or cause to be held, Teachers' Institutes at least once a year in their respective counties.

DUTIES OF TRUSTEES.

1. The Trustees shall take charge of the educational affairs of their respective townships, towns and cities.

2. They shall employ teachers, establish and locate, conveniently, a sufficient number of schools for the education of the children therein; and build and otherwise provide suitable houses, furniture, apparatus, and other articles and educational appliances necessary for the thorough organization and efficient management of said schools.

3. They may also establish graded schools, or such modifications of them as may be practicable; and provide for admitting into the higher departments of the graded schools of their townships such pupils as are sufficiently advanced for such admission.

4. They shall keep accurate accounts of the receipts and expenditures of such revenues.

5. They shall keep a record of all their proceedings relative to the schools, including all orders and allowances, and accounts of all receipts and expenditures, distinguishing between the State school revenue and the special school revenue.

6. They may levy a special township tax for building and furnishing school houses, etc.

7. They may levy a special tax for tuition purposes.

8. They shall provide for the teaching of the German language as a branch of study when the parents or guardians of twenty-five or more pupils of a school demand it.

9. They shall cause the doors of the school houses to swing outward.

10. They may require special examination of teachers in the special branches authorized by school meetings.

11. They are empowered to hear and determine appeals from the Directors on the exclusion of pupils from school.

DUTIES OF DIRECTORS.

1. The Director of each school shall preside at all meetings of the inhabitants connected therewith, and record their proceedings.

2. He shall also act as the organ of communication between the inhabitants and the Township Trustee.

3. He shall take charge of the school house and property belonging thereto, under the general order and concurrence of the Trustee, and preserve the same; and

4. Shall make all temporary repairs of the school house, furniture and fixtures, and provide the necessary fuel for the school, reporting the cost thereof to the Trustee for payment.

5. He shall visit and inspect the school from time to time, and, when necessary, may exclude any refractory pupil therefrom; but the exclusion of any pupil from the school for disorderly conduct shall not extend beyond the current term, and may be, in the discretion of the Director, for a shorter period. The decision of the Director in excluding a pupil shall be subject to appeal to the Township Trustee, whose decision shall be final.

DUTIES OF TEACHERS.

1. It is the duty of the teacher to carry out in good faith the rules and regulations of the County Board and Trustees.

2. The teacher should exercise care over the school property in his charge.

3. A teacher may punish a pupil with kindness, prudence and propriety, for disobedience of his proper commands.

4. Teachers should be very careful how they punish pupils for what they do or say away from the school premises, and should never undertake to punish for such behavior, unless it seems necessary for the preservation of discipline in the school.

5. Except on account of sickness, teachers are required to be present at each monthly township institute.

6. Teachers must perform such reasonable duties as are assigned to them at such institutes.

7. The law requires the teacher to make a report to the Trustee at the end of the term for which said teacher shall have been employed.

DUTIES OF PARENTS AND GUARDIANS.

1. All taxpayers who are parents, guardians or heads of families, except married women and minors, are entitled to vote in school meetings in the district to which they are attached.

2. A school meeting may be called at any time by the Director or any five voters, five days' notice being given by posting in five public places in the vicinity.

3. School meetings have power to determine what branches shall be taught in addition to those required by law. They have power to fill vacancies in the office of Director; to direct such repairs as they deem necessary in their school house and to petition the Township Trustee for the removal of their school house to a more convenient location, for the erection of a new one, or the sale of an old one and the lands belonging thereto, and upon any other subject connected therewith. When such meetings shall petition the Trustee in regard to repairs, removal, or erection of a school house, they shall also furnish to such Trustee an estimate of the probable cost of such repairs, removal or erection.

4. Patrons are by law entitled to protest against the employment of any teacher: but they are not empowered to select teachers. A majority of those entitled to vote at school meetings may prevent the employment of any teacher whom they do not wish to have employed by voting to that effect at any regular meeting.

5. A majority of such voters may, by petitioning the Township Trustee, secure the dismissal of the teacher, upon due notice and for good cause shown.

6. When a pupil is excluded from a school by a Director, a parent, or guardian, or the pupil himself, may appeal from the decision of the Director to the Trustee, whose decision is final.

7. Parents, guardians or others are prohibited by law from upbraiding a teacher in the presence of the school, from any cause, fancied or real.

8. When a majority of the persons entitled to vote at school meetings desire that a private school be taught in a school house not occupied by public school, or desire the use of the school house for other purposes, and make application to the Trustee, it is the duty of the Trustee to permit the use of the building for the private school or to authorize the Director to permit its use for the other purposes.

CALENDAR SHOWING WHEN THE DUTIES OF SCHOOL OFFICERS MUST BE PERFORMED.

January, Last Monday.—Distribution of the School Revenue for Tuition to School Corporations, made by County Auditor, and reported to State Superintendent.

April 10.—Enumeration of School Children by Trustees, to be completed before the first of May.

May 1.—Meeting of County Board of Education—Trustees' Reports of Enumeration and Transfers must be filed with the Superintendent.

May 15.—County Superintendent's Report of Enumeration is due to State Superintendent.

June, Third Monday.—Auditor's Semi-annual Report of School Revenue for Apportionment is due State Superintendent.

June 1.—County Superintendent Reports to County Auditor Basis of Apportionment, made from lists of enumeration and reports of transfers.

June, First Monday.—County Commissioners meet, receive Reports from Auditor and Treasurer, and report condition of School Funds to State Superintendent. Auditor at the same time reports Transfers of Congressional Township School Fund.

June, First Monday, Biennially.—Election of County Superintendent.

June, Early.—County Superintendent reports names of Teachers licensed to State Superintendent—Election of City and Town Trustees. They must give bonds and qualify within ten days. Auditor reports their names to State Superintendent.

July, Second Monday.—Distribution of School Revenue to School Corporations, made by County Auditor and reported to State Superintendent.

August 1.—Beginning of School Year.

August, First Monday.—Trustee's Statistical Report to County Superintendent. Financial Report to County Commissioners. Must file a copy of the report to Commissioners with County Superintendent within ten days.

September 1.—Meeting of County Board of Education—County Superintendent's Statistical and Written Reports to State Superintendent.

October, First Saturday.—Election of School Directors.

November.—General Election. Election of Township Trustees for four years.

December 25, or Earlier.—Auditor's Semi-annual Report of School Revenue for Apportionment and Annual Settlement-sheet of Interest, due to State Superintendent.

Last Saturday in Each Month.—Public Examination of Teachers.

SCHEDULE OF BLANKS ISSUED BY THE STATE SUPERINTENDENT.

To County Auditors, Forms 1, 4, 5, 7, 15, 16, 17, 21.
To County Superintendents, Forms 3, 8, 10, 12, 12 (a), 13, 18.
To County Commissioners, Form 6.
To Township Trustees, Forms 2, 9.
To City Superintendents, Form 11.

EXPLANATION OF FORMS.

Form 1. January distribution of school revenue.
Form 2. Enumeration of school children.
Form 3. Report of enumeration.
Form 4. Revenues for apportionment (June).
Form 5. July distribution of school revenue.
Form 6. Condition of funds held by counties.
Form 7. Names of school trustees of cities and towns.
Form 8. Names of teachers licensed.
Form 11. Application for High School Commissions.
Form 12. County Superintendent's statistical report.
Form 12 (a). County Superintendent's financial report.
Form 13. Names and report of private schools.
Form 15. Names of township trustees.
Form 16. Revenues for apportionment (December).
Form 17. Names and addresses of County Superintendents.
Form 18. Requests for examination questions.
Form 21. Special school revenue distributions.

CHAPTER I.

CONSTITUTIONAL PROVISIONS.

SEC.
1. Common schools.
2. Common school fund.
3. Principal, a perpetual fund.
4. Investment and distribution.
5. Reinvestment.
6. Counties—Liability.
7. Trust funds inviolate,
8. Superintendent of Public Instruction.

ARTICLE VIII.

[In force November 1, 1851.]

1. Common Schools. 1. Knowledge and learning generally diffused throughout a community being essential to the preservation of a free government, it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific and agricultural improvement, and to provide by law for a general and uniform system of common schools, wherein tuition shall be without charge and equally open to all. (R. S. 1881, § 182; R. S. 1894, § 182; R. S. 1897, § 182.)

1. SCHOOLS A STATE INSTITUTION. Under our former Constitution we had two systems of common schools, the general and local; but the local broke down the general system, and neither had flourished. This was an evil distinctly in the view of the convention which framed the new Constitution, and it was determined that the two systems should no longer co-exist; that the one general system should continue, strengthened by additional aids, and that the counteracting local systems should go out of existence. Common schools, as a whole, are made a State institution—a system co-extensive with the State, embracing within it every citizen, every foot of territory, and all the taxable property of the State.—City of Lafayette *v.* Jenners, 10 Ind. 76 and 77; Greencastle Tp. *v.* Black, 5 Ind. 557.

2. GENERAL. Our common school system must be general, that is, it must extend over and embrace every portion of the State.—Corey *v.* Carter, 48 Ind. 358.

3. UNIFORM. It must be uniform. This is secured when all the schools of the same grade have the same system of government and discipline, the same branches of learning taught, and the same qualifications for admission.—Corey *v.* Carter, 48 Ind. 358.

4. CLASSIFICATION. The schools must be equally open to all. But the Legislature may classify the pupils to be admitted, with reference to age, sex, advancement and branches of study to be pursued, and may designate to what schools and what school houses the different ages, sexes and degrees of proficiency shall be assigned.—Corey *v.* Carter, 48 Ind. 358.

5. Colored Pupils. To require the white and colored children to be taught separately, provision being made for the education of each in the same branches, according to age, capacity or advancement, with capable teachers, does not amount to a denial of equal privileges to either, or conflict with the open character of the system required by the Constitution.—Corey *v.* Carter, 48 Ind. 358.

6. Legislature does not Levy. The above section does not require the Legislature to levy all school taxes nor prohibit it from providing by general law for the levying of school taxes by the local school authorities.—Robinson *v.* Schenck, 102 Ind. 307.

7. Legislative Power. The Legislature is given full power under this section to provide for a general and uniform system of common schools, and such power necessarily resides in it, although it be not given by the Constitution. It may prescribe the course of study and the system of instruction that shall be pursued and adopted, as well as the *books* which shall be used.—State *v.* Haworth, 122 Ind. 462.

2. Common School Fund. 2. The Common School Fund shall consist of the Congressional Township Fund and the lands belonging thereto;

The Surplus Revenue Fund;

The Saline Fund, and the lands belonging thereto;

The Bank Tax Fund, and the fund arising from the one hundred and fourteenth section of the Charter of the State Bank of Indiana;

The fund to be derived from the sale of county seminaries, and the moneys and property heretofore held for such seminaries; for the fines assessed for breaches of the penal laws of the State, and from all forfeitures which may accrue;

All lands and other estate which shall escheat to the State for want of heirs or kindred entitled to the inheritance;

All lands that have been or may hereafter be granted to the State when no special purpose is expressed in the grant, and the proceeds of the sales thereof, including the proceeds of the sales of the swamp lands granted to the State of Indiana by the act of Congress, of the twenty-eighth day of September, one thousand eight hundred and fifty, after deducting the expense of selecting and draining the same;

Taxes on the property of corporations that may be assessed by the General Assembly for common school purposes. (R. S. 1881, § 183; R. S. 1894, § 183; R. S. 1897, § 183.)

1. Consolidation Void. In so far as this section attempts to consolidate the Congressional Township Fund with other funds, it is inoperative. The provisions of the School Law of 1852, which were designed in pursuance of this section to

effect such consolidation, are in contravention of the subsequent section 7, and of the congressional grant to the townships.—State *v.* Springfield Tp., 6 Ind. 83; Davis *v.* Indiana, 94 U. S. 792.

2. SALE OF SEMINARIES VOID. The provisions authorizing the sale of County Seminaries is void, impairing the obligation of contracts.—Edwards *v.* Jagers, 19 Ind. 407. Compare Heaston *v.* The Board, 20 Ind. 398.

3. PENALTIES. The fact that a penalty under R. S. 1894, § 8465, for making a *false tax list*, is to be paid into the County Treasury, for the use of the county, does not bring the statute into conflict with this section of the Constitution, for such penalty is not a fine in the sense of the word as there used, Burgh *v.* State, 108 Ind. 132. So the statute turning over certain fines assessed for immorality, to the *Home for Friendless Women*, is valid, sec. 6243, R. S. 1881; R. S. 1894, § 8346.—City of Indianapolis *v.* Indianapolis Home, 50 Ind. 215.

4. ESCHEATED REAL ESTATE. Under this section it is "the fund to be derived from the sale of escheated real estate," and not such real estate itself, which becomes a part of the Common School Fund.—State *v.* Meyer, 63 Ind. 33.

5. ESTRAYS. Money arising from the sale of estrays and property adrift, belongs to the School Fund by virtue of the act of 1844, p. 86, and R. S. 1881, § 235; R. S. 1894, § 235; R. S. 1897, § 235.

6. See § 248 and notes.

3. Principal, a Perpetual Fund. 3. The principal of the Common School Fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of common schools and to no other purpose whatever. (R. S. 1881, § 184; R. S. 1894, § 184; R. S. 1897, § 184.)

1. DIVERSION. This "fund must be devoted to the support of the common schools, without the diversion from it of a penny for any other purpose whatever."—Board *v.* State, 120 Ind. 282.

2. AUTHORITY OF COURTS TO INVESTIGATE. The money due the School Fund can not, by any legislative contrivance, be kept out of it, nor can any legislative scheme be framed that will preclude the courts from ascertaining the facts. No official statement can preclude the proper authorities and erect a barrier between them and the way to a recovery of money which the Constitution imperatively ordains shall inviolably and without diminution be preserved for school purposes. A statute making the statement of the County Auditors as to the amount of school funds held in trust by their respective counties, when approved by the Superintendent of Public Instruction, "conclusive evidence of the facts therein contained," is unconstitutional.—Board *v.* State, 120 Ind. 282.

4. Investment and Distribution. 4. The General Assembly shall invest, in some safe and profitable manner, all such portions of the Common School Fund as have not heretofere been entrusted to the several counties, and shall make provision, by law, for the distribution among the several counties of the

interest thereof. (R. S. 1881, § 185; R. S. 1894, § 185; R. S. 1897, § 185.)

1. "INVEST" DEFINED. The word "invest" is construed as broad enough to cover loans made by counties, and that the fund may be entrusted to them for that purpose, but it does not restrict to that mode of investment.—Shoemaker *v.* Smith, 37 Ind. 122.

5. Reinvestment. 5. If any county shall fail to demand its proportion of such interest, for Common School purposes, the same shall be reinvested for the benefit of such county. (R. S. 1881, § 186; R. S. 1894, § 186; R. S. 1897, § 186.)

6. Counties—Liability. 6. The several counties shall be held liable for the preservation of so much of said fund as may be entrusted to them, and for the payment of the annual interest thereon. (R. S. 1881, § 187; R. S. 1894, § 187; R. S. 1897, § 187.)

1. RENTS. A county is liable for rents derived from unsold congressional township land.—Davis *v.* Board, 44 Ind. 38.

2. SUIT. An action may be sustained in the name of the State on the relation of the Board of County Commissioners to recover rent received by a Township Trustee for the lease of unsold school lands belonging to the sixteenth section, and not paid by such Trustee into the county treasury.—Davis *v.* Board, 44 Ind. 38; Davis *v.* Indiana, 94 U. S. (4 Otto) 792.

3. MONEY FOR THE RENT OF UNSOLD SCHOOL LANDS. Money derived from the rents of unsold school lands belonging to the sixteenth section is to be paid into the county treasury, to insure its just and equitable distribution to the inhabitants of the congressional township in which such section lies.—Davis *v.* Board, 44 Ind. 38.

4. POLICY OF THE LAW. It is the policy of the law that all school revenues are to be distributed to the beneficiaries thereof through and from the county treasury to the proper officers of the various school corporations—cities, towns and civil townships.—Davis *v.* Board, 44 Ind. 38.

7. Trust Funds inviolate. 7. All trust funds held by the State shall remain inviolate, and be faithfully and exclusively applied to the purposes for which the trust was created. (R. S. 1881, § 188; R. S. 1894, § 188; R. S. 1897, § 188.)

1. EXPENSE OF MANAGEMENT. The Constitution requires the counties to bear the expense of managing the School Fund; and if they pay out any part of the fund for such expense they are liable to make the loss good.—Board *v.* State, 103 Ind. 497; Vanarsdall *v.* State, 65 Ind. 176; State *v.* Board, 90 Ind. 359; Board *v.* State, 116 Ind. 329.

2. DIRECT TRUST—STATUTE OF LIMITATIONS INOPERATIVE. The county, in receiving and disbursing the School Fund, acts as the trustee of a direct trust, and

against such trust the defense of the statute of limitations can not be interposed.—Board *v.* State, 103 Ind. 497; Board *v.* State, 106 Ind. 270.

3. Settlement Between Commissioners and County Officer Does Not Conclude the State. A settlement between the Board of Commissioners and a County Auditor or other county officer does not conclude the State from maintaining an action to recover school funds unlawfully paid to an officer by the board.—Board *v.* State, 103 Ind. 497; Board *v.* State, 106 Ind. 270; Board *v.* State, 116 Ind. 329; Board *v.* State, 106 Ind. 531.

4. Duty of Commissioners—Fees—Counsel—Interest. It is the duty of the Board of Commissioners to prosecute an action against a Township Trustee who refuses to account for the income of land belonging to the Congressional Township Fund, and in the discharge of that duty it is proper for the Board to employ attorneys and pay reasonable fees for their services out of the proper funds; but such fees can not be paid out of the moneys recovered in such proceedings, as such moneys, under the compact between the United States and the State of Indiana, and under Section 3 of Article 8 of the State Constitution (Section 3 above), are inviolably appropriated to the inhabitants of the proper township for the use of the common schools, and for any deduction made therefrom for attorneys' fees or otherwise the county is liable, under Sections 6 and 7 of the article cited (Sections 6 and 7 above), with interest from the date of diversion. Attorneys' fees should be paid out of the general county fund.—Board *v.* State, 116 Ind. 329.

5. The Grant Was a Contract. The grant, by Congress, of the sixteenth section to the inhabitants of the Congressional townships, respectively, was a contract executed and incapable of revocation by the Legislature.—State *v.* Springfield Tp., 6 Ind. 83; Quick *v.* Whitewater Tp., 7 Ind. 570; Quick *v.* Springfield Tp., 7 Ind. 636; Springfield Tp. *v.* Quick, 22 How. 56. The School Law of 1855 was held valid.—Quick *v.* Springfield Tp., 7 Ind. 636.

8. Superintendent of Public Instruction. 8. The General Assembly shall provide for the election, by the voters of the State, of a State Superintendent of Public Instruction, who shall hold his office for two years, and whose duties and compensation shall be prescribed by law. (R. S. 1881, § 189; R. S. 1894, § 189; R. S. 1897, § 189.)

CHAPTER II.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

SEC.
9. Superintendent.
10. Commencement of term—Oath.
11. Duties—Office—Clerks.
12. Report to Governor.
13. Report to General Assembly.
14. Duties.
15. Traveling expenses.
16. Supervision of school funds.
17. May require reports.
18. Blanks and forms.
19. Forms of bookkeeping.
20. Shall publish School Law.
21. Journals, etc., to Libraries.

[1865, p. 3. Approved and in force March 6, 1865.]

9. Superintendent—Election. 119. There shall be elected by the qualified voters of the State, at a general election, a State Superintendent of Public Instruction, who shall hold his office for two years. (R. S. 1881, § 4406; R. S. 1894, § 5835; R. S. 1897, § 5997.)

1. SALARY. The salary of the State Superintendent of Public Instruction is $2,500 per annum.—Acts 1895, p. 320; R. S. 1897, § 6715.

10. Commencement of term—Oath. 120. His official term shall commence on the fifteenth day of March succeeding his election. He shall take and subscribe the oath prescribed by law; which proceeding shall in all things conform to the law relative to the oaths of public officers. (R. S. 1881, § 4407; R. S. 1894, § 5836; R. S. 1897, § 5998.)

11. Duties—Office—Clerks. 121. The Superintendent shall be charged with the administration of the system of public instruction and a general superintendence of the business relating to the common schools of the State, and of the school funds and school revenues set apart and appropriated for their support. A suitable office shall be furnished for him at the seat of government, in which the books, papers and effects relating to the business of said office shall be kept; and there he shall give reasonable attendance to the business and duties of the office. He shall render an opinion, in writing, to any school officer asking the same, touching the administration or construction of the school law. He is hereby authorized to employ two clerks for said office, to be paid as the clerks of the office of

the Auditor of State are paid; and the sum of eighteen hundred dollars is hereby annually appropriated for that purpose. (R. S. 1881, § 4408; R. S. 1894, § 5837; R. S. 1897, § 5999.)

1. Additional Clerk. The General Assembly, upon the passage of the school book law, provided for an additional clerk, which has been continued by subsequent Legislatures.

2. Opinions. He is not bound to give opinions except to school officers—that is county auditors, county treasurers and superintendents, township trustees, school directors, and school trustees of towns and cities. But the courtesy of Superintendents has established the custom of answering questions touching the construction and administration of the school laws for all who need such information.

2. His Opinions not a Defense. It has been decided that depositing funds in a solvent bank, by advice of State and county superintendents and county board, if loss result, is no defense to the trustee depositing.—Inglis *v.* State, 61 Ind. 212.

12. Report to Governor. 122. In the month of January in each year in which there is no regular session of the General Assembly, he shall make a brief report, in writing, to the Governor, indicating, in general terms, the enumeration of the children of the State for common school purposes, the additions to the permanent school fund within the year, the amount of school revenue collected within the year, and the amounts apportioned and distributed to the schools. (R. S. 1881, § 4409; R. S. 1894, § 5838; R. S. 1897, § 6101.)

13. Report to General Assembly. 123. At each regular session of the General Assembly, on or before the fifteenth day of January, said Superintendent shall present a biennial report of his administration of the system of public instruction, in which he shall furnish a brief exhibit—

First. Of his labors, the results of his experience and observation as to the operation of said system, and suggest the remedy for observed imperfections.

Second. Of the amount of the permanent school funds, and their general condition as to safety of manner of investment; the amount of revenue annually derived therefrom, and from other sources; estimates for the following two years; and the estimated value of all other property set apart or appropriated for school purposes.

Third. Of such plans as he may have matured for the better organization of the schools, and for the increase, safe invest-

ment, and better preservation and management of the permanent school funds, and for the increase and more economical expenditure of the revenue for tuition.

Fourth. He shall present a comparison of the results of the year then closing with those of the year next preceding, and, if deemed expedient, of years preceding that, so as to indicate the progress made in the business of public instruction.

Fifth. He shall furnish such other information relative to the system of public instruction—the schools, their permanent funds, annual revenues, etc., as he may think to be of interest to the General Assembly.

He shall append to said report statistical tables, compiled from the materials transmitted to his office by the proper officers, with proper summaries, averages and totals appended thereto. He shall append a statement of the semi-annual collections of school revenue, and his apportionment thereof; and, when he deems it of sufficient interest to do so, he shall append extracts from the correspondence of school officers, tending to show either the salutary or defective operation of the system or of any of its parts; and shall cause ten thousand copies to be printed and distributed to the several counties of the State. (R. S. 1881, § 4410; R. S. 1894, § 5839; R. S. 1897, § 6102.)

14. Duties. 124. He shall visit each county in the State at least once during his term of office, and examine the Auditor's books and records relative to the school funds and revenues, with a view to ascertain the amount and the safety and preservation of said funds and revenues; and for that purpose he shall have access to, and full power to require for inspection the use of the books and papers of the Auditor's office. Whenever he may discover that any of the school funds are unsafely invested and unproductive of school revenue, or that any of the school revenues have been diverted from their proper objects, he shall report the same to the General Assembly. He shall meet with such school officers as may attend his appointment, counseling with the teachers, and lecturing upon topics calculated to subserve the interests of popular education. (R. S. 1881, § 4411; R. S. 1894, § 5840; R. S. 1897, § 6103.)

15. Traveling expenses. 125. He shall receive, for traveling and other expenses while traveling on the business of the

department, a sum not exceeding six hundred dollars per annum; and an appropriation of that amount is hereby made for that purpose, annually. (R. S. 1881, § 4412; R. S. 1894, § 5841; R. S. 1897, § 6104.)

16. Supervision of school funds. 126. He shall exercise such supervision over the school funds and revenues as may be necessary to ascertain their safety, and secure their preservation and application to the proper object; and cause to be instituted in the name of the State of Indiana, for the use of the proper fund or revenue, all suits necessary for the recovery of any portion of said funds or revenues. It is hereby made the duty of the proper Circuit Prosecuting Attorney to prosecute all such suits at the instance of the Superintendent, and without charge against said funds or revenue. (R. S. 1881, § 4413; R. S. 1894, § 5842; R. S. 1897, § 6105.)

17. May require reports. 127. He may require of the County Auditors, County Superintendents, County Treasurers, Trustees, Clerks and Treasurers, copies of all reports required to be made by them, and all such other information in relation to the duties of their respective offices, so far as they relate to the condition of the school funds, revenues and property of the common schools and the condition and management of such schools, as he may deem important. (R. S. 1881, § 4414; R. S. 1894, § 5843; R. S. 1897, § 6106.)

18. Blanks and Forms. 128. He may prepare, and transmit to the proper officers, suitable forms and regulations for making all reports, and the necessary blanks therefor, and all necessary instructions for the better organization and government of common schools, and conducting all necessary proceedings under this act. (R. S. 1881, § 4415; R. S. 1894, § 5844; R. S. 1897, § 6107.)

19. Forms of bookkeeping. 102. Forms and modes of bookkeeping shall, from time to time, be prescribed for County Auditors and County Treasurers by the State Superintendent of Public Instruction. (R. S. 1881, § 4416; R. S. 1894, § 5845; R. S. 1897, § 6108.)

20. Shall publish school laws. 129. He shall cause as many copies of the acts of the General Assembly in relation to the common schools or the school funds, with necessary forms, instructions, and regulations, to be from time to time printed and distributed among the school townships as he shall deem the public good requires. (R. S. 1881, § 4417; R. S. 1894, § 5846; R. S. 1897, § 6109.)

21. Journals, etc., to libraries. 130. He shall supply each common school library with the Legislative and Documentary Journals, and the acts of each session of the General Assembly, and his own annual reports. At the expiration of his term of office he shall deliver to his successor possession of the office, and all books, records, documents, papers, and other articles pertaining or belonging to his office. (R. S. 1881, § 4418; R. S. 1894, § 5847; R. S. 1897, § 6110.)

CHAPTER III.

STATE BOARD OF EDUCATION.

Sec.	Sec.
22. State Board of Education.	24. State certificates.
23. Duties and powers.	25. Pay and mileage of Board.

[1875, p. 130. Approved February 25, 1875. In force August 24, 1875.]

22. State Board of Education. 153. The Governor of the State, the State Superintendent of Public Instruction, the President of the State University, the President of Purdue University, the President of the State Normal School, and Superintendents of common schools of the three largest cities in the State, shall constitute a board, to be denominated the Indiana State Board of Education. The size of the cities shall, for this purpose, be determined by the enumeration of children for school purposes, annually reported by County Superintendents to the Superintendent of Public Instruction. The Superintendent of Public Instruction shall, *ex officio*, be President of the Board; and in his absence the members present shall elect a President *pro tempore*. The Board shall elect one of its members Secretary and Treasurer, who shall have the custody of its

records, papers and effects, and shall keep minutes of its proceedings: *Provided*, That such records, papers, effects and minutes shall be kept at the office of the Superintendent, and shall be open for his inspection. The said Board shall meet upon the call of the President or a majority of its members, at such place in the State as may be designated in the call; and shall devise, adopt and procure a seal, on the face of which shall be the words, "Indiana State Board of Education," and such other device or motto as the Board may direct—an impression and written description of which shall be recorded on the minutes of the Board and filed in the office of the Secretary of State; which seal shall be used for the authentication of the acts of the Board and the important acts of the Superintendent of Public Instruction. (R. S. 1881, § 4420; R. S. 1894, § 5849; R. S. 1897, § 6112.)

1. The First Board. When first created in 1852 the Board consisted of the Superintendent of Public Instruction and the Governor, Secretary, Treasurer and Auditor of State. In 1855 the Attorney-General was added. It remained merely a board of State officers, but little interested in or conversant with educational affairs, and exerting no appreciable influence, till 1865, when the membership was constituted as at present, except the President of Purdue University, who was added in 1875. As a board of professional educators, independent of politics, it has been a valuable agent in our educational progress.

2. Board of School Book Commissioners. The members of the State Board of Education are also, by virtue of their office, members of the State Board Commissioners for school books. See Sec. 26.

[1865, p. 3. Approved and in force March 6, 1865.]

23. Duties and powers. 154. Said Board, at its meetings, shall perform such duties as are prescribed by law, and may make and adopt such rules, by-laws and regulations as may be necessary for its own government, and for the complete carrying into effect the provisions of the next section of this act, and not in conflict with the laws of the State, and shall take cognizance of such questions as may arise in the practical administration of the school system not otherwise provided for, and duly consider, discuss, and determine the same. (R. S. 1881, § 4421; R. S. 1894, § 5850; R. S. 1897, § 6113.)

[1865, p. 3. Approved and in force March 6, 1865.]

24. State certificates. 155. Said Board may grant State certificates of qualification to such teachers as may, upon a thorough and critical examination, be found to possess eminent scholarship and professional ability, and shall furnish satisfactory evidence of good moral character. They shall hold stated meetings, at which they shall examine all applicants, and those found to possess the qualifications herein above named shall receive such certificate, signed by the President of the Board, and impressed with the seal thereof; and the said certificate shall entitle the holder to teach in any of the schools of the State without further examination, and shall also be valid during the lifetime of said holder, unless revoked by said Board. Each applicant for examination shall, on making application, pay to the Treasurer of the Board five dollars as a fee. (R. S. 1881, § 4422; R. S. 1894, § 5851; R. S. 1897, § 6114.)

Professional and State Licenses. Examinations for these licenses are conducted by the County Superintendents in the months of March and April.

Subjects for March: Algebra, Civil Government, American Literature, Science of Education, and *two* of the following *three* subjects: Elements of Physics, Elements of Botany, and Latin (Latin Grammar, two books of Cæsar, and two of Virgil.)

Subjects for April: Geometry, Rhetoric, General History, English Literature, Physical Geography, and *two* of the following *three* subjects: Chemistry, Geology and Zoölogy.

The following requirements govern the application for Life State and Professional Licenses.

1. Applicants for Life State and Professional Licenses must have held two thirty-six month licenses in Indiana, or an equivalent in another State, obtained by *actual examination*, and must have taught successfully at least forty-eight months, which facts shall be properly certified to and sent with the manuscripts to the State Board of Education.

Before entering upon the examination, applicants shall present to the County Superintendent satisfactory evinence of good moral character and professional ability. Applicants for Life State License shall pay five dollars each (the fee prescribed by law), which can, in no case, be refunded.

2. Applicants for Professional License will take the March examination only.

3. No fee is required of applicants for Professional License.

4. A license will be granted to those who make a general average of *seventy-five per cent.*, not falling below *sixty per cent.* in any subject, and who present satisfactory evidence of professional ability and good moral character.

5. An applicant for a *Life State License* who shall fail in the examination for the same, but who has met all the requirements of a *Professional License*, shall

receive such license, or if he reaches the required average for a Professional License, but falls below the standard per cent. in one subject, he may be conditioned in such subject, and may be granted a Professional License on the same conditions as if he had originally applied for a license of this class.

6. An applicant is "conditioned," that is he may complete the work at the next regular examination, if he reach the required general average and pass successfully upon all the branches *except one*, required for the license applied for. A statement setting forth this fact will be furnished such "conditioned" applicant, who must present the same to the County Superintendent, who will forward it with the manuscript to this Department.

[1873, p. 68. Approved and in force March 8, 1873.]

25. Pay and mileage of Board. 156. The members of said Board, other than the Governor and State Superintendent of Public Instruction, shall be entitled to receive for their services, while actually engaged in the duties of their office, five dollars per day and five cents per mile necessarily traveled while so engaged; which amount shall be certified by the Board to the Auditor of the State, who shall draw his warrant therefor, payable out of the general fund, which sum shall be reimbursed to the general fund by the Treasurer of the Board paying into it that amount out of the money received by him as fees for certificates; and if there be any residue of money received as such fees, it shall be expended by the Superintendent of Public Instruction in the purchase of suitable books for an office library. Said Board shall be allowed the necessary expenses incurred in the discharge of the duties required of the same, for clerk hire, postage, etc.; which expenses shall be paid as the expenses of the members of the Board are paid. (R. S. 1881, § 4423; R. S. 1894, § 5852; R. S. 1897, § 6115.)

CHAPTER IV.

SCHOOL BOOKS.

SEC.
26. State Board of Education a Board of School Book Commissioners.
27. Advertise for bids.
28. Open bids.
29. May procure manuscripts.
30. State not liable.
31. Governor's proclamation.
32. Trustee's duty.
33. Quarterly reports.
34. Superintendent to enter suit.
35. Superintendent's special bond.
36. Reports to contractors.
37. Sale for more than contract price a misdemeanor.
38. Embezzlement.
39. Appropriation—Laws repealed.
40. Advertise for bids.
41. Trustees to make requisitions first Monday of June.
42. Trustees to acknowledge receipt of books.
43. Books for poor or indigent children.
44. Reports to Commissioners and County Superintendent.
45. Appropriation.
46. Suit on Trustee's bond.
47. County Superintendent's special bond.
48. Superintendent's report to contractor.
49. Failure to report—Embezzlement.
50. Books to be uniformly used.

SEC.
51. Duty of contractor.
52. Name and price of books on cover.
53. State Superintendent's duty.
54. Act supplemental.
55. Contractors to file consent.
56. Sale to merchants or dealers—Trustee's report.
57. Officers to supply sufficient books.
58. Duty of merchants and dealers.
59. County Superintendent to make report.
60. Officers failing to report—Right of action.
61. Failure to report at expiration of term—Embezzlement.
62. Sale for more than contract price a misdemeanor.
63. Contractors to file consent for revision of books.
64. Author to revise—County and State Superintendent to scale requisition.
65. Intermediate grammar or language lessons.
66. State Board to meet—Notice.
67. Frequency of revision—Geographies.
68. Standard of revision—Contractor's bond.
69. Appropriation.
70. New bond.
71. State Superintendent's duty.
72. Act supplemental.

[1889, p. 74. Became a law by lapse of time without the Governor's approval, March 2, 1889.]

26. State Board of Education a Board of School Book Commissioners. 1. The State Board of Education shall constitute a Board of Commissioners for the purpose of making a selection, or procuring the compilation for use in the common schools of the State of Indiana, of a series of text-books in the following branches of study, namely: Spelling, reading, arithmetic, geography, English grammar, physiology, history of the United States, and a graded series of writing books. The matter contained in the readers shall consist of lessons commencing with the simplest expression of the language, and by a regular gradation advancing to and including the highest style of composition both in poetry and prose: *Provided*, That

none of said text-books shall contain anything of a partisan or sectarian character: *And, provided further*, That the foregoing books shall be at least equal in size and quality as to matter, material, style of binding and mechanical execution, to the following text-books now in general use, namely: The speller to McGuffey's Spelling-book, the reader to Appleton's Readers, the arithmetic to Ray's New Arithmetic Series, the geographies to the Eclectic Series of Geographies, the grammar to Harvey's Grammar, the physiology to Dalton's Physiology, the history of the United States to Thalheimer's History of the United States, and the writing-books equal to the Eclectic Copy-books. (R. S. 1894, § 5853; R. S. 1897, § 6269.)

1. CONSTITUTIONAL. This act is constitutional. It is not void on the ground that it creates a monopoly, nor on the ground that it confers a special privilege. —State *v.* Haworth, 122 Ind. 462.

2. CHOICE OF BOOKS. The Legislature has the power to require a designated series of books to be used in the public schools, and to require that the books selected shall be obtained by the school officers from the person to whom the contract for supplying them may be awarded. It may not only prescribe regulations for using the books designated, but it may also declare how the books shall be obtained and distributed.—State *v.* Haworth, 122. Ind. 462.

27. Advertise for bids. 2. The said Board of Commissioners shall, immediately upon the taking effect of this act, advertise for twenty-one consecutive days in two daily papers published in this State, having the largest circulation, and in one newspaper of general circulation in the cities of New York, Philadelphia, Cincinnati, Chicago and St. Louis that at a time and place to be fixed by said notice, and not later than six months after the first publication thereof, said board will receive sealed proposals on the following:

First. From publishers of school text-books, for furnishing books to the school trustees of the State of Indiana for use in the common schools of this State, as provided in this act, for a term of five years, stating specifically in such bid the price at which each book will be furnished, and accompanying such bid with specimen copies of each and all books proposed to be furnished in such bid.

Second. From authors of school text-books, who have manuscripts of books not published, for prices at which they will sell their manuscript, together with the copyright of such books, for use in the public schools of the State of Indiana.

Third. From persons who are willing to undertake the compilation of a book or books, or a series of books, as provided for in section one (1) of this act, the price at which they are willing to undertake such compilation of any or all of such books, to the acceptance and satisfaction of the said Board of Commissioners: *Provided*, That any and all bids by publishers, herein provided for, must be accompanied by a bond in the penal sum of fifty thousand dollars, with resident freehold surety, to the acceptance and satisfaction of the Governor of this State, conditioned that if any contract be awarded to any bidder hereunder, such bidder will enter into a contract to perform the conditions of his bid to the acceptance and satisfaction of said board: *And provided further*, That no bid shall be considered unless the same be accompanied by the affidavit of the bidder that he is in nowise, directly or indirectly, connected with any other publisher or firm who is now bidding for books submitted to such board, nor has any pecuniary interest in any other publisher or firm bidding at the same time, and that he is not a party to any compact, syndicate or other scheme whereby the benefits of competition are denied to the people of this State: *And be it further provided*, That if any competent author or authors shall compile any one or more books of the first order of excellence, and shall offer the same as a free gift to the people of this State, together with the copyright of the same and the right to manufacture and sell such works in the State of Indiana for use in the public schools, it shall be the duty of such Board of Commissioners to pay no money for any manuscript or copyright for such book or books on the subject treated of in the manuscript so donated; and such board shall have the right to reject any and all bids, and at their option such board shall have the right to reject any bid as to a part of such books, and to accept the same as to the residue thereof. (R. S. 1894, § 5854; R. S. 1897, § 6270.)

28. Open bids. 3. It shall be the duty of such board to meet at the time and place mentioned in such notice, and open and examine all sealed proposals received pursuant to the notice provided for in section two (2) of this act, and it shall be the further duty of such board to make a full, complete and thorough investigation of all such bids or proposals, and to ascertain

under which of said proposals or propositions the school books could be furnished to the people of this State for use in the common schools at the lowest price, taking into consideration the size and quality, as to matter, material, style of binding, and mechanical execution of such books: *Provided, always*, That such board shall not, in any case, contract with any author, publisher or publishers, for the furnishing of any book, manuscript, copyright, or books, which shall be sold to patrons, for use in the public schools of this State, at a price above, or in excess of, the following, which prices shall include all cost and charges for the transportation and delivery to the several County School Superintendents in this State, namely: for a spelling book, ten (10) cents; for a first reader, ten (10) cents; for a second reader, fifteen (15) cents; for a third reader, twenty-five (25) cents; for a fourth reader, thirty (30) cents; for a fifth reader, forty (40) cents; for an arithmetic, intermediate, thirty-five (35) cents; for an arithmetic, complete, forty-five (45) cents; for a geography, elementary, thirty (30) cents; for a geography, complete, seventy-five (75) cents; for an English grammar, elementary, twenty-five (25) cents; for an English grammar, complete, forty (40) cents; for a physiology, thirty-five (35) cents; for a history of the United States, fifty (50) cents; for copy books, each, five (5) cents. (R. S. 1894, § 5855; R. S. 1897, § 6271.)

29. May procure manuscripts. 4. If, upon the examination of such proposals, it shall be the opinion of such Board of Commissioners that such books can be furnished cheaper to the patrons for use in the common schools in the State, by procuring and causing to be published the manuscript of any or all of such books, it shall be their duty to procure such manuscript and to advertise for sealed proposals for publishing the same, in like manner as hereinbefore provided and under the same conditions and restrictions. And such contract may be let for the publication of all of such books, or for any one or more of such books separately; and it shall be the further duty of such Board of Commissioners to provide in the contract for the publication of any such manuscript for the payment, by the publisher, of the compensation agreed between such board and the author or owner of any such manuscript for such manuscript, together with

the cost or expense of copyrighting the same. (R. S. 1894, § 5856; R. S. 1897, § 6272.)

30. State not liable. 5. It shall be a part of the terms and conditions of every contract made in pursuance of this act that the State of Indiana shall not be liable to any contractor hereunder for any sum whatever; but that all such contractors shall receive their pay and compensation solely and exclusively from the proceeds of the sale of the books, as provided for in this act. (R. S. 1894, § 5857; R. S. 1897, § 6273.)

31. Governor's proclamation. 6. As soon as such board shall have entered into any contract for the furnishing of books for use in the public schools of this State, pursuant to the provisions of this act, it shall be the duty of the Governor to issue his proclamation announcing such fact to the people of this State. (R. S. 1894, § 5858; R. S. 1897, § 6274.)

32. Trustee's duty. 7. When such proclamation shall have been duly issued, it shall be the duty of the School Trustees of each and every school corporation in this State, within thirty days thereafter, and at such other times as books may be needed for use in the public schools of their respective corporations, to certify to the County Superintendent of their respective counties the number of school text-books provided for in such contract required by the children for use in the schools of their several school corporations. Such County Superintendent shall forthwith make such requisition for books as the schools in the said several counties may require upon the State Superintendent of Public Instruction, and that said State Superintendent of Public Instruction shall immediately thereafter make a requisition for said books upon the contractor, who shall, within ninety days, ship the books so ordered directly to the County School Superintendents of the several counties of this State. Upon the receipt of such books it shall be the duty of such County School Superintendents to immediately notify all the School Trustees of the school corporations, as shown by the last school enumeration of their counties, of the receipt of such books. It shall then be the duty of such School Trustees to immediately procure and take charge and custody of all the books assigned to their several school corpo-

rations, receipting therefor, to the said County School Superintendent; and, upon the receipt of such books by said School Trustees, they shall furnish them, on demand, to the school patrons or school children of their respective corporations, at the price fixed therefor by the contract entered into between said Board of Commissioners and said contractor; and it shall be the duty of such school officers to sell books for cash only; and if they shall sell or dispose of any books other than for the cash price thereof, they shall be held personally liable, and liable upon their official bond for the price of such book or books: *Provided*, That any patron or pupil of any school or schools other than the public schools, and also any child between the ages of six and twenty-one years of age, or the parent, guardian or teacher of such child, shall have the right to purchase and receive the books, and at the prices herein named, by payment of the cash price thereof to the School Superintendent of any county in this State, and it is hereby made his duty to make requisition upon the contractor for any and all books so ordered and paid for by any such person or persons: *And, provided further*, That nothing in this act shall operate to prevent the State Board of Education, Boards of School Trustees or Boards of School Commissioners, from devising means and making arrangements for the sale, exchange or other disposition of such books as may be owned by the pupils of schools under their charge, at the time of the adoption of books under the provisions of this act. (R. S. 1894, § 5859; R. S. 1897, § 6275.)

33. Quarterly reports. 8. At the expiration of three months after the receipt of such books by the County Superintendent, and every three months thereafter, it shall be the duty of each school trustee receiving and chargeable with books under the provisions of this act, to make a full and complete report to the County Superintendent of the number of books sold, and the amount of money received therefor, and the number of books on hand; and at the time of making such report he shall pay over to the County Superintendent all moneys received by him or with which he is chargeable, from the sales of books in his hands; which report shall be duly verified by the oath of the party making it. (R. S. 1894, § 5860; R. S. 1897, § 6276.)

34. Superintendent to enter suit. 9. If, at the expiration of ten days from the time required by this act for the making of such report of any School Superintendent chargeable with books under this act, any such officer shall have failed, neglected or refused to make such report, or turn over any moneys with which he is chargeable, it shall be the duty of the County School Superintendent, within fifteen days, to enter suit upon his official bond for an accounting and recovery of any moneys due from him on account of such books with which he is chargeable; and all judgments recovered upon such bonds shall include a reasonable attorney's fee for the attorney prosecuting such suit; and such judgment shall be without relief from valuation or appraisement laws, and shall be without stay of execution. (R. S. 1894, § 5861; R. S. 1897, § 6277.)

35. Superintendent's special bond. 10. It shall be the duty of the several County School Superintendents of this State, within thirty days from the issuing of the proclamation by the Governor, as hereinbefore provided for, and of every County School Superintendent hereafter elected, before he enters upon the discharge of his official duties, to enter into a special bond, with at least two freehold sureties of such county, payable to the State of Indiana, conditioned that they will faithfully and honestly perform all the duties required of them by this act, and account for and pay over all moneys that may come into their hands, pursuant to the provisions of this act, in a penal sum which shall be equal in amount to one hundred dollars for every one thousand inhabitants of their respective counties as shown by the last census immediately preceding the giving of such bond, to be approved by the Board of Commissioners of their respective counties; and upon the failure of any County School Superintendent to give such bond, his office shall become immediately vacant, and the Board of Commissioners of his county shall immediately appoint some competent and suitable person to fill such vacancy for the unexpired term of his office. (R. S. 1894, § 5862; R. S. 1897, § 6278.)

36. Reports to contractor. 11. It shall be the duty of each County School Superintendent in this State, within ten days after the quarterly reports of the school trustees, as here-

inbefore provided for, to make a full, true, complete and detailed report to the contractor of all books sold by the several school trustees of his county, and of the number of books in the hands of the trustees of each school corporation, which report shall be accompanied by all cash received by him from the school officers from sales of books by them sold, and which report shall be duly verified by him, and a duplicate thereof shall be filed in the office of the Auditor of his county. Upon the failure of any County School Superintendent to make the report and to transmit the cash, as required by this section, a right of action shall immediately accrue to the contractor against the said school superintendent and the sureties upon the bond provided for in this act, for an accounting and for the recovery of any moneys received and not transmitted by him, and for any damages which may have resulted from his neglect or failure to comply with the provisions of this act, and any judgment upon any such bond shall include a reasonable fee for the attorney prosecuting such suit, and such judgment shall be without relief from valuation and appraisement laws, and shall be without stay of execution. (R. S. 1894, § 5863; R. S. 1897, § 6279.)

37. Sale for more than contract price a misdemeanor. 12. Any school trustee charged with the sales of any books under the provisions of this act, who shall directly or indirectly demand or receive any money for any book or books in excess of the contract price, as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten nor more than one hundred dollars, to which may be added imprisonment in the county jail for a term not exceeding sixty days. (R. S. 1894, § 5864; R. S. 1897, § 6280.)

38. Embezzlement. 13. Any county school superintendent or trustee of any township or school corporation in this State who shall fraudulently fail or refuse, at the expiration of the term for which he was elected or appointed, or at any time during such term, when legally required by the proper person or authority, to account for and deliver and pay over to such person or persons as may be lawfully entitled to receive the

same, all moneys or school books which may have come into his hands by virtue of the provisions of this act, shall be deemed guilty of embezzlement, and upon conviction thereof shall be imprisoned in the State prison for any period not more than five years nor less than one year, and fined in any sum not exceeding one thousand dollars, and rendered incapable of holding any office of trust or profit for any determinate period. (R. S. 1894, § 5865; R. S. 1897, § 6281.)

39. Appropriation—Laws repealed. 14. The sum of one thousand dollars is hereby appropriated out of any funds in the State Treasury not otherwise appropriated, for the purpose of paying the cost and expenses incident to the giving of the notices herein provided for, and carrying out the provisions of this act. All laws and parts of laws in conflict with the provisions of this act are hereby repealed. (R. S. 1894, § 5866; R. S. 1897, § 6282.)

[1891, p. 99. Approved and in force March 5, 1891.]

40. Advertise for bids. 1. It shall be the duty of the Board of Commissioners, for the purpose of securing for use in the common schools of the State of Indiana of a series of text-books as constituted by the act of the General Assembly in this section mentioned, to immediately advertise for bids, and to act upon such bids as may be submitted for the furnishing for use in the common schools of the State of Indiana of a spelling-book, a primary physiology, a more advanced work on physiology and hygiene, an elementary grammar, a complete grammar, and a history of the United States. In advertising for such bids, and in acting upon any bid which may be submitted, such Board of Commissioners shall be governed, as far as possible, by the same terms, conditions and limitations concerning them, and shall require bidders and contractors to comply with all terms, conditions and limitations concerning bidders or contractors, so far as applicable, as are contained in an act of the General Assembly of Indiana, entitled "An act entitled an act to create a Board of Commissioners for the purpose of securing for use in the common schools of the State of Indiana of a series of text-books, defining the duties of certain officers therein named with reference thereto, making appropriations therefor, defining certain

felonies and misdemeanors, providing penalties for the violation of the provisions of said act, repealing all laws in conflict therewith, and declaring an emergency." Acts of the General Assembly of the State of Indiana, 1889, p. 74: *Provided*, That the standard of Physiologies shall be Hutchinson's laws of health and Hutchinson's physiology and hygiene: *And provided further*, That no bids shall be considered in which the price of a primary physiology shall exceed thirty cents for the volume, or in which a physiology and hygiene shall exceed sixty cents for the volume, or in which a history of the United States shall exceed sixty-five cents for the volume. (R. S. 1894, § 5867; R. S. 1897, § 6283.)

41. Trustees to make requisitions first Monday of June. 2. That it shall be the duty of the Township Trustees and School Boards of the State, severally, on the first Monday of June in each year, and at such intermediate times as the necessity therefor shall exist, after considering the number and kind of adopted books already sold in the corporation, the number and kind of such books on hand, and ascertaining from their teachers or Principal and Superintendent, as the case may be, the enrollment of scholars in the different classes or grades of the schools of the corporation, to order such quantities of the books which the State has at that time adopted, as may seem to him, or to it, to be necessary for use in the schools of such corporation until the first day of June then next succeeding; the estimate being based upon the information which it is above provided shall be gathered, and on the advice of the County Superintendent: *Provided*, That the total orders for any school year of the books adopted heretofore, and those mentioned in section one of this act, shall not exceed the amount of one dollar for each child enumerated for school purposes in the corporation: *And provided further*, That it shall be the duty of the State Superintendent to properly scale down any order for books which may pass through his hands in case that it shall seem clear to him that such order is for a quantity of books in excess of the needs of the corporation during the period for which such books were ordered. (R. S. 1894, § 5868; R. S. 1897, § 6284.)

42. Trustees to acknowledge receipt of books. 3. Whenever an order for the books which the State has adopted,

or may adopt, shall have been filled by a contractor with the State, and the books delivered to the Township Trustee or School Board making such order, it shall be the duty of such trustee or boards to immediately acknowledge the receipt of such books to the contractor, and also to make a report thereof to the County Superintendent, and it shall be lawful for any such trustee or school board to at once make payment for such books to the contractor, through the superintendent of the county, out of any school funds in excess of the needs of their respective townships or school corporations for current expenses, or other special needs, in the hands or control of such trustee or board, aside from the principal or interest of the common congressional school fund, or the "school revenue for tuition:" *Provided, however*, That no debt shall ever be contracted, or warrant, or other evidence of indebtedness, ever be issued by a trustee or board on account of a purchase of books: *And, provided further*, That whenever any books are paid for by any trustee or school board, such trustee or school board shall be liable personally, and liable upon their official bonds, respectively, for the preservation, custody and safe keeping of all such books until the same are sold and accounted for, or otherwise disposed of according to law. Whenever a book, paid for as aforesaid, is sold by a trustee or school board, it shall be the duty of such trustee or school board to turn the entire proceeds of such sale into the fund, out of which payment was made to the contractor, to reimburse the fund for such advancement. In case a trustee or school board receiving books from a contractor with the State shall not pay for such books, as provided in this section, he, or it, shall make quarterly reports under oath of the sale of such books, accompanied by all cash received therefor, to the County Superintendent, for transmission to the contractor, as now provided by law, until such books shall have been fully paid for. The provisions of this section shall apply to all orders heretofore filed: *Provided*, That if said trustee or board shall have on hands any books heretofore ordered, for which he, or it, may have no immediate use, the same shall, upon the order of the County Superintendent, or the State Superintendent of Public Instruction, be returned to the contractor, or be shipped to such other point as the contractor may direct, the contractor to pay all freight charges on such shipment; and the County

Superintendent and such trustee or board shall, thereupon, have credit for such books so returned or shipped. (R. S. 1894, § 5869; R. S. 1897, § 6285.)

43. Books for poor or indigent children. 4. It shall be the duty of each Township Trustee and each School Board to furnish the necessary school books, so far as they have been or may be adopted by the State, to all such poor or indigent children as may desire to attend the common schools of his, or its, corporation, as in his, or its, opinion would be otherwise unable to attend such schools: *Provided*, That no Township Trustee in this State shall receive an amount exceeding five dollars as compensation for his services in any one year for duties performed in carrying out the provisions of this act, or the act to which it is supplemental. (R. S. 1894, § 5870; R. S. 1897; § 6286.)

44. Reports to Commissioners and County Superintendent. 5. When books are fully paid for out of the funds of a school corporation, as provided in section three of this act, it shall not be necessary for the Township Trustee or School Board of such corporation to make quarterly reports of the sale of the adopted books, but instead thereof a report shall in all cases be made by him, or it, upon oath on the first Monday of August in each year to the County Superintendent, and like report upon oath shall at the same time be made to the Board of Commissioners of the county, which reports shall severally state the number and kind of books on hand at last report; the number and kind sold; the number then on hand; the disposition of the money received on such sales; the amount of money used from any school fund in payment for books received; and the condition of such funds. Such reports shall also state the number and kind of books furnished as provided in section four of this act; for the price of which books so furnished the Township Trustee or School Board furnishing the same shall have credit. (R. S. 1894, § 5871; R. S. 1897, § 6287.)

45. Appropriation. 6. The sum of one thousand dollars is hereby appropriated out of the general fund in the State treasury to enable the Board of School Commissioners, mentioned in section one of this act, to advertise for bids as in said section provided. (R. S. 1894, § 5872; R. S. 1897, § 6288.)

46. Suit on Trustee's bond. 7. Any Township Trustee or member of a School Board, receiving or being in possession of any moneys which at the end of the next quarter should be turned over to the County Superintendent to pay a contractor for books sold which have not been paid for out of the funds of the corporation, who shall fail to report the sale of such books at the end of such next quarter, or who shall fail to pay therewith the full proceeds thereof to the County Superintendent, or so much thereof as may be necessary to fully pay the contractor, shall be liable, after demand upon him, to a suit on his official bond, brought on the relation of the County Superintendent, whose duty it shall be to bring the action for the amount due from him, and damages, if any, and any judgment which shall be rendered in favor of the plaintiff in the action shall contain a reasonable attorney's fee, and shall be payable without relief from valuation or appraisement laws. The same liability upon his bond shall accrue against a Township Trustee or member of a School Board who shall refuse to pay over as in this act required any moneys drawn from the funds of his corporation on account of books purchased, or who shall fail to apply all moneys for books sold that have been purchased by the corporation, to the reimbursement of the proper fund. Any judgment rendered against a Township Trustee, School Board, or member of a School Board, because of the non-performance of any duty, shall include a reasonable fee for the plaintiff's attorney. (R. S. 1894, § 5873; R. S. 1897, § 6289.)

47. County Superintendent's Special Bond. 8. It shall be the duty of each County School Superintendent of this State, within thirty days from the taking effect of this act, and of each County School Superintendent hereafter elected, before he enters upon the discharge of his official duties, to execute a special bond with at least two freehold sureties of his county, payable to the State of Indiana, conditioned that he will faithfully and honestly perform all the duties required of him by law, and account for and pay over all moneys which may come into his hands pursuant to law, in a penal sum which shall be equal to one hundred dollars for every thousand inhabitants of his county, as shown by the last census immediately preceding the

giving of such bond, which bond shall be executed to the approval of the Board of Commissioners of his county, and upon failure of any County School Superintendent to give such bond, his office shall become immediately vacant, and the Board of Commissioners of his county shall immediately appoint some competent and suitable person to fill such vacancy for the unexpired term of his office. (R. S. 1894, § 5874; R. S. 1897, § 6290.)

48. Superintendent's report to contractor. 9. It shall be the duty of such County School Superintendent within ten days after the receipt of any report, or money, from a Township Trustee or School Board, as hereinbefore provided for, to make a full, true, complete and detailed report thereof to the contractor, which report shall be accompanied by all cash received by him from the school officers. The report above provided for shall be duly sworn to by the County Superintendent, and a duplicate thereof shall be filed by him in the office of the Auditor of his county. Upon the failure of any County School Superintendent to make report to the contractor and to transmit the cash as required by law, a right of action shall immediately accrue to the contractor against the said County School Superintendent, and the sureties upon his bond provided for in this act, for an accounting and for the recovery of any moneys received and not transmitted by him, and for any damages which may have resulted from his neglect or failure to comply with the provisions of this act, and any judgment upon any such bond shall include a reasonable fee for the attorney prosecuting such suit, and such judgment shall be without relief from valuation or appraisement laws, and shall be without stay of execution. (R. S. 1894, § 5875; R. S. 1897, § 6291.)

49. Failure to report—Embezzlement. 10. Any County School Superintendent, or Trustee of any Township, or member of any School Board in this State, who shall fraudulently fail or refuse, at the expiration of the term for which he was elected or appointed, or at any time during such term, when legally required by the proper person or authority to account for and deliver and pay over to such person or persons as may be lawfully entitled to receive the same, all moneys, or school books

which may come into his hands by virtue of the provisions of law, shall be deemed guilty of embezzlement, and upon conviction thereof shall be imprisoned in the State prison not more than five nor less than one year, and fined in any sum not exceeding one thousand dollars, and rendered incapable of holding any office of trust or profit for any determinate period. (R. S. 1894, § 5876; R. S. 1897, § 6292.)

50. Books to be uniformly used. 11. The books which have been, or may hereafter be, adopted by the State of Indiana for use in its common schools by virtue of this act, or the act mentioned in section one hereof, shall be uniformly used in all the common schools of the State, in teaching the branches of learning treated of in such books, and it shall be the duty of the proper school officers and authorities to use in such schools such books for teaching the subjects treated in them. (R. S. 1894, § 5877; R. S. 1897, § 6293.)

51. Duty of Contractor. 12. It shall be the duty of any person or persons, firm or corporation, who shall hereafter furnish and supply books under the provisions of this act, or under the provisions of the act of 1889, title whereof is set out in the first section of this act, to ship to and notify the consignee of such shipment, and deliver the books ordered by the various County Superintendents, at such railway stations as may be most convenient for the various Township Trustees or School Boards in the several counties to receive the same as may be directed by the said County Superintendent. And in preparing such books for such shipment, it shall be the duty of every such contractor to wrap each several kind of books by themselves in packages of not to exceed five or ten books, according to their size, each such package to be securely wrapped in good substantial paper of sufficient weight to protect the books enclosed therein, and to be closed at each end thereof, and each package to have plainly and clearly marked or printed on the outside thereof the kind and number of books contained therein, and as many of such packages shall be enclosed in large packages or boxes as may be safe and convenient for shipment. And upon the receipt of such books it shall be the duty of each Township Trustee or School Board to carefully care for and

protect such books until sold, and to preserve the same in the original packages in which they are wrapped without opening, until all copies of the same books heretofore received by him or it have been sold, and thereafter not to open any such package until all copies contained in packages previously opened have been sold: *Provided*, If, upon the opening of any such package, any Township Trustee or School Board shall discover that any of the books therein contained have been damaged, or are defective at the time of their receipt by him, or it, so as to be unsalable, he, or it, shall not be required to offer the same for sale, but in such an event, he, or it, shall immediately notify the County Superintendent of such damaged or defective book or books, who shall immediately thereafter give notice thereof to the contractor furnishing the same, and thereafter such damaged or defective book or books shall be subject to the order of the contractor. (R. S. 1894, § 5878; R. S. 1897, § 6294.)

52. Name and price of books on cover. 13. It shall be the duty of any person or persons, firm or corporation who may hereafter furnish and supply books under the provisions or this statute, or of the act of 1889, the title whereof is set out in the first section of this act, to print in large letters upon the outside of the first cover of each book so furnished and supplied by him or them, the name of the adopted book, and upon the outside of the back cover the price at which such book is furnished to be sold to pupils, under such contract, and it shall be the duty of all County Superintendents, Township Trustees, and other school officers and school teachers, to see that all books so furnished to pupils, and bought by pupils for use in the schools of the State shall bear such imprint: *Provided*, This section shall not apply to copy books. (R. S. 1894, § 5879; R. S. 1897, § 6295.)

53. State Superintendent's duty. 14. It shall be the duty of the Superintendent of Public Instruction to cause to be printed, at the expense of the printing fund, and to send to each of the County Superintendents, as soon as possible after the passage thereof, a sufficient number of copies of this act to provide such Superintendent and each Township Trustee and each member of the School Board in such county with one copy

of such act. Each County Superintendent shall, at once, upon the receipt of the copies intended for his county, mail, or otherwise deliver, to each Township Trustee and member of a School Board in his county a copy of this act. (R. S. 1894, § 5880; R. S. 1897, § 6296.)

54. Act supplemental. 15. Nothing in this act shall be construed to in anywise affect the act mentioned in section one of this act, and the two acts shall be regarded as each supplementing the other, except where this act shall provide a different procedure from the first act, in which case the provisions of this act shall govern. Nothing in this act shall be construed as affecting or impairing any contract right secured by any contractor under the act mentioned in section one of this act, but all such contracts are hereby declared to be, and are hereby made, binding upon the State to the same extent as they would have been had this act not been passed. (R. S. 1894, § 5881; R. S. 1897, § 6297.)

[1893, p. 165. Approved and in force March 1, 1893.]

55. Contractors to file consent. 1. Whenever the contractors, or either of them, to the extent that they might be affected in their contract rights under prior laws, to wit: An act entitled "An act entitled an act to create a Board of Commissioners for the purpose of securing, for use in the common schools of the State of Indiana, of a series of text books, defining the duties of certain officers therein named with reference thereto, making appropriations therefor, defining certain felonies and misdemeanors, providing penalties for the violation of the provisions of said act, 'repealing all laws in conflict therewith and declaring an emergency,'" passed by the General Assembly of the State of Indiana in the year 1889, and published on page 74 of the acts of 1889; and an act supplemental thereto and upon the same general subject, approved March 5, 1891, shall have filed with the State Superintendent of Public Instruction an agreement in writing, duly executed by them, or either of them separately, consenting to the operation of this act, as affecting the sale of school books furnished by them, under contract with the State pursuant to the provisions of existing laws, it shall then be lawful for, and it is hereby made

the duty of, the Township Trustees and School Boards of this State, to sell, for cash, to all merchants and dealers who may apply therefor, and in such quantities as they may require, a sufficient number of adopted school books, furnished by the contractor or contractors, so consenting, to supply all demands of school patrons and pupils attending the common schools and residing in their immediate neighborhoods, respectively; which books shall, in no event, be sold to school patrons or pupils, by such merchants or dealers, at a price in excess of the price fixed in the contract for such books between the State Board of School Book Commissioners and such contractor. In making such sales, the Township Trustee and School Boards shall be authorized, and it is hereby made their duty to deduct ten per cent. from the contract price at which such books are required by law to be sold to the school patrons and school children of the State, to compensate the dealer for handling and selling such books; one-half of which deduction shall be borne by the contractor and one-half thereof by such school corporation. And hereafter no adopted books shall be delivered or sold to merchants or dealers by any County School Superintendent, Township Trustee or School Board, except upon the terms and conditions hereinbefore specified. (R. S. 1894, § 5882; R. S. 1897, § 6298.)

56. Sale to Merchants or Dealers—Trustee's Report. 2. When sale shall be made of any books by any Township Trustee or School Board to any merchant or dealer, pursuant to the provisions of section one of this act, it shall be the duty of such Trustee or School Board, at the end of such calendar month, to make a report thereof to the County School Superintendent of the number and kind of books sold, and the amount of money received therefor, and the number and kind of books on hand; and at the time of making such report to pay over to the County School Superintendent all money received by him or them from any such sale or sales; at the time of making such report such Trustee or School Board shall also pay to such Superintendent, for transmission to the contractor, the one-half of the amount of the deduction in the price of the books so sold, which last amount shall be paid out of and charged to the special school fund of such school corporation; and for such

amount the said Trustee or School Board shall take the receipt of such Superintendent. And in their reports to and settlements thereafter made with the Board of Commissioners of their respective counties, the said Trustees and School Boards shall be entitled to full credit for the money so paid out of said fund when such Superintendent's receipt is tendered and filed with such reports: *Provided*, That whenever any Township Trustee or School Board shall have sold all books ordered by him or them, or in his or their hands for sale to merchants or dealers, as herein provided, they shall not be required to make quarterly reports, as now provided by law. (R. S. 1894, § 5883; R. S. 1897, § 6299.)

57. Officers to supply sufficient books. 3. It shall be the duty of County School Superintendents, Township Trustees and School Boards to see that at all times there are sufficient number of books on hand, either in the hands of such Superintendents, Trustees or School Boards respectively, or in the hands of the dealers in the different neighborhoods of their respective school corporations, to supply the patrons and pupils of the common schools with all needed books; and nothing in this act shall be construed so as to relieve them from any of the duties now imposed by law in this respect. (R. S. 1894, § 5884: R. S. 1897, § 6300.)

58. Duty of merchants and dealers. 4. It shall be the duty of all merchants or dealers who may be supplied with books by virtue of the provisions of this act to furnish the Township Trustee or School Board of whom such books may have been purchased and received with a detailed statement of the number of books of each kind on hand on the fifteenth day of May of each year, and at such other times during the year as the same may be called for by such Trustee or School Board; and any merchant or dealer who shall refuse for the period of five days after request to do so, by any Trustee or School Board entitled to receive the same, to furnish such statement as above provided, shall not be entitled thereafter to purchase or sell any school books under the provisions of this act. And upon the receipt of any such report it shall be the duty of such Trustee or School Board to forthwith transmit a copy thereof to the County School

Superintendent, who shall, within ten days after the receipt of any such report, transmit a copy thereof to the contractor, for which reports the contractor shall furnish the necessary blanks. (R. S. 1894, § 5885; R. S. 1897, § 6301.)

59. County Superintendent to make report. 5. It shall be the duty of each County School Superintendent in this State, within ten days after receiving any report or money on account of the sale of any books, from any Trustee or School Board of his county, as hereinbefore provided, to make a full, true and verified report to the contractor of the number and kind of books so sold by the several Township Trustees or School Boards of his county, and of the number and kind of books on hands with the said school officers and himself, which report shall be accompanied by all cash received by him from such Trustees or School Boards on account of such sales; and he shall file a duplicate thereof in the office of the Auditor of his county. The necessary blanks for which reports shall be furnished by the contractor. (R. S. 1894, § 5886; R. S. 1897, § 6302.)

60. Officers failing to report—Right of action. 6. Upon failure of any Township Trustee, School Board or County School Superintendent to perform any duty or to make report of any cash received by him or them, as required by the provisions of this act, a right of action shall immediately accrue to the contractor against the said officer so in default, and the sureties upon his official bond, for an accounting and for the recovery of any money received and not transmitted by him or them, and for any damage which may have resulted from his or their neglect or failure to comply with the provisions of this act; and any judgment in favor of the contractor in any such action shall include a reasonable fee for the attorney prosecuting the suit, and such judgment shall be collectible without relief from valuation and appraisement laws, and shall be without stay of execution. (R. S. 1894, § 5887; R. S. 1897, § 6303.)

61. Failure to report at expiration of term—Embezzlement. 7. Any County School Superintendent, Township Trustee or member of any School Board of this State who shall fraudulently fail or refuse, at the expiration of the term for which he was elected or appointed, or at any time during such

term, when legally required by the proper person or authority, to account for and pay over to such person or persons as may be lawfully entitled to receive the same, all money or school books not previously accounted for, which may have come into his hands by virtue of the provisions of this act, shall be deemed guilty of embezzlement, and upon conviction thereof, shall be imprisoned in the State Prison not more than five years nor less than one year, and fined in any sum not exceeding one thousand dollars and rendered incapable of holding any office of trust or profit for any determinate period. (R. S. 1894, § 5888; R. S. 1897, § 6304.)

62. Sale for more than contract price a misdemeanor. 8. Any merchant or dealer who shall knowingly or willfully charge, receive, collect or attempt to charge or collect, for any school book or books by him sold to any school patron or pupil, any sum in access of the price at which such book or books are required to be sold by law, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be imprisoned in the county jail not more than six months nor less than thirty days, and fined in any sum not exceeding five hundred dollars. (R. S. 1894, § 5889; R. S. 1897, § 6305.)

63. Contractors to file consent for revision of books. 9. Whenever the contractors for furnishing books for use in the common schools, under the provisions of existing laws hereinbefore specified, shall have filed with the State Superintendent of Public Instruction their consent, in writing, to the revision or the introduction of an intermediate book, as hereinafter provided, duly executed by them, and the State Board of School Book Commissioners shall determine that a revision is needed of any or all of the books in use in the common schools under contract made pursuant to law, or that an intermediate grammar or language lessons is needed, then it shall be lawful for the State Board of School Book Commissioners to order a revision to be made of any or all of such books as in their judgment may be found necessary for the welfare of the common schools of the State, in the manner and under the conditions following:

The said Board of School Book Commissioners shall select a competent author or authors to perform the work of revision

of the subject-matter of such book or books so ordered to be revised. The entire cost of such revision, including the manuscript, illustrations, engravings, maps and plates therefor, shall be paid by the contractor or contractors who may at the time of such revision be required to furnish such book or books under their contract with the State. The cost and expense, however, of such revision shall first be agreed upon by the State Board of School Book Commissioners and the contractor or contractors before such work of revision is commenced: *Provided*, If said Board and contractor or contractors shall, for a period of sixty days after an estimate of the cost of any proposed revision has been furnished by such State Board to the contractor, be unable to agree upon an amount, which in the opinion of such State Board would be necessary to cover the cost of any such revision, then the said State Board may advertise for bids from publishers of school books for furnishing any such book or books, the cost of revision of which could not be agreed upon; and in such advertisement, selecting and contracting for such book or books, the said Board shall be governed by the provisions of laws now in force respecting such matters. (R. S. 1894, § 5890; R. S. 1897, § 6306.)

64. Author to revise—County and State Superintendent to scale requisition. 10. Whenever the revision of any book, or series of books, shall be determined upon by the State Board of School Book Commissioners, and they shall have contracted with an author or authors to furnish the manuscript for such revision, sufficient time shall be given to the author in which to perform the work of revising the subject matter of such book to the acceptance and satisfaction of such Board, and when the revision of the subject matter of any such book is completed by the author and the manuscript thereof furnished to the contractor, at least six months' time shall be given the contractor in which to make the necessary illustrations, engravings, maps and plates, manufacture and ship the books to the various school corporations of the State before any such contractor shall be required to furnish any such book, or series of books, so revised for use in the schools of the State under his contract. And no new book, or revised book, or series of books, shall be introduced for use in the schools of the

State, at any time, by virtue of the provisions of this act, until the State Board of School Book Commissioners shall have given notice to the County Superintendents, Township Trustees and School Boards of the State, by printed notice mailed to each of said school officers, last above named, at least twelve months in advance of the time when such book, or series of books, are to be used in the public schools, and like notice shall be given by said County Superintendents, Trustees and School Boards to all merchants and dealers in their respective school corporations, who may be selling the adopted books. And it shall be the duty of the State Superintendent of Public Instruction and the County Superintendents of each county to scale down to the minimum number all requisitions for school books, which may be made after such notice is given, thereby enabling all Township Trustees, School Boards, and dealers, to dispose of the stock of books in their hands; but no dealer shall buy or carry on hand, at any time, more books than are actually needed to supply the demands therefor, for the purpose, or with the intent, of preventing the introduction of any new or revised book, according to the spirit of this act. And for the purpose of enabling the State Superintendent of Public Instruction to determine when any requisitions should be scaled down in anticipation of the expiration of any existing contract, it shall be the duty of the contractor to furnish to said State Superintendent a copy of the quarterly verified reports made by County Superintendents to the contractor, giving the number and kind of books on hand with the various dealers and Township Trustees and School Boards of their respective counties; and at the expiration of such notice such book or books shall only be required to be introduced in the schools as new classes in the study of such branches are being formed, and all classes in such study, or studies, who, at the time of the expiration of the term of such notice, shall have purchased books for use in such classes, shall be allowed time to complete such books before being compelled to buy new or revised books. And at the expiration of any contract now in existence, or which may hereafter be made by the State Board of School Book Commissioners, for furnishing books for use in the common schools of the State of Indiana, the books then in use in the common schools of this State under such contract or contracts shall be

continued in use therein at the same price and upon the same terms and conditions until such time or times as the State Board of School Book Commissioners shall determine that a revision thereof is necessary for the best interests of the schools, when such revision shall be made, or a new book contracted for and introduced for use in the schools as hereinbefore specified: *Provided*, That, at the expiration of any such contract, the State Board of School Book Commissioners shall require such contractor or contractors furnishing such books to execute a new bond, conditioned that they will continue to execute such contract in all regards as they had theretofore executed the original contract: *Provided, further*, That nothing herein contained shall be construed as restraining or preventing said State Board of School Book Commissioners, after any such school book, or any such revised book, shall have been in use in the schools of the State for a period of five years, from proposing to the contractor furnishing the same, such reduction in the price at which such book or revised book shall be continued in use in the schools for the next ensuing five years, as, in the judgment of said board, may seem reasonable. If such contractor shall accede to such proposed reduction, then the price of such book or revised book shall, for such ensuing period of five years, be fixed at the original contract price thereof, less the amount of the reduction so agreed upon, and such price shall be printed on the back of said book, as now required by law. In event said contractor shall not be willing to accede to such terms, the said board may appoint a disinterested person, conversant with such matters, and require the said contractor to select another such person, and the two so chosen shall select a third, and, thereupon, the three so chosen shall inquire into and consider what, if any, reduction ought to be made in the price at which such book or revised book should be furnished for use in the schools of the State for the next ensuing period of five years, and if they shall determine that any such reduction ought to be made, they shall fix the amount of such reduction, and shall certify to the said board and to such contractor their determination in that behalf, and thereupon, if said contractor shall accede to the price thus arrived at, the price of said book for the next ensuing five years shall be fixed at that sum, and the same shall be printed on the back of such books, as now provided by law, and said

contractor shall be required to furnish the same at such price; but otherwise, in all regards under the provisions of this act and acts to which it is supplemental. But if such contractor shall decline to accede to such price thus arrived at, then such board shall have the right, in their discretion, to proceed to advertise for bids to furnish a book in the place thereof; and, in so doing, and in all subsequent steps therein, they shall proceed in accordance with the provisions of this act and of the acts to which it is supplemental: *And, provided further*, That nothing in this act contained shall be construed to prevent the State Board of School Book Commissioners from exercising their discretion in deciding whether they shall order any of the books already in use under contract to be revised, or whether, instead, they shall advertise for books to be adopted instead of said books already in use. (R. S. 1894, § 5891; R. S. 1897, § 6307.)

65. Intermediate grammar or language lessons. 11. If, in the opinion of the State Board of School Book Commissioners, an intermediate grammar or language lessons is needed for the better teaching of such branch of study, instead of a revision of the series of grammars now in use, it shall then be lawful for such board to provide for such intermediate book, and for that purpose shall proceed, as now provided by law, to advertise for proposals to furnish such book, requiring bond in such sum as they deem sufficient to insure the compliance with such proposals, consider such proposals and contract for such book: *Provided, however*, That such intermediate grammar shall be equal in quality as to material, style of binding and mechanical execution to Long's Lessons in English, and in subject matter shall embrace not less than 110 pages, and shall be adapted to follow in sequence to that of the Language Lessons book of said series now in use, and to be properly introductory to the matter contained in the complete book of the series as now adopted; and if revision of the grammar now in use should be determined upon by the State Board of School Book Commissioners, then such modification shall be made of each or either of the books now constituting said course in grammar as shall adapt them more perfectly to use in the same series, and as shall cover more perfectly the entire subject matter necessary to a complete edu-

cation in this branch of learning. And said intermediate grammars shall not be sold to patrons or pupils of the public schools of this State at a price above or in excess of twenty cents each. (R. S. 1894, § 5892; R. S. 1897, § 6308.)

66. State Board to meet—Notice. 12. For the purpose of determining what book or books, if any, may need revision, or whether an intermediate grammar is needed, the State Board of School Book Commissioners shall meet on the first Monday of April, 1893, and shall then and there make such inquiry and examination of books then in use under contract with the State as shall enable them to determine upon the propriety of ordering any such revision or intermediate book or Language Lessons. And such board shall, within sixty days thereafter, determine and give notice to the contractors of any and all revisions that shall be required to be made before the time of the expiration of the existing contract for any such book or books. (R. S. 1894, § 5893; R. S. 1897, § 6309.)

67. Frequency of revision—Geographies. 13. In no case shall a revision of any book or books be required by the State Board of School Book Commissioners oftener than every five years, except in geographies and histories, which said mentioned books may be ordered to be revised as often as in the opinion of the said board shall be necessary to keep said books accurate and modern in all matters pertaining to those branches of study. (R. S. 1894, § 5894; R. S. 1897, § 6310.)

68. Standard of revision—Contractor's bond. 14. Whenever any book or series of books shall be revised by order of the State Board of School Commissioners such book or books, when completed and ready for use in the schools, shall be equal in every respect to the standard now fixed by law, as to subject matter, material, style of binding, and mechanical execution. And said State Board, when contracting for any such revision, shall require the contractor or contractors to enter into a written agreement for the furnishing of such books, and to execute bond with resident freehold sureties to the acceptance of the Governor of this State for the faithful compliance with their contract, such bond to be in such amount as said board shall

deem sufficient for the purposes contemplated. (R. S. 1894, § 5895; R. S. 1897, § 6311.)

69. Appropriation. 15. The sum of one thousand dollars is hereby appropriated out of any funds in the State Treasury not otherwise appropriated for the purpose of paying costs and expenses incident to the giving of notices herein provided for by said State Board of School Book Commissioners, and to pay the expenses of the State Superintendent of Public Instruction incurred in the distribution of this act, and of the acts to which this is supplemental, as herein required, and to carry out the provisions of this act. (R. S. 1894, § 5896; R. S. 1897, § 6312.)

70. New bond. 16. If at any time the State Board of School Book Commissioners shall find that the bond of any contractor, contracting to furnish books for use in the common schools of the State of Indiana, under this act, or the acts to which it is supplemental, has become insufficient to secure the faithful performance of such contract, or from any other reason become inoperative, they shall have the right to require such contractor to execute a new and sufficient bond to secure the faithful execution of such contract. And upon failure of any such contractor to furnish such new bond within thirty days after being so required by said board, the said board shall give notice thereof to the Attorney-General of the State of Indiana, who shall immediately upon receipt of such notice bring suit to procure the cancellation of such contract of such contractor so refusing. And service of summons in such cause upon the agent of such contractor in the State of Indiana shall be deemed and held to be sufficient service upon the contractor; and in such case the Attorney-General shall receive a reasonable fee for the prosecuting of such action. (R. S. 1894, § 5897; R. S. 1897, § 6313.)

71. State Superintendent's duty. 17. It shall be the duty of the State Superintendent of Public Instruction, immediately upon the passage of this act, to cause to be printed a sufficient number of copies thereof, as well also of the acts referred to in the first section hereof, to furnish each County Superintendent, School Trustee and member of School Boards in the State of

Indiana, with one copy thereof, and promptly to distribute the same to such school officers through the County Superintendents. (R. S. 1894, § 5898; R. S. 1897, § 6314.)

72. Act supplemental. 18. This act shall be construed as supplementary to the acts referred to in the first section hereof, and said former acts are continued in full force and effect, except so far as modified by the provisions of this act. (R. S. 1894, § 5899; R. S. 1897, § 6315.)

CHAPTER V.

COUNTY SUPERINTENDENT.

SEC.
73. County Superintendent.
74. Shall examine teachers.
75. May revoke license.
76. Examinations—License.
77. Record-book—Report to State Superintendent.
78. General duties.
79. When must enumerate.
80. Annual reports.
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82. Compensation.
83. Duty as to apportionment.
84. Duty as to School Fund.

[1873, p. 75. Approved and in force March 8, 1873.]

73. County Superintendent. 33. The Township Trustees of the several townships shall meet at the office of the County Auditor of their respective counties, on the first Monday of June, eighteen hundred and seventy-three, and biennially thereafter, and appoint a County Superintendent, who shall be a citizen of such county, whose official term shall expire as soon as his successor is appointed and qualified, who, before entering upon the duties of his office, shall take and subscribe an oath that he will faithfully perform his duties as such officer according to law, which oath shall be filed with the County Auditor, and shall execute a bond with freehold surety, to the approval of the County Auditor, payable to the State of Indiana, in the penal sum of one thousand dollars, conditioned that he will faithfully discharge his duties according to law, and faithfully account for, and pay over to the proper persons all money which may come into his hands by reason of such office, and thereupon, the County Auditor shall report the name and postoffice

address of the person appointed to the Superintendent of Public Instruction: *Provided, however*, That the Board of County Commissioners shall have power to dismiss any County Superintendent for immorality, incompetency, or general neglect of duty, or for acting as agent for the sale of any text-book, school furniture or maps; but no County Superintendent shall be dismissed without giving him written notice, under the hand and seal of the Auditor, ten days before the first day of the term of the Court of Commissioners, at which the cause is to be heard, and the said notice shall state the charges preferred against the Superintendent, the character of the instrument in which they are preferred, whether petition, complaint or other writing, and in the name of those preferring the same. And the duties required of the School Examiner by this act shall hereafter be performed by the County Superintendent. Whenever a vacancy shall occur in the office of County Superintendent by death, resignation or removal, the said Trustees, on the notice of the County Auditor, shall assemble at the office of such Auditor and fill such vacancy for the unexpired portion of the term, in the manner herein provided, and the County Auditor shall be clerk of such election in all cases, and give the casting vote in case of a tie, and shall keep the record of such election in a book to be kept for that purpose. (R. S. 1881, §4424; R. S. 1894, §5900; R. S. 1897, §6116.)

1. Amendments Void. The act of March 9, 1875 (Acts 1875, p. 131), attempting to amend this section, and §§76, 78 and 82, is unconstitutional and void.—Board *v.* Smith, 52 Ind. 420; State *v.* Harrison, 67 Ind. 71; likewise is the attempted amendment of 1895 (Acts 1895, p. 208), Boring *v.* State. 141 Ind. 640.

2. Quorum for Appointment. The County Auditor, not being a member of the body, can not be counted in determining whether or not a quorum is present. An election by less than a quorum is void.—State *v.* Porter, 113 Ind. 79; State *v.* Edwards, 114 Ind. 581.

3. Meeting of Trustees. The Trustees, having failed to appoint a Superintendent on the day fixed by law, adjourned *sine die*, and afterward, on call of the Auditor, met and made an appointment. But such action was held to be invalid and of no effect.—State *v.* Harrison, 67 Ind. 71. Yet had the Trustees adjourned from day to day, an appointment at such adjourned meeting would probably have been valid; and possibly after adjournment *sine die*, a mandamus might have issued to compel a reassembling to perform the omitted duty.—Sacket *v.* State, 74 Ind. 486.

4. Mode of Election. The Auditor has a right to act as the clerk of the Board of Election, keep a record of the same, and give the casting vote in case of a tie. The Trustees have the right of controlling the manner of the election.

The Auditor's declaring a person elected does not amount to anything; he has no right to make such declaration. It is the duty of the Board of Trustees to do that, and until they finally settle the matter a member has a right to vote. The appointment has very few elements of a popular election about it. The law simply provides that the Township Trustees shall appoint, and says nothing about the manner in which the appointment shall be made. Any mode that they may adopt by which they can arrive at the expression of the wish of the majority is sufficient to designate the person to be appointed, and there is nothing binding until there is a final determination of the subject by the Trustees.—State *v.* Kilroy, 86 Ind. 118.

5. WHO ELIGIBLE. To be eligible to the county superintendency a person must be a *bona fide* resident and elector of the county.—R. S. 1881, § 154; R. S. 1894, § 154; R. S. 1897, § 154.

He must have been an inhabitant of the county during one year preceding his appointment, but it is not essential that he should have been a citizen or elector for so long a time.—State *v.* Kilroy, 86 Ind. 118.

6. DISPUTED ELECTION. The qualifying of the appointee consists in the execution and acceptance of the required bond, and taking and subscribing the oath of office. A person who has received the certificate of appointment and taken the above action is County Superintendent, at least *de facto*. If the validity of the appointment is disputed, the right to the office may be tested by a writ of *quo warranto* against one of the claimants.

7. APPEAL ON DISMISSAL—SUPERINTENDENT CAN NOT SERVE WHILE APPEAL IS PENDING. An appeal lies to the Circuit Court from a decision of County Commissioners dismissing a Superintendent from office. While such appeal is pending, the person dismissed can not act as Superintendent, but a successor may be appointed, and will hold for the unexpired term, unless the person dismissed is reinstated by the Court. See Walls *v.* Palmer, 64 Ind. 493, and State *v.* Chase, 41 Ind. 356; J., M. & I. Ry. *v.* McQueen, 49 Ind. 64.

8. OFFICE. The County Commissioners are not required to furnish the County Superintendent with an office, nor are they liable to him for the use of his own office as such Superintendent.—Board *v.* Axtell, 96 Ind. 384.

9. LENGTH OF TERM. A County Superintendent, properly elected and qualified, holds his office until his successor is elected and qualified.—State *v.* Sutton, 99 Ind. 300.

10. RECORD OF ELECTION. The Record of a Superintendent's election, made by the County Auditor, is *prima facie* correct, and is *prima facie* evidence of such election.—State *v.* Sutton, 99 Ind. 300.

11. ELECTION BY BALLOT. When the Township Trustees agree that the election of a Superintendent shall be by secret ballot, the election will be determined by the ballots actually cast, and in a suit regarding the validity of such an election the ballots are the best evidence, but when they have been lost, it is proper for the jury or Court to consider the testimony of Trustees who cast the ballots, and of those who counted them and announced the result.—State *v.* Sutton, 99 Ind. 300.

12. ACQUIESCENCE IN ELECTION. Where the Trustees agreed that the election should be by ballot, adhered to that mode throughout, and at the time the result was announced supposed the result was correctly announced, it was decided by the Court that an adjournment without an objection was not an acquiescence

in the result, and that such action did not amount to an acquiescence in the result. State *v.* Sutton, 99 Ind. 300. Without, however, regard to whether the votes of a majority of all the School Trustees are necessary to the valid appointment of a County Superintendent, where such Trustees recognize the appointment as valid, and the appointee qualifies and enters upon the duties of the office with the acquiescence of all others, he may compel his predecessor to deliver the records of the office to him.—McGee *v.* State, 103 Ind. 444.

13. MANDAMUS. Mandamus is the proper remedy to compel a Superintendent to turn over the records and furniture of the office to his successor.—McGee *v.* State, 103 Ind. 444.

14. RESIGNATION. Where, without notice of the withdrawal of a resignation previously made, the time arrives for it to take effect, and a successor to the incumbent is duly appointed, no formal acceptance of such resignation is necessary to deprive such incumbent of title to the office. McGee *v.* State, 103 Ind. 444.

15. REGULARITY OF APPOINTMENT. One can not contest the regularity of the appointment of a successor, who has become invested with an apparent title, by refusing to surrender the records of the office.—McGee *v.* State, 103 Ind. 444.

16. VOTING FOR HIMSELF. A Township Trustee can not vote for himself, and if he does his vote is void. A failure of the Trustees voting for other candidates to make further objections after the presiding officer has announced the result of the election, can not be taken to be either an implied or informal vote in favor of the officer who voted for himself.—Hornung *v.* State, 116 Ind. 458.

17. TRUSTEES PRESENT AND NOT VOTING. There were eight Trustees, all there were in the county, present. Four voted for A, and the other four declined to vote. The chairman announced that the vote was a tie, and the Auditor then voted for A, and the chairman declared him elected; A qualified and demanded the office. It was decided that he was duly elected; that there was a quorum present; that he received the votes of all those present and voting, which was a majority of the number necessary to constitute a quorum, and that he received the necessary number without the vote of the Auditor, who would only be entitled to vote in case of a tie.—State *v.* Dillon, 125 Ind. 65.

18. AUDITOR VOTING. Township Trustees met at the time required by statute, several ineffectual votes were taken, and on the last ballot one-half of the Trustees voted for E, and the others voted blanks. A resolution was then offered declaring that E be appointed. The vote on this resolution was evenly divided for and against it. The Auditor then gave a casting vote for the resolution and a certificate of election was issued to E. It was held that the election of E was void.—State *v.* Edwards, 114 Ind. 581. This case, however, has been modified by the decision in the case cited in note 17.

19. FILING BOND. Mere failure to file the bond within the time required by law does not render the office vacant.—Board *v.* Johnson, 124 Ind. 145.

The Auditor can not refuse to approve the bond on the ground that the Superintendent was corruptly elected.—State *v.* Board, 124 Ind. 554.

20. WHEN MAY BE REMOVED. A County Superintendent may be removed at a special term of the Board of County Commissioners.—Hufford *v.* Conover, 139 Ind. 151.

[1893, p. 142. Approved and in force May 18, 1893.]

74. Shall Examine Teachers. 34. Said County Superintendent shall examine all applicants for license as teachers for the common schools of the State by a series of written or printed questions, requiring answers in writing, and in addition to the said questions and answers in writing, questions may be asked and answered orally, and if, from the ratio of correct answers and other evidences disclosed by the examination, the applicant is found to possess a knowledge which is sufficient, in the estimation of the County Superintendent, to enable said applicant successfully to teach, in the common schools of the State, orthography, reading, writing, arithmetic, geography, English grammar, physiology and the history of the United States, and to govern such school, said County Superintendent shall license said applicant for the term of six months, twelve months, twenty-four months, or thirty-six months, according to the ratio of correct answers and other evidences of qualifications given upon said examination, the standard of which shall be fixed by the County Superintendent; and in examining persons for positions to teach in graded schools in cities and towns, the County Superintendent may take into consideration the special fitness of such applicants to perform the services required of them, and shall make, on the licenses issued to such applicants, a statement of the kind of work for which they are especially qualified; and all applicants, before being licensed, shall produce to the County Superintendent the proper Trustee's certificate or other satisfactory evidence of a good moral character: *Provided*, That a six months' license shall be regarded as a trial license, and that no person who hereafter receives a six months' license in any county shall be again thereafter licensed in said county unless he obtains a grade which shall entitle him to receive at least a twelve months' license: *And provided*, That any person now possessing a thirty-six months' license, whose next consecutive license shall be for a term of thirty-six months, or any person who shall hereafter receive two licenses in succession each for thirty-six months, may receive at the expiration of such several licenses, a license for the term of eight years upon such an examination held by the County Superintendent as may be prescribed by the State Board of Education, and such license

shall issue only upon the approval of the State Board of Education, and shall be styled a professional license, and shall entitle the holder to teach in any of the schools of this State: *Provided*, That any person who has taught for six consecutive years in the common schools of this State, and now holds a three years' license to teach therein, or who, having previously taught for six consecutive years in said common schools, and shall hereafter obtain a three years' license to teach therein, or who has heretofore been exempted under this act, shall be forever afterward exempt from examination so long as he or she shall teach in the common schools of the county in which said three years' license was obtained; but if such person shall, at any time after said exemption accrues, suffer a period of one year to pass without having taught one full school year in the common schools of the county within said period, then said exemption shall cease at the option of the County Superintendent; and if such person shall, during such exemption, seek employment to teach other or higher branches in the common schools of this State than those branches which were included in the examination upon which said three years' license was issued, then he or she shall be examined in such additional branches: *Provided*, That said County Superintendent be authorized to issue an exemption license upon proper affidavit or affirmation of said applicant, and that said exemption license be subject to the same legal limitations as other licenses issued by said County Superintendent. (R. S. 1894, § 5901; R. S. 1897; § 6117.)

1. Professional Licenses. It is ordered by the State Board of Education that persons who have received two county licenses of the first grade may be admitted to an examination for an eight years' professional license, which shall comprise the subjects of elementary algebra, elements of physics, elements of botany, grammar, civil government, American literature, and the science of teaching. Such examination shall be conducted by the County Superintendents in the several counties, upon questions prepared by the State Board; the manuscripts shall be sent to the Board for gradation, and the certificates granted shall take effect upon the expiration of the thirty-six months' licenses held by the persons receiving them. An examination for eight years' licenses is held in March, annually.

2. Appeal. If an applicant for a license is not satisfied with the grading of his County Superintendent he may appeal to the Superintendent of Public Instruction; and if, on the other hand, any patron of a school thinks that a teacher thereof has been too liberally graded, the same right of appeal exists in such patron as in the applicant for a license.

3. Incompetent Teacher. A County Superintendent may refuse to license a teacher whom he knows to be incompetent to teach. There are two ways that such knowledge may come to him: 1st. From personal visitation and inspection of his school work. 2d. From statements made by those in a position to inspect such work.

4. Exemption License. The law expressly says that a teacher must teach without interruption after a license is issued to him under the exemption clause of this section. The inference is that the six years' teaching done should have been done in the six years last past—that is, without any interruption—to entitle an applicant to the exemption. The County Superintendent may require such evidence of his teaching in other counties as will satisfy him that the teacher has done the necessary work, and that he has shown a degree of success sufficient to justify the Superintendent in granting the renewal. It is, therefore, decided by the Superintendent of Public Instruction that the teaching must have been done in the six years last passed, but that the teaching in other counties may be credited if the County Superintendent is fully satisfied that the teaching in other counties has been successful.

5. Powers of Superintendent Not Judicial—Liability. The County Superintendent belongs to the executive department of the government; he acts in neither a judicial nor *quasi*-judicial capacity in licensing persons to teach, and he has a discretion on the subject of licensing teachers, which is so far analogous to judicial discretion that he is protected from any claim for damages on account of any mistake in his decisions, or error in judgment, either in granting or withholding a license. Yet he is liable in damages for maliciously withholding a license to teach from an applicant lawfully entitled to receive the same, and he will be held to have acted maliciously where he acts either from willful and wicked or from corrupt motives.—Elmore *v.* Overton, 104 Ind. 548.

6. License and certificate. There is no legal distinction between the granting of a license to teach and the act of issuing a certificate of that fact. The terms are convertible, and the "licensing" implies the issuing to an applicant of a written permission to teach in the public schools.—Elmore *v.* Overton, 104 Ind. 548.

7. Principals and high school teachers in town and city schools. The spirit of the law is fully complied with when high school teachers pass examination in such branches and only such as they are required to teach. If an applicant is to teach say Latin, Geometry, General History and Physics, there is no good reason for requiring him to pass on the "eight common school branches." It is doubtful whether a teacher can legally draw money from the tuition revenue for teaching the high school branches on a common school license. The intention of the law clearly is that a teacher's fitness to teach should be tested on what he is required to teach, not on what he is not required to teach. Generally an examination in the enumerated branches is sufficient, but when a school district has decided by legal school meeting, under section ...., that they desire other or higher branches taught in their school, then the Superintendent must examine the applicant on the additional branches required by the school meeting. But in case a School Board requires a special teacher in a graded school, such teacher should be examined only on what he is required to teach.

8. Discretion. Reasonable discretion of the County Superintendent can not be controlled by the courts.

9. MANDAMUS. Mandamus will not lie to compel the issuance of a teacher's certificate by the County Superintendent; the Superintendent being vested with a discretionary power, the court may compel him to act upon an application, but can not control his discretion. The mode of procedure in such a case is an appeal to the Superintendent of Public Instruction, and if after hearing the case he orders the County Superintendent to issue a certificate, mandamus would lie to compel him to do so.

10. MINISTERIAL DUTY. Mandamus is the proper action to compel an officer to perform any ministerial duty, but mandamus will not lie to compel the performance of any discretionary duty.

[1865, p. 3. Approved and in force March 6, 1865.]

75. May revoke licenses. 36. The County Superintendent shall have power to revoke licenses granted by him or his predecessors, for incompetency, immorality, cruelty, or general neglect of the business of the school; and the revocation of the license of any teacher shall terminate his employment in the school which such teacher may have been employed to teach. (R. S. 1881, §4426; R. S. 1894, §5902; R. S. 1897, §6119.)

1. REVOCATION OF LICENSE. In the revocation of a license, the Superintendent may act upon his own knowledge, or he may proceed upon petition of the patrons. In the former case he should make out and record charges and specifications, based on his own knowledge, and furnish the teacher a copy thereof, citing him to appear at a certain time and answer with such evidence and explanations as he may be able to give. The answer and evidence should be made a matter of record, together with the finding of the Superintendent. In case a petition for the revocation of a license is received from patrons, the Superintendent may dismiss it if the complaints are of a frivolous character. A mere petition is not enough. Definite charges and specifications should be filed with it. When such charges are received, the Superintendent should fix an early day for the trial, notify the teacher of the pendency of charges and furnish him a copy thereof, and notify all parties interested of the time and place at which the trial will be held. *An accurate record of all the proceedings should be made and all papers filed,* for use in case of an appeal to the Superintendent of Public Instruction. Whenever a license has been revoked, the Superintendent should make a record of the fact, and immediately notify all the Trustees of the county. A license having once been granted, the teacher acquires a proprietary interest in it. It is in one sense property. No teacher should be deprived of his license without an opportunity to answer charges that may be brought against him, whether by the County Superintendent or others. The license of a teacher guilty of forgery may be revoked; he must, however, be actually guilty of the crime, and while an indictment against him is strong evidence of his guilt, it is far from conclusive; for on the trial he may be acquitted. The fact that he dismissed school to attend his trial, does not authorize his dismissal. The fact that many citizens of the vicinity of the school believe he is guilty does not authorize the revocation of his license

nor his dismissal. The fact that his teaching tends to lower the moral standard of the schools of the county, and hinder the County Superintendent in his efforts to uphold it, does not authorize his dismissal. A license can only be revoked for the causes enumerated in the above section. If a majority of those entitled to vote at a school meeting petition the Trustee to dismiss him, the Township Trustee may do so, after due notice and good cause shown. A County Superintendent is not liable for revoking a license unless he acted maliciously.

2. PRACTICE. When charges of incompetency are made against a teacher, those making the charges should be required to prove them by the oaths of such witnesses as have a knowledge of the facts. If the teacher fail in the government of his school, or ability to teach falls short of the proper standard, the Superintendent is justified in revoking the licence, if these facts are proved. The examination of the teacher in technical school work has been settled by the issuing of a license to him. The charges of incompetency should cover that part of the teacher's work along the line of the practical or administrative side of his work. Observations of the County Superintendent gleaned during his visits is proper evidence to be considered in passing judgment upon the case.

3. IMMORALITY. "An act is considered as immoral which is inconsistent with rectitude, contrary to conscience, wicked, unjust, dishonest or vicious."

[1873, p. 75. Approved and in force March 8, 1873.]

76. Examinations—License. 37. The County Superintendent shall hold at least one public examination in each month in the year in his county; and in no case shall he grant a license upon a private examination; and all licenses granted by him shall be limited to the county in which they are granted. (R. S. 1881, § 4427; R. S. 1894, § 5903; R. S. 1897, § 6120.)

1. WHEN HELD. Examinations are now held on the last Saturday of every month.

[1865, p. 3. Approved and in force March 6, 1865.]

77. Record-book—Report to State Superintendent. 38. The County Superintendent shall provide a blank-book at the expense of the county, in which he shall keep minutes of his proceedings, and shall deliver said record, and all other books, papers and property appertaining to his office, to his successor, and take a receipt therefor. Said Superintendent shall, in the last week of May, annually, report to the Superintendent of Public Instruction, the names of the persons to whom he has granted license since the last report, for his county; distinguishing between those licensed for six, twelve, eighteen, and twenty-four months; giving the number of males, and the number of females, and total number licensed; and the number, but

not the names, of applicants for license who have been rejected; and the number of licenses revoked. (R. S. 1881, § 4428; R. S. 1894, § 5904; R. S. 1897, § 6121.)

1. PAROL PROOF OF CONTENTS OF RECORD. The presumption is that a County Superintendent keeps a record of his proceedings, which is the best evidence of his acts in either granting or refusing a license; and in an action against him for maliciously withholding a license, oral proof of his admission that he had granted a license to the applicant is inadmissible unless it is averred in the complaint and first shown that he kept no such record as required by the statute, or that such record is incorrect.—Elmore *v.* Overton, 104 Ind. 548.

2. RECORDING DECISION. The decision of the Superintendent is binding, on appeal, on the Trustee from the time it is given, though not entered in the Superintendent's record until afterwards.—Knight *v.* Woods, 129 Ind. 101.

[1873, p. 75. Approved and in force March 8, 1873.]

78. General duties. 39. The County Superintendent shall have the general superintendence of the schools of his county. He shall attend each Township Institute at least once in each year, when he shall preside at the same and conduct its exercise. He shall visit each school of the county at least once each year, for the purpose of increasing its usefulness and elevating, as far as practicable, the poorer schools to the standard of the best. He shall encourage Teachers' Institutes and Associations, and shall labor, in every practicable way, to elevate the standard of teaching, and to improve the condition of the schools of the county. In all controversies of a general nature arising under the school law, the opinion of the County Superintendent shall first be sought, whence an appeal may be taken to the State Superintendent, on a written statement of facts, certified to by the County Superintendent: *Provided*, That nothing in this act shall be so construed as to change or abridge the jurisdiction of any Court in cases arising under the school laws of the State; and the right of any person to bring suit in any Court, in any case arising under the school laws, shall not be abridged by the provisions of this act. He shall, at all times, carry out the orders and instructions of the State Board of Education and the Superintendent of Public Instruction, and shall constitute the medium between the State Superintendent and subordinate school officers and the schools: *Provided*, That city schools having a Superintendent employed by their board may, at the request of said board, be exempt from

the general superintendence authorized in this section. (R. S. 1881, § 4429; R. S. 1894, § 5905; R. S. 1897, § 6122.)

1. Care and oversight. The Superintendent has the care and oversight of the schools of his county, with authority to direct in their organization and management.

2. Visitation. To make his visitations of much value, the Superintendent ought to visit each school at least twice a year. This can be done under the law by giving each school a half day at a visit. It is safe to say it was the intention of the Legislature that the Superintendent should be allowed at least as many days for visiting the schools as he has different teachers to visit. The Commissioners should not in any case restrict him to a less number of days than this, and if he is a prudent man it would be safe to let him visit at his own discretion. The restriction can be placed upon him at any time if it be shown that he abuses his privilege.

3. Exemption of cities. This privilege is not extended to incorporated towns. The request should be addressed to the County Superintendent, and should be entered in the records of the City School Board. From the date of the request and so long as a City Superintendent is employed the County Superintendent has no authority over the city schools, but such authority will revive if the City Board fails to employ a Superintendent.

4. Power as to course of study and rules. The management and control of the schools is conferred by law upon the Trustees, and this power involves the right to prescribe a course of study and make rules and regulations. But the Trustees also appoint a County Superintendent, who, in a large department of school government, is the representative and agent of the Trustees, and to him their powers are delegated so far as is necessary to successful administration. If neither the County Board of Education nor the Trustees individually have taken the necessary action, the Superintendent may arrange a course of study and direct its enforcement in the schools, and may make reasonable rules and regulations, and the refusal of a teacher to obey the Superintendent in these particulars, would be such "neglect of the business of the school" as would warrant a revocation of his license, or would indicate such incompetence "to successfully teach" as would warrant a refusal to grant him another license.

[1873, p. 68. Approved and in force March 8, 1873.]

79. When must enumerate. 40. When any Trustee shall neglect to file with the County Superintendent an enumeration of the children of the township, town or city, as required by section 118, the County Superintendent shall, immediately after the first day of May in each year, employ a competent person to take the same, and allow a reasonable compensation for such services, payable from the special school revenue of the township; and shall proceed to recover the same in the name of the State of Indiana, for the use of said revenue of said township, by action against the said Trustee in his individual capacity; and in such suit the County Superintendent shall

be a competent witness. (R. S. 1881, § 4430; R. S. 1894, § 5906; R. S. 1897, § 6123.)

[1895, p. 127. Approved March 5, 1893. In force June 28, 1895.]

80. Annual Reports. 41. The County Superintendent shall, on or before the fifteenth day of May, annually make out and forward to the State Superintendent the enumeration of their respective counties, with the same particular discrimination required of the Trustees. When, however, the State Superintendent of Public Instruction, upon examination of the enumeration returns of any county, or of any township, town or city of such county, finds any evidence that the enumeration is excessive in numbers, or otherwise incorrect, he may require the County Superintendent to cause the enumeration of such county, township, town or city to be retaken and returned according to the provision of this act, and the school revenue to be distributed to said county upon such corrected enumeration. If, however, the corrected enumeration is received by the State Superintendent of Public Instruction too late for the semi-annual apportionment, the State Superintendent of Public Instruction shall make the apportionment on the last accepted enumeration. They shall, on or before the fifteenth day of October, annually furnish the statistical information which Trustees are required to report to them in such form as may be prescribed by the Superintendent of Public Instruction. They shall also furnish with such statistical report such additional information, embodied in a written report, relative to the condition of the schools, school houses, and the general progress of education, etc., in the county, as the State Superintendent may from time to time call for. On failure of any County Superintendent to make his report of enumeration by the fifteenth day of May, his county shall be subject to a diminution of twenty-five dollars ($25) in the next apportionment of school revenue by the State Superintendent, and on failure to make his statistical and other reports by the fifteenth day of October, his county shall be subject to a diminution of ten dollars ($10) in the next apportionment likewise. The sum thus withheld may be collected from said County Superintendent, on his bond, in a suit before a Justice of the Peace, prosecuted in the name

of the State, by any person living in said county, who has children enumerated for school purposes for the current year, who is aggrieved by said diminution. Said suit may be commenced within two years from the time when said report is due, and not afterward: *Provided*, That said County Superintendent may discharge himself from liability to such suit by a certificate of the postmaster that said report was mailed in due time, together with his own affidavit of that fact. (R. S. 1897, § 6124.)

1. Private Institutions. County Superintendents are expected to furnish statistical and other reports relative to private schools, high schools, colleges and other private institutions of learning within their respective counties, so as to enable the Superintendent of Public Instruction to present a view of all the educational facilities of the State.

2. See section 17.

[1865, p. 3. Approved and in force March 6, 1865.]

81. Apportionment—Report. 42. The County Superintendent shall make out, from the lists of enumeration and the reports of transfers, the basis of the apportionment of school revenue to the several townships, towns and cities of their respective counties, and parts of congressional townships of adjoining counties whose congressional township fund is managed in their counties, and report the same to the proper County Auditors by the first day of June, annually, so as to enable County Auditors to accurately apportion the school revenue for tuition. (R. S. 1881, § 4432; R. S. 1894, § 5908; R. S. 1897, § 6125.)

1. Congressional Townships. The basis of apportionment should show, by number and range, the congressional townships, or parts of congressional townships, which form each civil township, the number of children enumerated in each of such parts; also the whole number of children enumerated in each civil township. With the basis of apportionment he should file with the Auditor a separate statement showing what congressional townships whose funds are managed in his county are divided by the county line; also, the number of children enumerated in each part of such townships.

[1873, p. 75. Approved and in force March 8, 1873.]

82. Compensation. 43. The County Superintendent shall receive four dollars for every day actually employed in the discharge of the duties required by this act. But before the County Commissioners shall allow his per diem, the same shall be presented in a bill of account stating, in separate items, the nature

and amount of service rendered on each day for which he claims compensation; which bill of account shall be verified by affidavit to the effect that the same and each item thereof is just and true. The County Auditor shall draw his warrant on the County Treasurer for the amount allowed by the Board in favor of said Superintendent, and the Treasurer shall pay the said warrant out of the ordinary county revenues: *Provided, however*, That the said Board of Commissioners shall have power to determine the number of days in each year in which the County Superintendent may labor in the performance of the duties required of him in visiting schools: *Provided, further*, The number of days so allowed in each year for visiting schools shall not be less than the whole number of schools in such county over which such Superintendent has control; and he shall receive no perquisites whatever. (R. S. 1881, § 4433; R. S. 1894, § 5909; R. S. 1897, § 6126.)

1. Office Furnished. The County Commissioners are not required to furnish the County Superintendent an office. Even if they were required to furnish him an office, they would not, in the absence of a contract, be liable to him for the use of an office of his own for the purposes of the County Superintendent.—Board *v.* Axtell, 96 Ind. 384.

It is undoubtedly proper, and not at all in conflict with the above decision of the court, that the Commissioners should allow the County Superintendent the use of a room in the Court House, whenever possible. The newer Court Houses invariably provide accommodations for the County Superintendent.

2. Power to Provide the Superintendent with an Office. Technically, County Commissioners could not be compelled to do any discretionary act. As guardians of the public welfare they ought, however, to provide properly for all public necessities. The County Superintendent's office is a public necessity, and ought to be provided for by the Commissioners. That they are clearly and amply authorized to do so will appear from the following:

The Supreme Court in Board *v.* Axtell, 96 Ind. 384, said: "The County Commissioners are not required to furnish the County Superintendent an office." The Commissioners are not required by statute to furnish the Sheriff an office (R. S. 1881, § 5748; R. S. 1894, § 7833) or a residence. Yet every county in the State does furnish the Sheriff an office, and all the counties in the State except three furnish the Sheriff a residence. This is all proper and legal, yet it is not commanded by statute. It is discretionary with them.

In discussing their discretionary powers, in The Board of Commissioners of Franklin County *v.* Bunting, 111 Ind. 143, the Supreme Court said: "That it (the Board of Commissioners) is invested with very extensive discretionary powers in the management of county affairs can not be doubted. The discretion vested in it is comprehensive enough to authorize it to build a Sheriff's residence in connection with a county jail, for such an act is within the scope of its authority."

3. Amount of Claim. The Superintendent should file his claim for the full amount of his services at $4 per day up to the end of the quarter.—Board *v.* Binford, 70 Ind. 208; Campbell *v.* Board, 71 Ind. 185.

4. Reports to Bureau of Statistics. The duty imposed on the County Superintendent of Schools (by R. S. 1881, § 5720; R. S. 1894, § 7768; R. S. 1897, §....), to make reports to the Bureau of Statistics, is an official duty imposed upon the officer, for which he is not entitled to compensation.—Yeager *v.* Board, 95 Ind. 427.

[1875, p. 131. Approved and in force March 9, 1875.]

83. Duty as to apportionment. 6. Such Superintendent shall see that the full amount of interest on school fund is paid and apportioned, and, when there is a deficit of interest of any school fund, or loss of any school fund or revenue by the county, that proper warrants be issued for the re-imbursement of the same; but no per centum beyond what is provided for herein and allowed shall in any case be paid him by said Board of Commissioners. (R. S. 1881, § 4434; R. S. 1894, § 5910; R. S. 1897, § 6127.)

[1873, p. 75. Approved and in force March 8, 1873.]

84. Duty as to school fund. 7. The official dockets, records, and books of account of the Clerks of the Courts, County Auditor, County Commissioners, Justices of the Peace, Prosecuting Attorneys, Mayors of cities, and Township and School Trustees, shall be open at all times to the inspection of the County Superintendent; and whenever he shall find that any of said officers have neglected or refused to collect and pay over interest, fines, forfeitures, licenses, or other claims, due the school funds and revenues of the State, or have misapplied the school funds and revenues of the State, or have misapplied the school funds and revenues in their possession, he shall be required to institute suit in the name of the State of Indiana for the recovery of the same, for the benefit of the school funds or revenues and make report of the same to the Board of County Commissioners and to the State Superintendent. (R. S. 1881, § 4435; R. S. 1894, § 5911; R. S. 1897, § 6128.)

1. Suit against Township Trustee. A County Superintendent may bring an action against a defaulting Township Trustee; but his right to bring such an action does not prohibit the successor of such Trustee suing his predecessor.—Nichols *v.* State, 65 Ind. 512.

2. See Carr *v.* State, 81 Ind. 342, concerning the power of County Superintendents to bring suit.

CHAPTER VI.

COUNTY BOARD OF EDUCATION.

[1877, p. 122. Approved and in force March 2, 1877.]

85. County Board of Education. 8. The County Superintendent and the Trustees of the townships, and the Chairman of the School Trustees of each town and city of the county shall constitute a County Board of Education. Said Board shall meet semi-annually at the office of the County Superintendent on the first days of May and September (unless the said days be Sunday, and if so, on the day following), a majority of whom shall constitute a quorum. The County Superintendent shall preside at the meetings of the Board, shall be allowed to vote on all questions as other members of the same are allowed to vote. Said Board shall consider the general wants and needs of the schools and school property of which they have charge, and all matters relating to the purchase of school furniture, books, maps, charts, etc. The change of text-books, except cities, and the care and management of township libraries, shall be determined by such Board, and each township shall conform as nearly as practicable to its action; but no text-book hereafter adopted by the County Board shall be changed within six years from the date of such adoption, except by unanimous vote of all the members of such Board: *Provided*, That any text-book heretofore adopted by the County Board of Education shall not be changed within three years from the date of its adoption. (R. S. 1881, § 4436; R. S. 1894, § 5912; R. S. 1897, § 6129.)

1. See State *v.* Harrison, 67 Ind. 71; Sackett *v.* State, 74 Ind. 491.

2. Quorum, Course of Study, Rules and Regulations, Records, etc. In the absence of the County Superintendent the Board may appoint one of its members president *pro tem.* No action can be taken by the Board unless a majority of all the members are present. If such majority be present at any meeting the Board may take legal action upon suitable questions by a majority vote of those present; but some questions require a majority vote, and others a unanimous vote, of all the members of the Board.

The Board may adopt a course of study for the district schools, and rules and regulations for the government thereof, but it should not attempt to make rules for the schools of towns and cities.

It is very important that school officers and County Boards should make a careful record of their proceedings. If a Board takes any legal action, and fails to record it, or makes an incorrect record, the record can be amended by order of the Board at a subsequent meeting. A legal act is not necessarily void by reason of a failure to make a record of it; but if a question should arise as to the action of a Board, evidence may be taken at a subsequent meeting outside the records, and a new record may be made in accordance with the fact as ascertained.

The County Board and Trustees have the right to make such rules and regulations, according to law, as will tend to promote the general good of the public schools, and it is the duty of teachers to carry out such rules in good faith.

3. Can Not Make Contracts. The County Board of Education has no power to make contracts. It is merely a *quasi*-corporation with but limited powers, and is nowhere authorized to contract, or sue or be sued. As a Board it has no control of revenues, nor power to order any expenditure. But all or any number of the Trustees may join together in purchasing or contracting for supplies, and such action may often be advisable. It is not, however, the action of the Board.

4. Adoption of High School Books. So far as the above section relates to the selection and adoption of text-books in the eight common school branches (sec. 74) it was repealed by the text-book laws of 1889, '91 and '93 (secs. 26 to 72); but text-books for high school subjects, in the township graded schools, may be adopted by the County Board of Education, and their use enforced by all reasonable rules.

5. Books Used and How Obtained. The Legislature has the authority to prescribe the course of study and the system of instruction that shall be pursued and adopted, as well as the books which shall be used.—State *v.* Haworth, 122 Ind. 462.

6. The Legislature has the power to require a designated series of books to be used in the schools, and to require that the books selected shall be obtained by the school officers from the person to whom the contract for supplying them may be awarded. It may not only prescribe regulations for using the books designated, but it may also declare how the books shall be obtained and distributed. —State *v.* Haworth, 122 Ind. 462.

7. Illegal Rulings of County Board as to Licenses. The rule of a County Board declaring that "no person under the age of twenty shall be licensed to teach in this county" is unauthorized by the statutes, palpably unreasonable and unwarranted in law.

8. Illegal Rulings of County Board as to Holidays. The rule of the County Board declaring that "no pay shall be allowed teachers for holidays that fall on legal school days" is illegal and void.

9. Libel. A newspaper publication, charging that a County Superintendent of schools, for a consideration in money, had, by the use of his influence, induced the County Board of Education to order a change in school books, is a libel in the sense of the statute.—Hartford *v.* State, 96 Ind. 461.

10. Legislature May Prescribe Duties of Officers. The power over the school system is legislative and exclusive, and the Legislature has authority to impose upon all officers whose tenure is legislative, such duties respecting school affairs as it deems proper. All such officers take their offices *cum onere*, and must do what the Legislature demands, or else resign.—State *v.* Haworth, 122 Ind. 462.

11. The County Board may adopt a course of study and compel every pupil to take the entire course in the order prescribed on penalty of expulsion.

Our State Constitution, article 8, section 182, directs the General Assembly "to provide, by law, for a general and uniform system for common schools, wherein tuition shall be without charge, and equally open to all." As a result of this the General Assembly enacted sections 11 and 85, which provide for the proper administration of this "system of common schools." To hold that the General Assembly charged the officers provided for in the above cited sections with the administration of the school system, without at the same time investing them with the necessary executive power to enforce their administration would be absurd. Such interpetration of these statutes would be the worst kind of travesty. It would be to render the whole common school machinery not only useless but ridiculous.

The officers in the before mentioned sections have the undoubted legal authority to adopt a course of study and to make all reasonable rules and regulations for the proper carrying out of the same. The teachers, of course, would have to carry out such rules as are directed by the Trustee or School Board. But to what extent the officers would be warranted in going to carry out their reasonable rules is the question. Our Supreme Court in State *v.* Webber, 108 Ind. 31, said:

"A rule, prescribed by the Superintendent of the free graded schools of a city, with the sanction of the Trustees, that the pupils in the high school department shall, at stated intervals, employ a certain period of time in the study and practice of music, for which purpose they shall provide themselves with a prescribed book, is an exercise of discretionary power conferred by law, and unless the regulation is shown to be unreasonable, or a satisfactory excuse for failing to comply therewith is given, mandamus will not lie to compel the school authorities to readmit a pupil who has been suspended for disobedience thereof."

There might be some cases in which it would be reasonable and just to excuse a pupil from taking the full course, or in the order prescribed, but they are exceptions.

It seems it would be best to educate the people to see that it is advantageous to their children to take all the studies, and in the order prescribed, rather than to resort to the law to compel people to do that which is obviously to their own interest. A parent stands in his own light when he objects to having his child carried through the course of study in the sequential order of the studies.

CHAPTER VII.

ADMINISTRATION.

SEC.
86. School township.
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[1859, p. 181. Approved March 3, 1859, and in force August 6, 1859.]

86. School township. 1. Each and every township that now is, or may hereafter be, organized in any county in this State, is hereby also declared to be a school township, and, as such, to be a body politic and corporate, by the name and style of "..... school township of ..... county," according to the name of the township and of the county in which the same may be organized; and, by such name, may contract and may be contracted with, sue and be sued, in any court having competent jurisdiction. (R. S. 1881, § 4437; R. S. 1894, § 5913; R. S. 1897, § 6130.)

1. CORPORATIONS DISTINCT. "There are two corporations in Greene County [conterminous in territory], with almost the same name. * * * The first is denominated a civil township, the second a school township. * * * It must be contemplated that the funds, etc., of these two corporations shall be kept separate. It is as an officer of the school township, and not as an officer of the civil township, that the Trustee has authority and power to levy a tax for the erection of school houses, and to expend the same for that purpose. We think it must follow that it is as Trustee of the school township, and not as Trustee of the civil township, that the Trustee must contract for the building of school houses. We do not think the Trustees of the civil township can legally contract for the building of a school house and make the civil township liable therefor."—Carmichael *v.* Lawrence, 47 Ind. 554; Utica Township *v.* Miller, 62 Ind. 230; Harrison School Township *v.* McGregor, 96 Ind. 185; Johnson *v.* Smith, 64 Ind. 275; Inglis *v.* State, 61 Ind. 212; Wright *v.* Stockman, 59 Ind. 65; Wingate *v.* Harrison School Township, 59 Ind. 520. A civil township has no power to make a contract for the

benefit of school property.—Jackson Township *v.* Barnes, 55 Ind. 136; Jackson Township *v.* Home Insurance Company, 54 Ind. 184; McLaughlin *v.* Shelby Township, 52 Ind. 114; McIlwaine *v.* Adams, 46 Ind. 580; Hornby *v.* State, 69 Ind. 102.

2. Intentions Considered. But a note, showing on its face that it was given in payment for articles furnished for the use of schools, though executed by a Trustee apparently in the name of the civil township, binds the school township.—Moral School Township *v.* Harrison, 74 Ind. 93; Johnson School Township *v.* Bank, 81 Ind. 515; Jackson School Township *v.* Hadley, 59 Ind. 534; White *v.* Kellogg, 119 Ind. 320.

3. Will. A devise by will, for the support of the public schools, can be made to a township; and a devise to a township, without saying whether to the school or the civil township is a devise to the school township.—Skinner *v.* Harrison Township, 116 Ind. 139.

4. Suit on Official Bond. A Township Trustee may be the relator in a suit upon the official bond of his predecessor, to recover moneys due the civil township, and also moneys due the school township; and under a proper complaint there may be a recovery for funds of either or both of the corporations; but on a complaint in which he sues only as trustee of the civil township, he can not recover money due to the school township.—Steinmetz *v.* State, 47 Ind. 465.

5. Civil Township Can Not Build a School House. A civil township has no authority to make a contract for the erection of a school house; and if it sue on a contract for the erection of a school house, the complaint, though it may state a good cause of action in favor of the school township, will be bad on demurrer. McLaughlin *v.* Shelby Township, 52 Ind. 114; Utica Township *v.* Miller, 62 Ind. 230. A town organized as a school corporation is the proper plaintiff in an action to recover land previously deeded for school purposes to the school township in which it is situated.—Newpoint Lodge *v.* Town of Newpoint, 138 Ind. 141.

6. Pleadings Must Designate the Corporation—Civil or School. Where an action is brought against a township, and the township name, merely, is given, it is conclusively presumed that the action is against the civil township. To make a complaint effective against the school corporation, it must, by appropriate averments, designate the school township, or its representation. It should be against the "school township trustee."—Jarvis *v.* Robertson, 126 Ind. 281; Braden *v.* Leibenguth, 126 Ind. 336.

7. Suit Against School Trustees of Town or City. An action to recover from a city or town school board, should be brought, not against such trustees, but against the school corporation, by the name and style of "The school city of ....," filling the blank with the name of the city.—Sims *v.* McClure, 52 Ind. 267.

8. Suit Against Township and not Against Trustee Personally. A summons reading, "You are hereby commanded to summons trustee Cicero school township, etc.," sufficiently indicates that the action is against the township, and not against the trustee personally, and the township is bound to take notice of the pendency of the action.—Vogel *v.* Brown Tp., 112 Ind. 299; distinguished in Cicero School Tp. *v.* Chicago National Bank, 127 Ind. 79.

9. Suit for School Taxes. An action against a civil township for school taxes is bad on demurrer.—Wright *v.* Stockman, 59 Ind. 65.

10. No Authority to Borrow Money—Liability for Borrowed Money. There are restrictive provisions [in the school law] which, fairly construed, must

be held to deny the authority to negotiate loans.—First National Bank *v.* Union School Tp., 75 Ind. 361. But if a trustee borrows money to build a needed and suitable school house, the school township receiving the benefit will be liable therefor.—Bicknell *v.* Widner School Tp., 73 Ind. 501. But in such case it must be averred and proved that the school township received the benefit of the money.—Reeve School Tp. *v.* Dodson, 98 Ind. 497; Union School Tp. *v.* First National Bank, 102 Ind. 464; Cicero School Tp. *v.* Chicago National Bank, 75 Ind. 361, 368; Pine Civil Tp. *v.* Huber Mfg. Co., 83 Ind. 121. And that there was no fraud practiced in the execution of the note.—Boyd *v.* Mill Creek School Tp., 124 Ind. 193. See also Grimsley *v.* State, 116 Ind. 130; State *v.* Howes, 112 Ind. 323; Kittenger *v.* Monroe School Tp., 3 Ind. App. 411; Messick *v.* Midland Ry. Co., 128 Ind. 81.

11. Contracts of Trustee—Notice. In dealing with the trustee of a school township, all persons are bound to take notice of his official and fiduciary character, and to know that he can only bind his township by contracts which are shown to be authorized by law.—Bloomington School Tp. *v.* National, etc., 107 Ind. 43; Union School Tp. *v.* First National Bank, 102 Ind. 464; Kittenger *v.* Monroe School Tp., 3 Ind. App. 411.

12. School Supplies—Necessary Averments. A complaint against a school township on a contract for school supplies to be good must allege that such supplies are necessary and suitable for the use of the public schools of the township, and that they have been delivered to and accepted by such township.—Bloomington School Tp. *v.* National, etc., 107 Ind. 43. And that there was no collusion to defraud.—Boyd *v.* Mill Creek School Tp., 124 Ind. 193; Kittenger *v.* Monroe School Tp., 3 Ind. App. 411. Where the suit is for school supplies furnished, school teachers may testify concerning their usefulness and the necessity of their purchase.—Litten *v.* Wright School Tp., 1 Ind. App. 92.

13. Bank Deposit—Promissory Note. When a trustee of a school corporation executes prommissory notes in the name of the corporation, deposits the money in his own name, and draws it out upon checks signed by himself as an individual, he becomes the creditor of the bank for such deposits, and the transaction is one between the bank and its depositor.—Union School Tp. *v.* First National Bank, 102 Ind. 464.

14. No Liability—When Trustee Has School Funds In His Hands—Note Void. When the trustee has money in his hands derived from the school revenues or funds, the lender of money can not be subrogated to the rights of the persons holding claims against the school corporation.—Union School Tp. *v.* First National Bank, 102 Ind. 464.

15. Fraudulent Issue of Certificates or Orders. If by a conspiracy certificates or orders are issued they are void, and even though the township has not rescinded the contract, and retains the benefit thereof, it is not bound upon such fraudulent certificate or order, and the assignee is not entitled to recover the actual value of goods furnished the township.—Boyd *v.* Mill Creek School Tp., 124 Ind. 193.

16. Orders Without Consideration Void—Estoppel. If a trustee issues orders or certificates in the name of his township without consideration, such order or certificate is invalid and void, and in such case no act, conduct or promise of the trustee or his successors in office will estop the township from pleading the want of consideration as sufficient defense to any suit against the township upon such order or certificate.—Axt *v.* Jackson School Tp., 90 Ind. 101.

17. Statute of Limitation—Time of Filing Complaint. An amendment to a complaint has reference to the time at which the complaint was filed. Where a town was sued as a school corporation, but not specifically described as such, the time of filing an amended complaint—if the statute of limitations intervene—relates back to the time of filing the original complaint.—Schooltown of Monticello *v.* Grant, 104 Ind. 168.

18. Judicial Knowledge. The Supreme Court will take judicial knowledge that the township trustee is the trustee of the school township. State *v.* McDonald, 106 Ind. 233. But it will not take judicial knowledge of the names of the townships of a county.—Bragg *v.* Board, 34 Ind. 405.

19. De Facto Officers. The contract of a de facto township trustee, if otherwise valid, is binding upon the township.—School Town of Milford *v.* Zeigler, 1 Ind. App. 138.

87. Towns and cities. 4. Each civil township and each incorporated town or city in the several counties of the State is hereby declared a distinct municipal corporation for school purposes, by the name and style of the civil township, town or city corporation respectively, and by such name may contract and be contracted with, sue and be sued, in any court having competent jurisdiction; and the Trustee of such township, and the Trustees provided for in the next section of this act, shall, for their township, town, or city, be School Trustees and perform the duties of Clerk and Treasurer for school purposes. (R. S. 1881, § 4438; R. S. 1894, § 5914; R. S. 1897, § 6131.)

1. Corporate Names. It has been decided, in very many cases, that the name of the school corporation is "the School Town (*or* City) of ——," or "School Township of —— County," and that, in this name, it must sue and be sued; that instead of a distinct function bestowed on the civil or municipal corporation, an independent and distinct corporation, for school purposes only, is created by this section; and that section 86 is still in force.—Carmichael *v.* Lawrence, 47 Ind. 554; City of Huntington *v.* Day, 55 Ind. 7; Jarvis *v.* Shelby, 62 Ind. 257; Harrison *v.* McGregor, 67 Ind. 380.

2. Corporations Independent. Each civil township and each incorporated town and city is a distinct school corporation, entitled to receive and expend its proper school moneys independent of any control by any other such corporation. —Johnson *v.* Smith, 64 Ind. 275.

3. Designations in Suits. The character in which an incorporated town may sue or be sued as a school corporation may be designated either in the title of the action, as a school corporation, or in the complaint, by an allegation of that fact.—Town of Noblesville *v.* McFarland, 57 Ind. 335; but see Steinmetz *v.* State, 47 Ind. 465; Robinson *v.* State, 60 Ind. 26; Inglis *v.* State, 61 Ind. 212.

4. Property and Revenues. When a village becomes incorporated the school town thus created becomes, as Trustee by statute, the successor of the township in the right to the possession and control of school property within its territory. School Town of Leesburg *v.* Plain Township, 86 Ind. 582. And as soon as School

Trustees are appointed and qualified they have a right to demand and receive of the Township Trustee whatever sums of money he has received by reason or on account of the school children residing within or transferred to the town, and he can not lawfully withhold it on any ground. He received and held it in trust for those children.—Johnson *v.* Smith, 64 Ind. 275.

5. Corporations Distinct. A civil township and the school township of the same territory are distinct corporations, and each must sue and be sued in its own proper corporate name, and neither can sue in the name of the other, or in that of the Township Trustee. So also a civil town and the school town are distinct corporations, which must sue and be sued in its own corporate name.—Wright *v.* Stockton, 59 Ind. 65.

6. Power of School City. A city organized under the general law for the incorporation of cities has no power to buy or give its promissory notes for a county seminary, though for school purposes in the city. That power belongs to the school corporation of the city.—State *v.* City of Terre Haute, 87 Ind. 212.

7. Division of Revenues. Where money has been apportioned to a school township and received by the Trustee thereof, some of which belongs to a school town afterward organized, and he refuses to pay it over, he may be compelled by mandate to do so, and the School Trustees of the town are the proper relators in such a suit.—Hon *v.* State, 89 Ind. 249.

8. Property of School Corporation. Real estate and buildings held by a school corporation for school purposes are subject to appropriation for highways as is private property.—Rominger *v.* Simmons, 88 Ind. 453.

9. Judicial Notice. The courts will not take judicial notice of a township organization, nor its name.—Bragg *v.* Board of Commissioners, 34 Ind. 405; Swails *v.* State, 4 Ind. 516.

10. Action. In dealing with a Trustee of a school township, all persons are bound to take notice of his official character, and to know that he can only bind his township by contracts which are shown to be authorized by law. Therefore, a complaint against a school township on a contract for school supplies, to be good, must allege that such supplies are necessary and suitable for the use of the public schools of the township, and that they have been delivered to and accepted by such township.—Bloomington School Township *v.* National School Furnishing Company, 107 Ind. 43; Platter *v.* Board, 103 Ind. 360; Summers *v.* Board, 103 Ind. 262; Reeve School Township *v.* Dodson, 98 Ind. 497; Axt *v.* Jackson School Township, 90 Ind. 101; Pine Civil Township *v.* Huber, etc., 83 Ind. 121; Kittenger *v.* Monroe School Tp., 3 Ind. App. 411.

11. Summons. A summons in an action against a township must be issued against the township; and if issued against the Trustee of such township a judgment thereon against the township is void.—Vogel *v.* Brown School Township, 112 Ind. 317; Vogel *v.* Brown Township, 112 Ind. 299.

[1875, p. 135. Approved and in force March 12, 1875.]

88. School Trustees in cities and towns. 5. The Common Council of each city and the Board of Trustees of each incorporated town of this State shall, at their first regular meeting in the month of June, elect three School Trustees who shall hold their office, one, two and three years respectively, as

said Trustees shall determine by lot at the time of their organization, and, annually thereafter, shall elect one School Trustee, who shall hold his office for three years. Said Trustees shall constitute the School Board of the city or town; and, before entering upon the duties of their office, shall take an oath faithfully to discharge the duties of the same. They shall meet within five days after their election, and organize by electing one of their number as president, one as secretary, and one as treasurer. The treasurer, before entering upon the duties of his office, shall execute a bond, to the acceptance of the County Auditor, conditioned as in ordinary official bonds, with at least two sufficient freehold sureties, who shall not be members of said Board, in a sum not less than double the amount of money which may come into his hands, within any one year, by virtue of his office. The president and secretary shall each give bond, with like sureties, to be approved by the County Auditor, in any sum not less than one-third of the treasurer's bond. All vacancies that may occur in said Board of School Trustees shall be filled by the Common Council of the city or Board of Trustees of the town; but such election to fill a vacancy shall only be for the unexpired term. The Board of School Trustees shall, each year, within five days after the annual election of a member, reorganize their Board and execute their respective bonds for the ensuing year. Said Trustees shall receive for their services such compensation as the Common Council of the city or the Board of Trustees of the town may deem just; which compensation shall be paid from the special school revenue of the city or town. (R. S. 1881, § 4439; R. S. 1894, § 5915; R. S. 1897, § 6132.)

1. TOWN TRUSTEE. A Town Trustee of an incorporated town may be elected to the office of School Trustee.—State *v.* Meyer, 60 Ind. 288.

2. TIME OF ELECTION. As to the time of election, this section is merely directory; and if omitted at the time it may be made afterward.—Sackett *v.* Foreman, 74 Ind. 486.

3. RESIGNATIONS. A resignation of a town or city School Trustee should be addressed to the body that elects, and is complete without formal acceptance; yet its withdrawal even after acceptance but with the consent of the electing body is equivalent to a reappointment. In case of such resignation an election to fill the vacancy may be held before the day set for the resignation to take effect.—Leach *v.* State, 78 Ind. 570.

4. POWER AS TO VACCINATION. School Trustees have the power, as a measure of public safety and to guard against a contagious disease, to order school

children to be vaccinated, but they should exercise it with discretion. In some localities there is no earthly danger of small-pox; in others—as a crowded city—when the disease has made its appearance immediate measures should be taken.

5. Purchase of Ground. The School Trustees can not purchase ground or enter into contracts for building except with the approval of the Common Council or Town Trustees.

6. Office Lucrative. As the statute provides for the compensation of Town School Trustees, their office is a lucrative one within the meaning of the Constitution, and a person can not hold it at the same time with another lucrative office. —Chambers *v.* State, 127 Ind. 365.

7. Suit Against Towns. A complaint against a school town alleging the employment of plaintiff by the defendant to teach school and breach of the contract, is sufficient without alleging employment by the Trustees of the town or that the town was incorporated, or that there was a Board of Trustees. In such a case a paragraph of a complaint founded on an account is good.—School Town of Rochester *v.* Shaw, 100 Ind. 268.

8. Officer de Facto. Pending suit to determine who is School Trustee, the courts will compel the County Auditor to recognize the Trustee in possession. Leach *v.* Cassidy, 23 Ind. 449. Hold-over Trustees can bind the school corporation.—School Town of Milford *v.* Zeigler, 1 Ind. App. 138.

9. Amendment of 1875. This section was amended in 1875, and it superseded and took the place of the amendment of 1873 (Acts 1873, p. 68).—Blakemore *v.* Dolan, 50 Ind. 194.

10. Abolishing Office. The Legislature may abolish the office of School Trustee, or shorten or lengthen the term thereof.—Blakemore *v.* Dolan, 50 Ind. 194.

11. Old Board's Contract. A contract made by the Board of School Trustees of an incorporated town or city with a school superintendent or a teacher, prior to the annual election in June, of a new member of the Board, and the reorganization required by statute, for services to be performed after the election of such member, is valid and binding on the school corporation.—Reubelt *v.* School Town of Noblesville, 106 Ind. 478.

12. Mandamus. Mandamus lies to compel a school officer to deliver the records, books and papers of the office to his successor. Frisbie *v.* Clarksville, 78 Ind. 269: and to compel the Trustees of a town or city to elect School Trustees.

13. Extending Term. The provisions of the Constitution (R. S. 1881, §225; R. S. 1894, §225; R. S. 1897, §225) extending the regular terms of officers until their successors "shall have been elected and qualified," applies to School Trustees, and such Trustees continue in office until their successors have not only been elected but have taken their oath of office and have filed their official bonds. —School Town of Milford *v.* Powner, 126 Ind. 528.

14. Board Acts as a Unit. The Board must act as a body, not as individuals, the majority ruling; and their action should be recorded.

But where one of the School Trustees of a town signed a contract of employment with a teacher in one of the schools of the town, and at a called meeting the contract was adopted by the Board and signed by another member, it became binding upon the town.—School Town of Milford *v.* Powner, 126 Ind. 528.

15. Validity of Rules and Regulations. Regulations adopted by persons in charge of a school are analogous to by-laws enacted by municipal and

other corporations, and both will be annulled by the courts when found to be unauthorized, against common right, or palpably unreasonable.—State *v.* White, 82 Ind. 278.

16. City Councilman. The office of City Councilman is not a lucrative office within the meaning of the Constitution.—State *v.* Kirk, 44 Ind. 401.

17. Justice of the Peace can not Serve as Trustee. A Justice of the Peace can not serve as School Trustee.—See § 176 State Constitution. *Post.*

18. Assent of Majority. A majority of the Board, at a legal meeting, must consent to an order to render it valid.—City of Logansport *v.* Dykeman, 116 Ind. 15.

19. Reasonableness of Rules. Rules must be reasonable under the circumstances.—Fertich *v.* Michener, 111 Ind. 472. Any rule of the school not subversive of the rights of the children or parents, or in conflict with humanity and the principles of the divine law, which tend to advance the objects of the law in establishing public schools, must be considered reasonable and proper.—Fertich *v.* Michener, 111 Ind. 472.

20. City Clerk. The office of City Clerk is not an office "under the State," within the meaning of section 176, State Constitution.—Mohan *v.* Jackson, 52 Ind. 599.

21. Acceptance of Lucrative Office. If an officer holding one lucrative office accepts another, the acceptance of the second vacates the first.—Howard *v.* Shoemaker, 35 Ind. 111; Mohan *v.* Jackson, 52 Ind. 599.

22. Authority to Adopt Rules. The School Board and school authorities have the power to adopt rules and regulations for the government of the schools under their control.—Fertich *v.* Michener, 111 Ind. 472.

23. Rules of Superintendent or Teacher Binding on Pupils. Any reasonable rule adopted by the superintendent or teacher, not inconsistent with some statute or some rule prescribed by higher authority, is binding upon the pupils.—Fertich *v.* Michener, 111 Ind. 472.

24. Gradation of Pupils. When a child has graduated from one department it is ineligible to that department again.

25. When Two Boards Act Together. When two Boards act together a majority of the whole Board of Trustees, whether such majority come from one corporation entirely, or from different corporations interested, have the power to transact any and all business.—Hanover School Township *v.* Gant, 125 Ind. 557.

26. Ratification of Contracts. Contracts may be ratified by the Board either by special resolution or by acquiescence.

27. Defalcation—Liability of Members of Boards. A Trustee who has had no part in the misapplication of funds is not liable therefor.—State *v.* Julian, 93 Ind. 292.

28. Contracts with De Facto Trustees. The contracts of *de facto* Trustees with teacher is binding upon their school corporation; and in an action by such teacher on the contract, the validity of their acts as officers can not be called in question.—School Town of Milford *v.* Zeigler, 1 Ind. App. 138.

29. Acquiescence in Illegal Election of Officers. After six years of acquiescence and approval on the part of the school town in the election and serving of certain persons acting as School Trustees, third persons dealing with them have the right to presume that they are at least officers *de facto.*—School Town of Milford *v.* Zeigler, 1 Ind. App. 138.

30. Hiring of Teacher by Old School Board. A Board of School Trustees (not a Township Trustee, § 172), after their successors have been elected, and before they are entitled to serve as officers, may hire a teacher for the year beginning after their terms of office will expire. School Town of Milford *v.* Zeigler, 1 Ind. App. 138. A School Trustee of a township can not ignore his predecessor's contract, because of mere formal and technical defects.—Sparta School Tp. *v.* Mendell, 138 Ind. 188. (See § 172.)

31. Signing Contract. If the School Board in session hire a teacher, the contract with him may be signed at different times; and a signing by a majority of the Trustees is sufficient. School Town of Milford *v.* Zeigler, 1 Ind. App. 138.

32. Abolishing School—Effect on Teacher's Contract. A contract with a teacher to teach can not be annulled by abolishing the school he was to have taught.—School Town of Milford *v.* Zeigler, 1 Ind. App. 138.

33. Majority of Trustees Sufficient to Make a Contract. A contract by two of three Trustees, when in session, "is valid."—School Town of Milford *v.* Zeigler, 1 Ind. App. 138.

34. Illegal Design of Trustee. A teacher's contract is not void when the Trustees have an illegal purpose or design in view, if he does not participate in such purpose or design.—School Town of Milford *v.* Zeigler, 1 Ind. App. 138.

35. Contest. Pending litigation to determine who is entitled to exercise an office, the officer *de facto* shall act, and when it appeared to the court that A was in possession of the office of School Trustee it properly compelled the County Auditor to recognize him as such.—Leach *v.* Cassidy, 23 Ind. 449. See also School Town of Milford *v.* Zeigler, 1 Ind. App. 138.

36. Employment by School Town. A complaint against a school town alleging the employment of the plaintiff by the defendant to teach school and a breach of contract is sufficient, without alleging employment by the Trustees of such school town, or that the town was incorporated, or that there was a Board of Trustees in said town.—School Town of Rochester *v.* Shaw, 100 Ind. 268; Sparta School Township *v.* Mendell, 138 Ind. 188.

37. Suit on Treasurer's Bond—Penalty—Relator. The incoming Treasurer may sue the outgoing Treasurer on his official bond for failure to turn over funds in his hands, and such suit may be maintained without an order from the County Commissioners. He is liable to the penalty of 10 per cent.—Sec. 91. Hiatt *v.* State, 110 Ind. 472.

38. Incoming Treasurer Entitled to Receive Money Only from His Predecessor. An incoming Treasurer is entitled to receive money only from his predecessor.—Hiatt *v.* State, 110 Ind. 472.

[1897, p. 115. Approved and in force March 2, 1897.]

89. Town refusing to elect School Trustees—Trustee of township controls. 1. In all incorporated towns of this State having a population of fifteen hundred persons or less, as shown by the last preceding United States census, the Board of Trustees of any such incorporated town of this State which has not taken control of the public schools, but which are now under the control of the Township Trustee in which such town is

located, may, at their option, refuse to elect School Trustees as provided for in section 4439 of the Revised Statutes of 1881, and in such case the care and control of the schools of such incorporated town shall be and continue under the control of the Township Trustee of the school township in which such incorporated town shall be situated, the same as the schools of such school township not located within the limits of such incorporated town, and in any such town no school town corporation shall exist until School Trustees are elected therefor according to section 4439 of the Revised Statutes of 1881. (R. S. 1897, § 6133.)

[1865, p. 3. Approved and in force March 6, 1865.]

90. Trustees' bonds—Vacancy. 6. The County Auditor, in fixing the penalty and approving and accepting the bonds of such Trustees, shall see to their sufficiency to secure the school revenues which may come into their hands, as well as the ordinary township or other revenue. In case of a vacancy in the office of Trustee, the County Auditor shall appoint a person to fill the same, who shall take an oath and give bonds as required in the last preceding section; and said Auditor shall report to the Superintendent of Public Instruction the name and postoffice address of each Trustee. (R. S. 1881, § 4440; R. S. 1894, § 5916; R. S. 1897, § 6134.)

1. Bond Does Not Cover Borrowed Money. There is here a clear implication that the only money which a Trustee can officially receive is that yielded by the school revenues. Money obtained by borrowing can not be said to be school revenue, and the penalty of the bond does not extend to such money.—Wallis *v.* Johnson Tp., 75 Ind. 368.

2. Title to School Money. A Trustee, like a County Treasurer, is liable on his bond for all money that may come into his hands by virtue of his office, whatever may become of the money. He is not a mere bailee, but the legal technical title to the money in his hands is in himself.—Rock *v.* Stinger, 36 Ind. 346.

3. Use Not Conversion. The mere use, by the Trustee, of school revenues of the township in his own business is not such a conversion of the money as constitutes a breach of the conditions of his bond.—Brown *v.* State, 78 Ind. 239; Bocard *v.* State, 79 Ind. 270; Goodwine *v.* State, 81 Ind. 109.

4. When Not Entitled to Interest. Title to such revenues does not vest in a Trustee until they are actually drawn by him out of the treasury, and he is not entitled to interest on warrants issued against them.—Hadley *v.* State, 66 Ind. 271.

5. Vacancies. Section 89, passed in 1875, takes away from the Auditor the power of filling vacancies in the office of Town or City School Trustees; and

the Board of County Commissioners, if in session when the vacancy occurs, or before it is filled, fills a vacancy in the office of Township Trustee; but if the vacancy occurs when they are not in session, the County Auditor may fill it.—R. S. 1881, §5996; R. S. 1894, §8071; Cooper *v.* State, 113 Ind. 70.

It is considered that a person appointed to fill a vacancy in an office holds such office until his successor is *elected* and *qualified*. The Supreme Court seem to have so regarded the question.—See Urmston *v.* State, 73 Ind. 175; §4440 b.

6. Resignation. When a City School Trustee resigns his office, to take effect at a future day, the City Council may elect to fill the vacancy before the day fixed for the taking effect of the resignation.—Leech *v.* State, 78 Ind. 570.

7. Overpayments—Shortage—Set-off. In an action on the bond of a Township Trustee he is entitled to set-off against the shortage in one fund over payments on account of another, so far as the shortage was occasioned thereby.—Finney *v.* State, 126 Ind. 577; State *v.* Julien, 93 Ind. 292; Hadley *v.* State, 66 Ind. 271.

8. Eligibility—Alien. A voter under the Constitution of this State, though not a citizen of the United States, is eligible to the office of Township Trustee.—McCarthy *v.* Foelke, 63 Ind. 507.

9. Liability of Surety. When a successor is elected and qualified, but does not take possession of the office, and the old Trustee continues to act, his acts are void; he is not an officer *de facto* or *de jure*, and his sureties are not bound.—Steinback *v.* State, 38 Ind. 483; Rany *v.* The Governor, 4 Blackf. 2.

10. Office Lucrative. The office of Township Trustee is a lucrative office within the meaning of the State Constitution.—Foltz *v.* Kerlin, 105 Ind. 221.

11. Liability of Officer and Surety. The statute creates a permanent and continuing liability and the sureties on his official bond, for a failure to perform any duty imposed by any law in force at the time the bond is executed, or which may be subsequently passed during the time for which such officer has been elected; and it is not necessary that the bond should provide in express terms for such permanent and continuing liability.—Davis *v.* State, 44 Ind. 38.

12. Damages in Suit Upon Bond of Trustee. It is the imperative duty of a court rendering judgment against a Township Trustee, in a suit upon his official bond, for a violation of a duty in reference to school revenues, to assess ten per cent. damages on the amount recovered.—Davis *v.* State, 44 Ind. 38.

13. Bond Covers Both Civil and School Township. A township embraces two distinct corporations, to wit: The civil township and the school township, existing within the same territory and having the same Trustee, who is bound by a single official bond.—Inglis *v.* State, 61 Ind. 212.

14. Action by Successor. An action on the relation of a Township Trustee, on the bond of a defaulting predecessor, may be instituted without the request or direction of the Board of County Commissioners.—Inglis *v.* State, 61 Ind. 212.

[1883, p. 118. Approved and in force March 6, 1883.]

91. Trustees manage revenues—Reports. 7. The School Trustees of every township, incorporated town or city, shall receive the special school revenue belonging thereto, and the revenue for tuition which may be apportioned to his township, town or city, by the State, for tuition or [for] the common

schools, and shall pay out the same for the purpose for which such revenues were collected and appropriated. Such Trustees shall keep accurate accounts of the receipts and expenditures of such revenues, and shall render to the County Commissioners, annually, on the first Monday of August, for the school year ending on the thirty-first day of July, and as much oftener as they may require, a report thereof, in writing. Said Board of Commissioners shall hold a session on said Monday to receive said reports. They shall clearly and separately state:

First. The amount of special school revenue and of school revenue for tuition on hand at the commencement of the year then ending.

Second. The amount of each kind of revenue received within the year, giving the amount of tuition revenue received at each semi-annual apportionment thereof.

Third. The amount of each kind of revenue paid out and expended within the year.

Fourth. The amount of each kind of revenue on hand at the date of said report, to be carried to the new account.

And shall, with said report, present and file a detailed account current of the receipts and payments for the year, and support the same by proper vouchers; which report and account current shall each be duly verified by affidavit; and when the said County Commissioners are satisfied that said report is full, accurate and right in all respects, and that said account is just and true, they shall allow and pass the same; which shall have the effect to credit the Trustee for the expenditures. A copy of said report, as passed and allowed by the County Commissioners, shall, within ten days after its date, be filed by the Trustee with the County Superintendent of the county, and upon failure of the Trustee to discharge any of the duties required of him relative to schools and school revenues, the Board of County Commissioners shall cause suit to be instituted against him, on his official bond, and in case of recovery against him, the court rendering the judgment shall assess upon the amount thereof ten per cent. damages, to be included in said judgment. (R. S. 1881, § 4441; R. S. 1894, § 5917; R. S. 1897, § 6135.)

1. Conversion. The application, by a Trustee, of tuition revenue to special school, road, or civil township purposes is a conversion of so much of the fund

and a breach of his bond.—Robinson *v.* State, 60 Ind. 26; Brown *v.* State, 78 Ind. 239; Board *v.* State, 79 Ind. 270. The suit may be brought on the relation of his successor.—Steinmetz *v.* State, 47 Ind. 465; Robinson *v.* State, 60 Ind. 26.

2. Liability of Trustee. The Trustee is absolutely liable for the loss of the funds by whatever casualty. Depositing in a solvent bank, by advice of State and County Superintendent and County Board, if loss result, is no defense. —Inglis *v.* State, 61 Ind. 212; Board *v.* State, 79 Ind. 270.

3. School Board Independent. The School Trustees of a city or town act independently of the City Council or Board of Town Trustees in receiving and expending the school revenues, and their action can not be controlled by the latter.—Johnson *v.* Smith, 64 Ind. 275.

4. Mistake in Settlement. When a Township Trustee fails to keep the accounts required by this section, and by reason thereof, and by reason of mislaying vouchers, he fails in his annual settlement with the County Commissioners to claim or receive credit for a certain sum properly paid out by him, he can not afterward recover for the amount so paid.—Butt *v.* Jennings Township, 81 Ind. 69.

5. Writ of Mandate. Mandamus lies by a School Trustee to compel delivery by his predecessor of the records, books and papers of the office, and to compel the payment of money which the Trustee is required by law to apply to school purposes.—Frisbie *v.* Fogg, 78 Ind. 269; Goldsberry *v.* State, 69 Ind. 430; Hiatt *v.* State, 110 Ind. 472; Brown *v.* State, 78 Ind. 239.

6. Assessment of Damages. In a suit on the bond of a School Trustee the Court, in rendering judgment upon the verdict, should add ten per cent. to the amount found by the jury.—Watson *v.* State, 80 Ind. 212; Goldsberry *v.* State, 69 Ind. 430; Hiatt *v.* State, 110 Ind. 472; Brown *v.* State, 78 Ind. 239. And the provision to that effect is imperative.—Brown *v.* State, 78 Ind. 239.

7. They Can Not Borrow Money. There is nothing in the statute from first to last indicating that a Township Trustee can rightfully obtain money from any other source than the school revenues. There is a plain and unmistakable purpose on the part of the Legislature to confine the Trustee to the funds expressly provided, and not permit him to go out into the business world as a borrower. * * * The money is supplied to them, and they must take it as supplied, and not attempt to devise or create other sources of supply.—Wallis *v.* Johnson Township, 75 Ind. 368.

8. Are Liable for Money Had and Received. Where money is loaned to a Township Trustee for the use and benefit of the school township represented by him, and the school township receives the benefit of the money, it is liable therefor; and though the note of the Trustee attempting to bind the township for the loan be held void, yet the liability of the township remains as for money had and received.—Bicknell *v.* Widner Township, 73 Ind. 501; First Nat. Bank *v.* Union Township, 75 Ind. 361.

9. May Execute Notes for Debts. A school township, by and in the name of its Trustee, may execute a valid negotiable promissory note for any debt contracted for the benefit of its property; but it is not governed by the law merchant, and an assignee takes it subject to all defenses.—Sheffield Tp. *v.* Andress, 56 Ind. 157. The Board of School Trustees of an incorporated town have power to execute a valid negotiable promissory note, by and in the name of such Trustees, binding upon the school corporation for any debt contracted for the benefit of its

property.—School Town of Monticello *v.* Kendall, 72 Ind. 91. A note executed by a School Trustee and given in payment for certain school maps was held to bind the school corporation.—Moral School Tp. *v.* Harrison, 74 Ind. 93. The same was true of a note given for dictionaries.—Jackson School Tp. *v.* Hadley, 59 Ind. 534. And for school furniture.—Johnson School Tp. *v.* Bank, 81 Ind. 515. But School Trustees have no power to bind their corporations by notes given for money borrowed.—Wallis *v.* Johnson School Tp., 75 Ind. 368.

Yet a Township Trustee may execute a note for school furniture that is *prima facie* valid and binding on the school township.—Miller *v.* White River School Tp., 101 Ind. 503. See also Litten *v.* Wright School Tp., 127 Ind. 81.

10. May Anticipate Certain Revenues. The only portion of the school revenues which the School Trustees may not expend in anticipation is the school revenue for tuition belonging to the State and by it apportioned.—Harney *v.* Wooden, 30 Ind. 178. But this is very far from deciding that money may be borrowed by the Trustee.—Wallis *v.* Johnson School Tp., 75 Ind. 368.

11. When May Issue Bonds. A Township Trustee, in case of a bequest or gift exceeding five thousand dollars, to an unincorporated town in his township, conditioned upon the raising of a like sum by the citizens of the township, may, upon petition of a majority of the legal voters thereof, issue and sell the bonds of the township to an amount not exceeding fifteen thousand dollars.—§ 186. School bonds of cities and incorporated towns are issued by the Common Council or Board of Town Trustees, but in no case by the School Board.

12. Result of the Decisions. The conclusion, from a careful comparison of the authorities, is that School Trustees have no power to borrow money; but they may bind their corporations by promissory notes for the payment in future of valid pre-existing debts, or for the repayment of money advanced to liquidate such debts. The indebtedness of all corporations is limited by the Constitution (R. S. 1881, § 220; R. S. 1894, § 220; R. S. 1897, § 220) to two per cent. on the value of taxable property.

13. Certificates of Indebtedness. Certificates of indebtedness issued without any consideration are invalid, and can not be inforced against the township, even if the proper officers promise to pay them. Axt *v.* Jackson School Tp., 90 Ind., 101. Such a certificate is void even in the hands of an innocent purchaser.—State *v.* Hawes, 112 Ind. 323; Boyd *v.* Mill Creek School Tp., 114 Ind. 210; Grimsley *v.* State, 116 Ind. 130.

14. Suits, How Brought. In an action against a school township for articles purchased by the township, it must be shown that they were suitable or necessary, and that they were received or used by the township. Reeve School Tp. *v.* Dodson, 98. Ind. 497; Bloomington School Tp. *v.* National School Furnishing Co., 107 Ind. 43; State *v.* Hawes, 112 Ind. 323. Delivery of the goods to a railroad company to be transported to the township is not such a delivery as will bind the township for goods purchased which are not suitable; but if actually received by the township and used, the contract is valid.—Boyd *v.* Mill Creek Tp., 114 Ind. 210; Litten *v.* Wright School Tp., 127 Ind. 81.

15. Misappropriation. A trustee of schools who has had no part in the misappropriation of funds of the corporation is not liable therefor.—State *v.* Julian, 93 Ind. 292.

16. Sessions of Board of County Commissioners. The sessions of the Board of County Commissioners under this section are for the sole purpose of

receiving from the School Trustees reports, as herein provided for, and taking action thereon, and the Board has no power to transact any other business.—Fahlor *v.* Board of Commissioners, 101 Ind. 167.

17. Who May Bring Action on Bond. The incoming town or city Treasurer is the proper person to bring suit against the outgoing Treasurer, on his bond, for a failure to turn over the school funds to him; and he may do so without an order of the Board of County Commissioners.—Hiatt *v.* State, 110 Ind. 472; Strong *v.* State, 75 Ind. 440.

18. Overpayment. If a Treasurer pays more than he is required to pay to his successor, he must bring an action to recover the amount of such overpayment within six years after the fact of payment; and if such overpayment was occasioned by his failure to keep proper vouchers and accounts, and he settled with the County Commissioners without making claim therefor, he can not recover the amount thereof.—Butt *v.* Jennings School Tp., 81 Ind. 69.

19. Advancing Money. A Township Trustee, who, in good faith, employs necessary and proper teachers, and when it is unexpectedly found that the public funds provided are insufficient to pay them in full, advances the deficit out of his own money, has a demand against the school township which he may recover. Kiefer *v.* Troy School Tp., 102 Ind. 279; Murphy *v.* Oren, 121 Ind. 59. And so may a city or town Treasurer who advances money under like circumstances.

20. Mixing Funds. The several school funds should be kept separate; but if payment is made out of the wrong fund, the fund from which it should have been made can be drawn upon to make up the deficiency in the overdrawn fund; and in a suit against the Trustee, he should have credit in this way.—State *v.* Finney, 125 Ind. 427; Murphy *v.* Oren, 121 Ind. 59; Finney *v.* State, 126 Ind. 577.

21. Officer De Facto Liable Can Not Deny Liability. It is no defense to an action by a school corporation to recover its moneys of one who had intruded unlawfully into the office of treasurer of the corporation, that another is holding that office.—Lucas *v.* State, 86 Ind. 180.

22. Ownership of Fund. The officer holding the school funds for the time being is the owner thereof, and entitled to all the interest that he may receive by a loan of the funds. Brown *v.* State, 78 Ind. 239; Bocard *v.* State, 79 Ind. 270; Rock *v.* Stinger, 36 Ind. 346; Shelton *v.* State, 53 Ind. 331; but if he receives the interest accruing on warrants issued by the County Auditor on the County Treasurer, he is liable for the amount of such interest thus received.—Hadley *v.* State, 66 Ind. 271.

23. Refunding to Trustee. An act of the Legislature refunding to a School Trustee, out of the funds of his school corporation, moneys lost without his fault is valid.—Mount *v.* State, 90 Ind. 29.

24. Right of New Town to Part of School Revenue. When new town is organized within township after school revenue is received, the town is entitled to its share; the trustee may be compelled by mandate to pay it over to the town school trustees, who are the proper relators in such suit.—Hon *v.* State, 89 Ind. 249.

[1865, p. 3. Approved and in force March 6, 1865.]

92. Record—Duty as to Revenue. 8. The Trustees shall keep a record of their proceedings relative to the schools, including all orders and allowances on account thereof; including,

also, accounts of all receipts and expenditures of school revenue, distinguishing between the special school revenue belonging to their township, town or city, and the school revenue for tuition, which belongs to the State, and by it apportioned to their township, town or city; which said revenue for tuition they shall not permit to be expended for any other purpose, nor even for that purpose in advance of its apportionment to their respective corporations. (R. S. 1881, § 4442; R. S. 1894, § 5918; R. S. 1897, § 6136.)

1. LIABILITY. A Trustee of Schools who has had no part in the misapplication of tuition revenue is not liable therefor. State *v.* Julian, 93 Ind. 292.

2. INSPECTION OF BOOKS. School Trustee's records, either of a city, town or township, are public records, always open for public inspection, and any one interested therein has a right to examine them. Anderson School Township *v.* Thompson, 92 Ind. 556.

93. Annual statement. 9. The Township Trustees and the School Trustees of incorporated towns and cities shall, immediately after their annual settlements with the County Commissioners, in August make a full statement of all their receipts and expenditures, for the year preceding, relative to their schools. (R. S. 1881, § 4443; R. S. 1894, § 5919; R. S. 1897, § 6137.)

94. General duties. 10. The Trustees shall take charge of the educational affairs of their respective townships, towns and cities. They shall employ teachers, establish and locate, conveniently, a sufficient number of schools for the education of the white children therein, and build, or otherwise provide, suitable houses, furniture, apparatus and other articles and educational appliances necessary for the thorough organization and efficient management of said schools. They may also establish graded schools, or such modifications of them as may be practicable, and provide for admitting into the higher departments of the graded schools, from the primary schools of their townships, such pupils as are sufficiently advanced for such admission. They shall have the care and management of all property, real and personal, belonging to their respective corporations for common school purposes, except the congressional township school lands; which lands shall be under the care and management of the Trustee of the civil township to which such lands

belong. (R. S. 1881, § 4444; R. S. 1894, § 5920; R. S. 1897, § 6138.)

1. Power of Trustee. The Township Trustee is clothed with almost autocratic power in all school matters. The voters and taxpayers of the township have but little, if indeed any, voice or part in the control of the details of educational affairs. So far as actual authority is concerned, the Trustee is the corporation, although in contemplation of law it is otherwise.—Wallis *v.* Johnson Tp., 75 Ind. 368; Bicknell *v.* Widner School Tp., 73 Ind. 501.

2. Patrons Can Not Designate Teachers. There is no provision of the law authorizing any other person than the Trustee to select a teacher. It is therefore held that the provision authorizing the Trustee to employ teachers, also authorizes him to select them, and that school meetings are not empowered by the law to designate or employ teachers. That power was taken from them in 1873.

3. County Can Not Build School House. A Board of County Commissioners has no authority to make an appropriation of any sum out of the general fund of their county for the erection of a school building. Rothrock v. Carr, 55 Ind. 334.

4. Abandoned Corporation. In case a town abandons its corporation, the powers and duties of the Board of School Trustees cease, the Township Trustee succeeds thereto, and it becomes his duty to take charge of the schools without special notice.

5. Trustee Can Not Employ Himself. You ask me whether a Township Trustee has a right to teach school in his own township. In answer I have to say that a Township Trustee, being the agent of the State to employ teachers for the public schools, is not authorized to employ himself.

6. Contracts with Teachers. A teacher contracts with the school township through its Trustee, and although the Trustee squanders the township funds and his bond is worthless, yet the township is liable to pay the teacher as specified in the contract. A verbal contract with a School Trustee to teach a school is as binding as a written contract.—Harrison School Tp. *v.* McGregor, 96 Ind. 185; Harmony School Tp. *v.* Moore, 80 Ind. 276. Verbal contract held valid.—Jackson School Tp. *v.* Shera, 8 Ind. App. 330; Fairplay School Tp. *v.* O'Neal, 127 Ind. 95.

7. When Contracts May Be Made. See sec. 172 for time of making contracts for a township teacher.

But a contract made by the Board of School Trustees of an incorporated town or city with a School Superintendent, prior to the annual election of a new member of the Board and the reorganization required by statute, for services to be performed after the election of such member, is valid and binding on the school corporation.—Reubelt *v.* School Town of Noblesville, 106 Ind. 478.

8. Resignation of Teacher. The relation existing between Trustee and teacher is based on a contract. A teacher can not resign without the consent of the Trustee. To abandon his school without such consent is a violation of his contract, and gives the Trustee a claim against him for any damages actually sustained by the school in consequence thereof.

9. Location of Houses—Title. The title to property on which a school house is to be built must be in the school corporation; and by proper proceedings land may be condemned for school purposes.

Trustees must not build outside their own jurisdiction, since the franchises of a school corporation can not extend beyond its own territory so as to attach to

land or school buildings outside the corporate limits.—Mt. Carmel *v.* Shields, 66 Ind. 521.

10. Providing Houses, Furniture, Etc. The school authorities are not bound to furnish educational facilities beyond those which the funds, devoted by law to that purpose, will yield. It is not for them to burden the school township with debt by borrowing money. Their duty is fully performed and their power completely exhausted when they have properly expended all money derived from the school revenue.—Wallis *v.* Johnson School Tp., 75 Ind. 368. But where money had been loaned to a Township Trustee for the purpose of completing a needed and suitable school house, the school township receiving the benefit of the loan was held to be liable therefor.—Bicknell *v.* Widner School Tp., 73 Ind. 501.

11. Text-Books May Be Furnished. A Township Trustee can not purchase at the expense of the township, text-books for the use of the pupils attending the public schools of the city or township.—Honey Creek School Tp. *v.* Barnes, 119 Ind. 213.

12. Furniture. The Trustees are under the law judges whether furniture is needed; and contracts therefor, and in consideration of the purchase of maps and dictionaries, will bind the corporation.—Moral School Tp. *v.* Harrison, 74 Ind. 93; Johnson School Tp. *v.* Bank, 81 Ind. 515; Jackson School Tp. *v.* Hadley, 59 Ind. 534.

13. Contracts of Trustees. Contracts for the benefit of school corporations, whether to build houses, employ teachers or purchase supplies or apparatus, should be made by the Trustee in the name of the school, not the civil, corporation.—Hornby *v.* State, 69 Ind. 102; Harrison Tp. *v.* McGregor, 67 Ind. 380.

A school town is bound, as such, for the contract price of material furnished and labor performed by another, in the erection of a school building for such town, under a parol contract therefor, made with him by the School Trustees of such town (School Town Princeton *v.* Gebhart, 61 Ind. 187), but a mechanic's lien can not be taken upon the building for materials furnished therefor and labor performed therenpon.—Fatout *v.* Board of School Com., 102 Ind. 223.

A suit to set aside a contract for the building of a school house and to enjoin the doing of the work, on the ground of fraud on the part of the Township Trustee, in the making of the contract, is properly brought in the name of the State, for the use of the civil township.—State *v.* Earhart, 27 Ind. 119.

A contract by a School Trustee for the improvement of school property, by the terms of which he is to share in the profits is void, both at common law, and under the statute.—Wingate *v.* Harrison School Tp., 59 Ind. 520.

The penalty for such corrupt interest in contracts is a fine of from three hundred to one thousand dollars, and imprisonment for from two to fourteen years.—R. S. 1881, § 2049; R. S. 1894, § 2136; R. S. 1897, § ——

14. Graded Schools. This section gives the Trustees ample power to organize, at their discretion, such a system of free schools as the peculiar circumstances of their townships may require. The schools may be all of the same grade, or of two or three more grades. They may classify the children of the township according to acquirements. They may authorize the teaching of any branches of science, literature and art which public interest and public opinion may require.

A graded school is a school in which the pupils are placed in different rooms and under different teachers, according to advancement. Consequently, the

greater the number of rooms and teachers for any given school the more favorable the means for perfect grading. From this it will be seen that a graded school as contemplated in the above section can not exist with less than two teachers. With one the school may be classified but not graded. Trustees will therefore have regard to this element when they put up buildings designed for graded school. 2d. As to the time when a graded school should be established for any given township, no definite directions can be given. There are too many local elements to admit of any special directions. It is, however, safe to say that whenever there are pupils in the township whose advancement is such that the district schools can not furnish them instruction, at that moment begins the need of a township graded school furnishing instruction of a higher grade. The Trustee must, however, be satisfied that the number of such pupils is sufficient to justify the establishment of such a school before providing the same. 3d. As to place, I would suggest that whenever practicable the township graded school should be established in connection with a district school, thus economizing in building, perhaps in teaching, also furnishing the means of a more thorough grading in at least one primary school in the township. It is suggested further that a village, if centrally located, is usually a favorable place for the township school.

The separation of pupils into different schools or departments, according to age and acquirements, is not an abridgment of their rights.—Corey *v.* Carter, 48 Ind. 360; State *v.* Grubb, 85 Ind. 213; State *v.* Gray, 93 Ind. 303.

15. Custody of School Property. The Trustee of each school district has charge and possession of the school house, for, although the director has the charge for certain purposes, he acts under the order and with the concurrence of the Trustee.—Hurd *v.* Walters, 48 Ind. 148.

16. Orders Without Consideration Void. Where the Trustee of a school township has issued an order or certificate of indebtedness, in the name of his township, without any consideration therefor, such order or certificate is invalid and void, and can not be enforced against the township; nor in such cases will the acts, conduct or promises of the Trustee, or his successors in office, estop the township from pleading the want of consideration as a sufficient defense to any suit against it upon such order or certificate.—Axt *v.* Jackson School Tp., 90 Ind. 101.

17. May Abolish Districts. After a School Trustee has, on appeal, been ordered by the County Superintendent to provide furniture for the school house of a certain district, he may at once abolish the district and provide proper school facilities for the people thereof in other districts. A School Trustee has no authority to provide furniture for a room for school purposes, or to employ a teacher for service therein, unless such room is owned or leased by the school township.—State *v.* Sherman, 90 Ind. 123.

18. Rules and Regulations. School Boards and other educational authorities have power to adopt appropriate rules and regulations for the government of the schools under their control. It is not necessary that all such rules shall be made a matter of record, nor that every act, order or direction affecting their management shall be authorized or confirmed by a formal vote; but any reasonable rule adopted by a superintendent or teacher not inconsistent with some statute or some other rule prescribed by higher authority, is binding upon the pupils. A rule requiring the superintendent of a city school to visit weekly all the schools under his charge, and to see that the best methods of instruction are adopted, confers upon him authority, if it were otherwise wanting, to order and promulgate

such additional reasonable rules as the best interests of the schools may require. In the *enforcement of all rules* for the government of a school due regard must be had to the health, comfort, age, mental and physical condition of the pupils; and to the circumstance attending such particular emergency, and the condition of the weather, the infirmity of a pupil, and the like, may require relaxation in their strict enforcement. A school regulation must not only be reasonable within itself, but its enforcement must also be reasonable under all the circumstances. The habit of *locking the doors* of a school room during the opening exercises is not an unreasonable enforcement, under ordinary circumstances, of a rule requiring pupils to remain in the hall during that time; but if the weather is unusually severe, and proper steps are not taken for the comfort of children thus excluded, such method of enforcement is unreasonable and improper. A rule requiring tardy pupils to remain either in the hall of the school building, which is provided with heat, or in the office of the principal, until the opening exercises, lasting from ten to fifteen, are concluded, in order that such exercises may not be interrupted or disturbed, is in itself a reasonable regulation. Such *detention as a penalty* for some omission or misconduct is one of the recognized methods of enforcing discipline and promoting the progress of *pupils* in the common schools, and although the cause for such detention be mistaken, it possesses none of the elements of false imprisonment, unless imposed from wanton, willful or malicious motives. A school officer is *not personally liable* for a mere mistake of judgment in the government of his school; but to render him liable it must be shown that he acted in the manner complained of wantonly, willfully or maliciously.—Fertich *v.* Michener, 111 Ind. 472.

19. Contagious Disease. Where a school town contracts with a teacher for a certain number of weeks of service, and, before the expiration of the term, closes the school upon order of the County Board of Health because of the prevalence of diphtheria, it is liable for the teacher's salary for the time the school is closed, the non-performance of the contract not being due to an act of God.—School Town of Carthage *v.* Gray, 10 Ind. App. 428.

20. Closing School on Account of Epidemics. If a teacher objects to closing school on account of epidemics he may be compelled to do so by order from the Secretary of the Board of Health.—R. S. 1894, § 6719.

21. Power as to Rules and Regulations. Under the Statutes of this State, construed in connection with the incidental powers of corporations, the various school boards and other educational authorities, have power to adopt appropriate rules and regulations for the government of the schools under their control.—Fertich *v.* Michener, 111 Ind. 472.

22. Rules Must be Reasonable Under the Circumstances. A school regulation must not only be reasonable in itself, but its enforcement must also be reasonable under all the circumstances.—Fertich *v.* Michener, 111 Ind. 472.

23. Mandamus the Proper Action to Compel the Performance of a Ministerial Duty. Mandamus is the proper action to compel any officer to perform a ministerial duty, but mandamus will not lie to compel the performance of a discretionary duty.

24. Bribery of Public Officer. To offer a receipt for more than the cost of any kind of apparatus to induce an officer to purchase is bribery.—State *v.* McDonald, 106 Ind. 233.

25. May Abolish District When the Average Attendance is Only Four Pupils. The Trustee may abolish a district when the attendance has be-

come so small as to satisfy him that no good purpose can be accomplished by keeping the school open. When the average daily attendance was only four pupils, the number not being reduced by sickness or other cause, it was no abuse of the Trustee's discretion to abolish the district.—Tufts *v.* State, 119 Ind. 232.

26. Courts Will Not Review Discretionary Acts if Not Abused. It is a general rule that courts will not revise the exercise of discretionary authority by a public officer, for as long as he acts in good faith and within the general scope of his authority, he is not subject to judicial control.—Tufts *v.* State, 119 Ind. 232; Weaver *v.* Templin, 113 Ind. 298; Leeds *v.* City of Richmond, 102 Ind. 372; City of Kokomo *v.* Mahan, 100 Ind. 242; Mayor, etc., *v.* Roberts, 34 Ind. 471.

27. Students Must Submit to Necessary Rules. A student is required to submit to any proper rule necessary for the good government of the school.—State *v.* White, 82 Ind. 278.

28. Conspiracy to Defraud Invalidates Township Orders, and Actual Value of Goods Can Not Be Obtained. The certificate upon which the action was predicated originated in an unlawful and corrupt conspiracy to defraud a public corporation. An agreement or conspiracy between two persons which has for its object the perpetration of a fraud or civil injury upon another, is illegal; and any agreement to carry out or consummate a scheme which involves a breach of trust, or official duty, is unlawful and void. And the actual value of the goods furnished the township can not be recovered.—Kittenger *v.* Monroe School Tp., 3 Ind. App. 411; Boyd *v.* Mill Creek School Tp., 124 Ind. 193.

29. Delivery and Acceptance of Supplies. The delivery of the goods to a railroad company by the vendor is not such a delivery as is required to make the school township liable upon a contract which its Trustee had no authority to make. In such a case liability is based upon the actual acceptance and appropriation of the goods.—Boyd *v.* Mill Creek School Tp., 114 Ind. 210. But this case has been modified by Boyd *v.* Mill Creek School Tp., 124 Ind. 193, and Kittenger *v.* Monroe School Tp., 3 Ind. App. 411, where fraud appears. See also 127 Ind. 81.

30. Mechanic's Lien Against Public Policy. A mechanic's lien for work done, or materials furnished, in the erection of a public school house, can not be acquired or enforced. It is against public policy.—Fatout *v.* Board, 102 Ind. 223.

31. Petition for School House. Any portion of the inhabitants of a township may petition the Trustee for the location of an additional school district, or the erection of a school house, and if their petition be refused they may appeal to the County Superintendent, and if he reverse the decision of the Trustee, it will be the duty of the latter to grant the prayer of said petition, and if he still refuse he may be compelled to do so by mandate.—Trager *v.* State, 21 Ind. 317. But see notes 34 and 20.

32. Township Must Own or Lease School Premises. A School Trustee has no lawful authority to provide furniture for a room for school purposes, or employ teachers for services therein, unless such room is owned or leased by the school township; and even if the County Superintendent, on appeal, direct him to do so, he may properly disobey the order, and mandate will not lie to compel him to obey it.—State *v.* Sherman, 90 Ind. 123.

[1873, p. 68. Approved and in force March 8, 1873.]

95. Superintendent in cities and towns. 12. The School Trustees of incorporated towns and cities shall have power to employ a Superintendent for their schools (whose salary shall be paid from the special school revenue), and to prescribe his duties, and to direct in the discharge of the same. (R. S. 1881, § 4445; R. S. 1894, § 5924; R. S. 1897, § 6145.)

1. Compensation. In case a person is employed to superintend part of the time and teach part of the time, he can be paid for the services he renders as Superintendent out of the special revenue, and for the services he renders as teacher out of the tuition revenue. If paid anything from the latter, he must possess a valid license.

96. Joint graded schools. 13. The School Trustees of two or more distinct municipal corporations for school purposes shall have power to establish joint graded schools, or such modifications of them as may be practicable, and provide for admitting into the higher departments of their graded schools, from the primary schools of their corporations, such pupils as are sufficiently advanced for such admission. Said Trustees shall have the care and management of such graded schools, and they shall select the teachers therefor. They shall have power to purchase suitable grounds for such graded schools, and erect suitable buildings thereon; and the title to all such property, acquired for such purposes, shall vest jointly in the corporations establishing the graded schools. (R. S. 1881, § 4446; R. S. 1894, § 5925; R. S. 1897, § 6146.)

1. Management and Supervision. A joint graded school, as to its management and teachers, is subject to the same laws, rules and regulations as township graded schools [§ 94], except that it is under the *joint* management of the School Trustees of *both* corporations. But the teachers should attend the institutes of the county and township in which the school is situated, and should be under the supervision of the Superintendent of that county.

2. Purchase of Property. The two corporations may purchase jointly real estate; and the Trustees are the sole judges of the right to purchase property of this character.—Craig School Tp. *v.* Scott, 124 Ind. 72.

3. Management of Joint Graded Schools. The Trustees act as individual Trustees, and do not as a unit represent their respective corporations. A majority of the whole Board of Trustees, whether such majority come from one corporation entirely, or from the different corporations interested, have the power to transact any and all business, including the employment of teachers relating to such joint graded school.—Hanover School Tp. *v.* Gant, 125 Ind. 557.

[1889, p. 355. Approved March 9, 1889, and in force May 10, 1889.]

97. Kindergartens. 1. In addition to other grades or departments now established in the common schools of the State, the Board of Trustees of any incorporated town or city are hereby empowered by law to establish, in connection with the common schools of such incorporated town or city, a kindergarten or kindergartens for the instruction of children between the ages of four and six, to be paid for in the same manner as other grades and departments now established in the common schools of such incorporated town or city: *Provided, however*, That no money accruing to such incorporated town or city from the "school revenue for tuition fund" of the State shall be used to defray the tuition and other expenses of such kindergarten; but the same may be defrayed from the local tax for tuition and the special school revenue of said incorporated town or city. (R. S. 1894, § 5921; R. S. 1897, § 6139.)

[1889, p. 187. Approved March 6, 1889, and in force May 10, 1889.]

98. Night Schools. 1. In all cities having a population of three thousand, or more, according to the census of 1880, the school trustees of such cities shall keep and maintain a night school, between the hours of seven and nine and a half o'clock P. M., during the regular school terms as a part of the systems of common schools whenever twenty or more inhabitants of such city, having children between the ages of fourteen and twenty-one years of age, or persons over the age of twenty-one years of age, and who, by reason of their circumstances, are compelled to be employed, or have their children employed during the school days to aid in the support of such families, who desire to and who shall attend such school, shall petition such School Trustee so to do. (R. S. 1894, § 5922; R. S. 1897, § 6140.)

99. Age of Pupils. 2. All persons between the ages of fourteen and thirty, who are actually engaged in business or at labor during the day, shall be permitted to attend such school. (R. S. 1894, § 5923; R. S. 1897, § 6141.)

[1879, S. p. 95. Approved March 31, 1879; and in force May 31, 1879.]

100. Surplus special school revenue. 1. It shall be the duty of the Board of School Trustees of any city or incorporated town in this State to pay over to the Common Council or

Board of Trustees of such city or town any surplus special school revenue in the hands of such School Trustees, not necessary to meet current expenses; such excess of the revenue aforesaid to be applied for the payment of the interest or principal, or both, of any indebtedness incurred under the provisions of the act of March 8, 1873, authorizing cities and incorporated towns to negotiate and sell bonds to procure means to erect and complete unfinished school buildings, and to purchase any ground and building for school purposes, and to pay debts contracted for the erection and purchase of buildings and grounds. (R. S. 1881, § 4447; R. S. 1894, § 5926; R. S. 1897, § 6147.)

1. PAYMENT FOR SCHOOL HOUSE. A city can not pay for a school house out of its general fund. Such payment must be made out of a fund especially levied for that purpose.—Nill *v.* Jenkinson, 15 Ind. 425.

[1877, p. 18. Approved and in force March 3, 1877.]

101. Things legalized. 2. Where the excess of special school revenue not necessary to meet the current demand upon such revenue shall have been, prior to the passage of this act, loaned, paid over, or applied, as provided in the preceding section, such loan, payment or application of such moneys is hereby legalized and made valid, as fully and completely as if this act had been in full force and effect at the time such transaction took place. (R. S. 1881, § 4448; R. S. 1894, § 5927; R. S. 1897, § 6148.)

[1865, p. 3. Approved and in force March 6, 1865.]

102. Teacher's reports. 20. To enable the Trustees to make reports which are required of them by this act, the teacher of each school, whether in township, town or city, shall, at the expiration of the term of the school for which such teacher shall have been employed, furnish a complete report to the proper Trustee, verified by affidavit, showing the length of the school term, in days; the number of teachers employed, male and female, and their daily compensation; the number of pupils admitted during the term, distinguishing between males and females, and between the ages of six and twenty-one years; the average attendance; books used and branches taught, and the number of pupils engaged in the study

of each branch. Until such report shall have been so filed, such Trustee shall not pay more than seventy-five per centum of the wages of such teacher, for his or her services. (R. S. 1881, § 4449; R. S. 1894, § 5928; R. S. 1897, § 6149.)

1. Teacher Excused, When. If the school authorities fail to furnish a building in which to teach the school, or refuse to furnish a school to be taught, or wrongfully discharge the teacher, such teacher is excused from making a report.—Charlestown School Township *v.* Hay, 74 Ind. 127.

2. Suit. It is a part of a teacher's contract that he will make a report, and until he does so he can not recover more than three-fourths of his wages, unless the Trustee has waived the report; and the burden is on the teacher to show either that he made the report or it was waived, if he desires to recover the full amount of his earnings.—Owen School Township *v.* Hay, 107 Ind. 351.

[1883, p. 118. Approved and in force March 6, 1883.]

103. Trustees' reports. 21. The Trustees of each township, town or city, shall, annually, on the first Monday of August, make their report for the school year ending on the 31st day of July, and furnish to the County Superintendent the statistical information obtained from teachers of the schools of their respective townships, towns, or cities, and embody in a tabular form the following additional items: The number of districts; schools taught, and their grades; teachers, males and females; average compensation of each grade; balance of tuition revenue on hand at the commencement of the current year; amount received during the year from the County Treasurer, and amount expended within the year for tuition; and balance on hand; length of school taught within the year, in days; school houses erected during the year; the cost of the same; the number and kind before erected, and the estimated value thereof, and of all other school property; number of volumes in the library, and the number taken out during the year ending the 31st day of July; also the number of volumes added thereto; assessment on each one hundred dollars of taxable property, and on each poll of special tax for school house erection, and amount of such levy; balance of special school revenue on hand at the commencement of the current year; amount received during the year from the County Treasurer; the amount of said revenue expended during the year, and balance on hand; the number of acres of unsold congressional school lands, the value thereof, and the income therefrom; together with such

other information as may be called for by the County Superintendent and the Superintendent of Public Instruction. (R. S. 1881, § 4450; R. S. 1894, § 5929; R. S. 1897, § 6150.)

[1865, p. 3. Approved and in force March 6, 1865.]

104. Failure to report. 22. On failure of any Trustee to make either the statistical report required by the last preceding section, or the report of the enumeration required by the sixteenth section of this act [§ 4473], or the report of finances required by the seventh section of this act [§ 4441], to the County Superintendent, at the time, and in the manner specified for each of said reports, the County Superintendent to whom such reports are due shall, within one week of the time the next semi-annual apportionment is to be made by the Auditor of the county, notify said Auditor, in writing, of any such failure; and the Auditor shall diminish the apportionment of said township, town or city by the sum of twenty-five dollars, and withhold from the delinquent Trustee the warrant for the money apportioned to his township, town or city, until such delinquent report is duly made and filed. For said twenty-five dollars, and any additional damages which the township, town or city may sustain, by reason of stopping said money, such Trustee shall be liable on his bond, for which the County Commissioners may sue. (R. S. 1881, § 4451; R. S. 1894, § 5930; R. S. 1897, § 6151.)

105. Neglecting duties. 23. If a Trustee shall fail to discharge any of the duties of his office relative to the schools, any person may maintain an action against him for every such offense, in the name of the State of Indiana, and may recover, for the use of the common school fund, any sum not exceeding ten dollars; which sum, when collected, shall be paid into the county treasury, and added by the County Auditor to said fund, and reported accordingly. (R. S. 1881, § 4452; R. S. 1894, § 5931; R. S. 1897, §6152.)

106. Failing to serve. 24. Any person elected or appointed such Trustee, who shall fail to qualify and serve as such, shall pay the sum of five dollars, to be recovered as specified in the preceding section for the use therein named, and in like manner added to said fund, unless such person shall have previously served as such Trustee. (R. S. 1881, § 4453; R. S. 1894, § 5932; R. S. 1897, § 6153.)

107. Trustee's accounts. 141. The books, papers and accounts of any Trustee, relative to schools, shall at all times be subject to the inspection of the County Superintendent, the County Auditor, and the Board of County Commissioners of the proper county. (R. S. 1881, § 4454; R. S. 1894, § 5933; R. S. 1897, § 6154.)

108. Examination of Trustee and his books. 142. For the purpose of such inspection, such County Superintendent, Auditor, and Board of County Commissioners may, by subpœna, summon before them any Trustee, and require the production of such books, papers and accounts, three days' notice of the time to appear and produce them being given. (R. S. 1881, § 4455; R. S. 1894, § 5934; R. S. 1897, § 6155.)

109. Correction of accounts—Removal. 143. If any such books and accounts have been imperfectly kept, said Board of Commissioners may correct them, and, if fraud appear, shall remove the person guilty thereof. (R. S. 1881, § 4456; R. S. 1894, § 5935; R. S. 1897, § 6156.)

1. INSPECTION. The County Commissioners may inspect a Trustee's books to see if money paid out has been paid out according to law; and if fraud appears, to refuse to allow him credit for it, but otherwise they can not refuse to allow his claims.—See Bicknell *v.* Widner School Township, 73 Ind. 501.

CHAPTER VIII.

TAXATION.

SEC.
110. State tax.
111. Uniform tax.
112. Special tax.
113. Assessment and collection.
114. Local tax for tuition.
115. Local tax, how applied.
116. Special tax to pay debts.
117. Tax to complete town school house and to support town schools.

[1895, p. 299. Approved and in force March 11, 1895.]

110. State tax. 3. There shall be in the year 1895, and annually thereafter, assessed and collected, as other taxes are assessed and collected, the sum of eleven cents on each one hundred dollars' worth of taxable property, and fifty cents on

each taxable poll in the State, which money, when collected, shall be paid into the School Revenue for Tuition Fund in the State Treasury, and shall be apportioned to the several counties of the State in the manner now provided by law. (R. S. 1897, § 6167.)

1. An act of 1873 (p. 216) legalized tax levies for tuition made by School Trustees of cities prior to January 21, 1875.

[1869, S. p. 41. Approved and in force May 13, 1869.]

111. Uniform tax. 1. In assessing and collecting taxes for school purposes under existing laws, all property, real and personal, subject to taxation for State and county purposes, shall be taxed for the support of common schools, without regard to the race or color of the owner of the property. (R. S. 1881, § 4466; R. S. 1894, § 5952; R. S. 1897, § 6168.)

[1873, p. 68. Approved and in force March 8, 1873.]

112. Special tax. 12. The Trustees of the several townships, towns and cities shall have the power to levy a special tax, in their respective townships, towns or cities, for the construction, renting, or repairing of school houses, for providing furniture, school apparatus, and fuel therefor, and for the payment of other necessary expenses of the school, except tuition; but no tax shall exceed the sum of fifty cents on each one hundred dollars' worth of taxable property and one dollar on each poll, in any one year, and the income from said tax shall be denominated the special school revenue. Any taxpayer who may choose to pay to the Treasurer of the township, town or city wherein said taxpayer has property liable to taxation, any amount of money, or furnish building material for the construction of school houses, or furniture or fuel therefor, shall be entitled to a receipt therefor from the Trustee of said township, town or city, which shall exempt such taxpayer from any further taxes for said purposes, until the taxes of said taxpayer, levied for such purposes, would, if not thus paid, amount to the sum or value of the materials so furnished or amount so paid: *Provided*, That said building materials, or furniture and fuel, shall be received at the option of said Trustee. (R. S. 1881, § 4467; R. S. 1894, § 5953; R. S. 1897, § 6169.)

1. This Section Constitutional. This question is decided in Rose *v.* Bath Tp., 10 Ind. 18, and several other cases.

The school corporations of the State can not be authorized by statute to establish and maintain schools separate and apart from the common school system of the State. Such a statute is unconstitutional. But they are not prohibited from aiding those common schools established under the supervision of the State, by levying a special tax.—Lafayette *v.* Jenners, 10 Ind. 70; Greencastle Tp. *v.* Black, 5 Ind. 557.

2. Who Levies. There can be no doubt but that the special tax authorized by this section is to be levied by the Trustee of the school township or by the School Trustees of cities and towns.

The approval of the Board of County Commissioners of the levy made by the Township Trustee under this section is unnecessary; and *mandamus* lies to compel the Auditor to place such tax on the duplicate, even when no such approval has been made.—Cole *v.* State, 131 Ind. 591. No one can levy the tax for the Township Trustee if he fail to levy it.—Shepardson *v.* Gillette, 133 Ind. 125.

3. Commissioners Have No Control. By the above section the Legislature amended the act of 1865, giving Trustees the absolute right to levy a special tax by increasing the amount from twenty-five cents to fifty cents, and reaffirming the former law, otherwise in the very words of it. This clearly removes all authority of Commissioners over the Trustees in making their special school levies.

4. Bank Stock. Shares of bank stock in a national bank are liable to the special tax authorized by this section.—Daniels *v.* Strader, 39 Ind. 63; Root *v.* Erdelmeyer, 37 Ind. 225, affirming 1 Wilson, 99.

5. Who Levies and Collects. The School Trustee of a school township levies the special tax authorized by this section; the County Auditor extends it on the tax duplicate, and the County Treasurer collects it.

6. Constitutional Limit of Debt. Where the indebtedness of a city or town has reached the constitutional limit of two per cent. it may contract for and erect school houses, the cost of which to be paid in such installments as will fall within the annual income from the special school tax levy.

7. Board of School Trustees of City Has Power to Make Levy Independent of Commissioners—Duty of Auditor to Make and Extend the Assessment. A Board of School Trustees, for the purpose of creating a special school revenue in accordance with the above section, levied a special school tax of 40 cents on each $100 of taxable property in the city, and 50 cents on each poll. The special levy was duly certified to the Auditor of the county with the request that he make the proper assessment of the special school tax as levied by the Board of Trustees, and extend the same upon the tax duplicate; but the Auditor, under the direction of the Board of Commissioners, failed and refused to extend the assessment on the tax duplicate, and modified the levy made by the Board of School Trustees. It was decided that the section authorized a Board of School Trustees of a city to levy the tax independently of the Board of Commissioners, and when made it is the duty of the Auditor to make the assessment and extend the same on the tax duplicate.—Wood *v.* School City of Tipton, 132 Ind. 206.

8. General Laws—Uniform System of Schools. A system that secures to all the various subdivisions of the State equal and uniform rights and privileges, leaving only to the local authorities the right, under the law, to govern the local

school affairs, is a general and uniform system, and a law providing such a system is a general law within the meaning of the Constitution.—Robinson *v.* Schenck, 102 Ind. 307.

[1865, p. 3. Approved and in force March 6, 1865.]

113. Assessment and collection. 13. The County Auditor shall, upon the property and polls liable to taxation for State and county purposes, make the proper assessments of special school tax levied by the Trustee, in the same manner as for State and county revenue, and shall set down the amount of said tax on his tax-list and duplicate thereof, as other taxes are set down, in appropriate columns; and he shall extend said assessment to the taxable property of the person transferred, which is situate in the township, town or city to which the transfer is made, and to the property and poll of the person transferred, situate in the township, town or city in which the person taxed resides, according to the rate and levy thereof in the township, town or city to which the transfer is made, and for its use; and said tax shall be collected by the County Treasurer as other taxes are collected, and shall be paid, when collected, to the Treasurer for school purposes of the proper township, town or city, upon the warrant of the County Auditor. To enable County Auditors correctly to assess said tax, the County Superintendents of the several counties shall, at the time they make out and report to the Auditor the basis of the apportionment of school revenue for tuition, as is required by section 4432 [§ 92], make out and report to said Auditor a statement of transfers which have been made for school purposes according to sections 4472 [§ 92 and § 93] and 4473. (R. S. 1881, § 4468; R. S. 1894, § 5954; R. S. 1897, § 6170.)

1. Levy of Taxes on Person Transferred. It is the duty of the Auditor to extend the school tax to all persons transferred to the township, town or city, and such tax is imposed upon all the property of such person situated in the township, town or city to which he is transferred, as well as to all his property situated in the township, town or city from which he is transferred.—Johns *v.* State, 130 Ind. 522.

[1895, p. 153. Approved and in force March 7, 1895.]

114. Local tax for tuition. 1. The School Trustees of the several townships, towns and cities shall have power to levy annually a tax not exceeding thirty-five cents on each one hundred dollars of taxable property, and twenty-five cents on

each taxable poll, which tax shall be assessed and collected as the taxes of State and county revenues are assessed and collected, and the revenues arising from such tax levy shall constitute a supplementary tuition fund, to extend the terms of school in said townships, towns and cities after the tuition funds apportioned to such townships, towns and cities from the State tuition revenue shall have been exhausted: *Provided, however*, That should there be remaining in the tuition fund of any township, town or city levying such tax at the close of any school year any unexpended balance of such supplementary tuition fund assessed and collected for use in such school year, or previous year, equal to or exceeding in amount one cent upon each one hundred dollars of taxable property in said township, town or city, then it shall be the duty of the County Auditor to take notice of the same, at the time when the Trustee or Trustees of such school corporation shall make the annual levy for such tax such Trustee or Trustees shall make, under oath, an estimate of the amount of supplementary tuition fund that will be required to meet the actual expenses of the schools for the next school year, and from such estimate said Auditor shall deduct the unexpended balance of such fund in such Trustee or Trustees' hands on the first Monday of July, and the said Trustee or Trustees shall make a levy not larger than shall be sufficient to produce a supplementary revenue equal to the amount remaining of such sworn estimate after such unexpended balance shall have been deducted therefrom. (R. S. 1897, § 6171.)

1. WHO MAKES LEVY. The levy is made by the School Trustees of cities and towns, and by the Township Trustees of townships.

2. CONSTITUTIONAL. The tax authorized by this section is valid, the section being constitutional.—Robinson *v.* Schenck, 102 Ind. 307; Shepardson *v.* Gillette, 133 Ind. 125.

115. Local tax, how applied. 2. The funds arising from such tax shall be under the charge and control of the same officers, secured by the same guarantees, subject to the same rules and regulations, and applied and expended in the same manner as funds arising from taxation for common school purposes by the laws of this State: *Provided*, That the funds assessed and collected in any school township, school town or school city

shall be applied and expended in the same school township, town or city in which such funds shall have been assessed and collected. (R. S. 1897, § 6172.)

1. ANTICIPATING. This revenue is not forbidden to be anticipated, as is the State's tuition revenue.—Harney *v.* Wooden, 30 Ind. 178.

2. TAX ON PERSONS TRANSFERRED—REPORT. Tax received by the Township Trustee from the County Treasurer which has been collected by him from persons transferred to such township must be applied to the tuition fund of such township.

[1871, p. 209. Approved and in force March 11, 1871.]

116. Special tax to pay debts. 1. In all cases where any Township Trustee may have heretofore made and contracted debts against any township in the construction, repairing or completion of school houses, or in providing furniture or school apparatus therefor, and the special school revenue tax, as provided for in section 4467, shall be insufficient to satisfy, pay and liquidate debts so made and contracted by such Trustee, then, and in that case, it shall be lawful and such Township Trustee is hereby authorized to levy an additional tax of not exceeding twenty-five cents on each one hundred dollars' worth of taxable property, in any one year, to the amount now authorized to be levied under said section, for the purpose of paying, satisfying and liquidating the debts made and contracted by said Trustee for the purposes aforesaid; and it shall be lawful and said Trustee is hereby authorized to make said levy for each and every year after the passage of this act, until said debts, made and contracted as aforesaid for the purposes aforesaid, shall be fully paid, satisfied and liquidated: *Provided*, That nothing in this act shall be construed to alter, change, modify, repeal or in any way conflict with section 4467: *Provided, further*, That such additional levy shall only be made after the legal voters of the township to be affected thereby shall have declared in favor thereof. (R. S. 1881, § 4471; R. S. 1894, § 5957; R. S. 1897, § 6173.)

1. MANDATE. It is the duty of the Trustee of a township to apply the tuition funds of the township, when received, to the payment of its indebtedness for tuition, and the performance of such duty may be enforced by mandate.—State *v.* Cooprider, 96 Ind. 279.

[1885, p. 171. Approved and in force April 10, 1885.]

117. Tax to complete town school houses and to support town schools. *Seventeenth.* Such Board of Trustees shall have power to complete school houses now in progress of erection, and provide for the payment of the same; to erect or provide such school houses as may be necessary for the use of schools of the town, to keep them in repair, and to provide fuel and other necessaries therefor.

Nineteenth. The said Board of Trustees shall have power to levy and collect annual taxes not exceeding thirty cents on the one hundred dollars valuation on all property subject by law to taxation, for the support of town schools within their said corporation. (R. S. 1894, § 4357; R. S. 1897, § 4462.)

1. STATUTE VALID. This statute has been declared valid in Shepardson *v.* Gillette, 133 Ind. 125.

CHAPTER IX.

ENUMERATION.

SEC.	
118.	Trustee to take—His duties—Who enumerated.
119.	Transfer.
120.	Transfer to adjoining county.
121.	Enumeration, where filed—Retaking.
122.	Township in two or more counties—Report.

[1895, p. 127. Approved and in force March 5, 1895.]

118. Trustee to take—His duties—Who enumerated. 14. The School Trustees of the several townships, towns and cities shall take or cause to be taken, between the tenth day of April and the thirtieth day of the same month, each year, an enumeration of all unmarried persons between the ages of six and twenty-one years resident within the respective townships, towns and cities.

Each person required or employed to take such enumeration shall take an oath or affirmation to take the same accurately and truly to the best of his skill and ability. Such oath or affirmation shall be made a matter of record and kept on file in the office of the School Trustee.

In making the said enumeration, the Trustee, or person so employed, shall distinguish between the white and colored children, enumerating them in separate lists, and shall list the names of parents, guardians, heads of families, or persons having charge of such child or children, male or female, shall list the full name and give the sex and age of each child so enumerated, shall secure the signature of either parent, guardian, head of family, or person having charge of such child or children, certifying to the correctness of the same, or if this is impossible, shall secure the signature of some responsible person who can certify to the correctness of said list; and he shall give the number of the school district to which such parent, guardian, head of family or person having charge of such child or children is attached for school purposes, and the number and initials which designate the congressional township in which such parent, guardian, head of family or person having charge of such child or children resides. In cities the said enumerator shall give, in addition to the above enumerated items, the street and number of the residence of such person. He shall include in such list all unmarried persons between the ages of six and twenty-one years, whose parents, guardians, heads of families or persons having charge of such child or children, shall have been transferred to his township, town or city for school purposes; and he shall exclude from such list all persons whose parents, guardians, heads of families or persons having charge of such child or children shall have been transferred from his township, town or city for school purposes. He shall not include in such list any persons residing temporarily in his towhship, town or city for the purpose of attending school, or who are members of a family staying temporarily in his township, town or city, but whose actual residence is elsewhere. He shall include in his list such unmarried persons between six and twenty-one years of age as are dependent upon themselves and not under charge of parents, guardian or heads of families, and shall so designate such persons in a separate list, giving in cities the street and number of the residence of such persons. He shall enumerate no one who is not reported to him personally, and properly certified to as herein provided, except in cases of minors who are dependent upon no one, and not inmates of any family who may be reported as herein provided for: *Provided*, That

if any parent, guardian, head of family or person having charge of any child, shall be absent, the enumerator shall ascertain the facts required from other reliable sources, and sign his own name to the certificate herein required; and in case any parent, guardian, head of family or person having charge of any child entitled to school privileges shall refuse to report to the enumerator any facts herein required, necessary to a full and accurate enumeration, he shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than one nor more than ten dollars. Each person required or employed to take the enumeration as provided for in this act, shall, when making returns of said enumeration to the proper officers, make affidavit or affirmation that he has taken and returned the enumeration in accordance with the provisions of this act, to the best of his knowledge and belief, and that such list contains the names of all persons entitled to be enumerated, and no others. The officer to whom such return is required to be made may take and shall certify such affidavit or affirmation, and shall keep in his office such affidavit or affirmation and such report and list of names; and each person so taking and returning the enumeration shall be allowed by the Township School Trustee, or the School Trustees of incorporated towns and cities, reasonable compensation per diem for his services, to be paid out of the special school fund of such township, town or city. Any person appointed as enumerator, or any officer through whose hands the enumeration required by this act shall pass, who shall knowingly enumerate persons not entitled to be enumerated, or who shall in any manner add to or take from the number actually enumerated, shall be deemed guilty of a misdemeanor, and, upon conviction of such offense, shall be fined in any sum not less than five nor more than one hundred dollars, or imprisonment in the county jail not less than ten nor more than thirty days, at the discretion of the court. (R. S. 1897, § 6174.)

1. Who May be Enumerated. Only persons between the ages of 6 and 21 years are entitled to be enumerated, and to have the benefits of the common schools.—Draper *v.* Cambridge, 20 Ind. 268. A minor attains to 21 years of age on the day preceding the twenty-first anniversary of his birth.—Wells *v.* Wells, 6 Ind. 447.

2. Residence. The legal domicile and residence of a minor, not emancipated, is that of his parents. Parents residing in another State can not send their

children into this State for the purpose of procuring an education, and enable them to acquire such a residence here as will entitle them to admission into the common schools of this State, unless the circumstances are such as will create a *bona fide* legal residence here.—Wheeler *v.* Burrow, 18 Ind. 14.

3. NON-RESIDENT STUDENTS. Persons residing temporarily within a corporation, for the purpose of studying at a school or college there located, do not acquire a legal residence therein.

4. CHOICE OF DISTRICTS. A person may be detached from one district and attached to another at any time during the year, with the consent of the Trustee, upon presentation to him of a suitable reason therefor; but a person whose school privileges have been affected by his removal, or by the relocation of a school house, has the right at the next enumeration to choose a district in the township to which he will be attached.

The distinction must be observed between a transfer and an attachment to a district, the former being a change from one corporation to another, the latter from one district to another in the same corporation.

5. CHOICE OF SCHOOLS IN CITIES AND TOWNS. There is no provision in the law, that we are aware of, authorizing parents or guardians to determine to which one of the schools they will send their children in towns and cities. These matters are managed, we believe, by the Trustees exclusively, in towns and cities, who, doubtless, to some extent, consult the wishes of the inhabitants, having in view the grade of the school which it is proper that any given pupil should attend, the convenience of parents and the surrounding circumstances.—City of Crawfordsville *v.* Hays, 42 Ind. 207.

6. PRIVILEGES OF CERTAIN CHILDREN. The School Trustees are required to "make an enumeration of the children, white and colored, within their respective townships, towns and cities," and to "list the names of parents, guardians or heads of families, male and female, having charge of such children." The law in this section recognizes three distinct relations in which the person having charge of a child may stand to the child, viz., parent, guardian and head of a family. The term "heads of families" must refer to a relation not included in the terms "parents" and "guardians." It is intended to cover cases where a person has children of school age in his home and under his protection, whether as employes or as members of his family, though without formal adoption or legal guardianship. But there are other cases which the provision of the statute as to listing names does not include, but which must be provided for under the requirement for enumerating the children within the several corporations. The domicile of a minor is with his parent or guardian, and in theory every minor is supposed to have a guardian. But, in fact, many are completely *sui juris*, independent of parental control or support, and living by their own labor. The homes of such, for the purposes of this section, must be the places where they are employed or stay without any immediate intention of departing therefrom. No one can be said to have charge of them, they do not live at the homes of their employers, and are not under their protection as heads of families. They are none the less entitled to school privileges under what our Constitution requires to be a "general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all."

The Supreme Court remarks, incidentally, in Johnson *v.* Smith, 64 Ind. 275: "The theory of these statutory provisions is, that each and every child of the proper

age, without regard to race or color, within the limits of this State, is entitled of right, and without charge for tuition, to the benefits of such an education as may be obtained in and by our common schools."

All persons between the ages of six and twenty-one years are entitled to school privileges, and may be enumerated in the school corporations in which they, in good faith, have their home—understanding home in the general sense, not in the technical sense of legal domicile. Those who are in any way in charge of a resident head of a family should be so enumerated; those who can not be so assigned may be enumerated as without guardian. In acting under this interpretation Trustees should guard against imposition, by finding out whether the case can be brought under the law of transfer (§§ 119 and 120); and, if not, whether the child is dependent upon himself for support, or upon the person with whom he lives. In either case he should be admitted to the schools. But children can not legally be maintained and sent to school by parents or guardians in corporations other than those in which they themselves reside, nor can a minor become a resident of a school corporation merely to acquire an education therein.

7. Colored Children. The Township Trustee will not be compelled by the courts to make a separate list of colored children, unless a separate school for them is practicable.—State *v.* Grubb, 85 Ind. 213.

8. Mandate—Pleadings. In an application for a mandate to enforce the admission of a person to a common school, the complaint should affirmatively show that the applicant is under twenty-one and not under six years of age, and unmarried, or such complaint will be bad on demurrer.—Draper *v.* Cambridge, 20 Ind. 268.

[1865, p. 3. Approved and in force March 6, 1865.]

119. Transfer. 16. When persons can be better accommodated at the school of an adjoining township, or of any incorporated town or city, the Trustee of the town or city in which such persons reside shall, if such person so request, at the time of making the enumeration, transfer them for educational purposes, to such township, town or city, and notify the Trustee of such transfer; which notice shall furnish the enumeration of the children of the persons so transferred. Each Trustee shall, with his report of the enumeration, report distinctly the persons transferred to his township, town or city for school purposes; indicating in said report the number of children in charge of the persons transferred, with the same particularity that is observed in the enumeration. (R. S. 1881, § 4473; R. S. 1894, § 5959; R. S. 1897, § 6175.)

1. Annual Transfer.—Transfers must be made every year; a transfer for one year is not valid for the next year.—143 Ind. 84.

2. The Right of Transfer. Persons can be transferred at no other time than the enumeration, and then only when the Trustee is satisfied that they can be better accommodated.—Edwards *v.* Trustee, etc., 143 Ind. 84.

3. Appeal. The right to be transferred is not absolute, depending upon the choice of the citizen, like the right to be attached to any school in his township. It can only be claimed if he "can be better accommodated" by such transfer, and the power of the Trustee to make the transfer depends upon the existence of that condition. Of necessity, then, he must determine whether or not the condition exists, and act upon such determination. But his decision is not final. Section 216 expressly provides for an appeal to the County Superintendent from all decisions of the Trustee relative to school matters; and for the purpose of preventing, as far as can be, vexatious litigation, provides that the decision of the County Superintendent shall be final as to certain matters, among which is enumerated "transfers of persons for school purposes."—Fogle *v.* Gregg, 26 Ind. 345; Edwards *v.* Trustee, etc., 143 Ind. 84.

4. To What Corporations. The word *adjoining* must be observed. Persons can only be transferred from one township to an *adjoining* township. It is difficult to see how a person (in view of the regularity with which our townships are laid out) could be better accommodated in a township not adjoining that in the one of his residence. But the word adjoining does not apply to towns and cities, except that it appears from § 120 that the city must not be farther away than the adjoining county.—Edwards *v.* Trustee, etc., 143 Ind. 84.

5. Better Accommodations. The right of transfer for educational purposes, provided by statute, is given only to persons who can be better accommodated thereby. It is a personal right, and each request for transfer is to be considered and determined upon its merits as a separate case, by the school officers; that is, can the person requesting the transfer, taking all the surroundings and conditions that will exist during the coming school year into consideration, be better accommodated during such year with school privileges at the schools of the school corporations to which he seeks transfer than at the schools of the school corporation in which he resides?

In the determination of this question many things would be material and pertinent; the proximity of the schools in the township and city to the residence of relator; the kind and character of the roads to each; the means of transportation, if any, to each; the crowded condition of the schools in either of the two school corporations.—Edwards *v.* Trustee, etc., 143 Ind. 84.

6. Duty of Auditor, Superintendent and Trustees. The additional labor required of the Auditor by a transfer is simply to enter the name of the party transferred and the value of his property situate in the township in which he resides upon the tax duplicate of the township to which the transfer is made, and assess upon such property the proper special school tax. All other property of the party transferred is subject to special school tax in the township where it is situate. County Superintendents, in making the statements of transfers required by this section, should state distinctly the names of the parties transferred, the township in which each resides, and the township to which transferred. Nothing short of this will enable the Auditor properly to assess the special school tax required.

7. Taxes of Transferred Persons—On What Property. Where a person is transferred for school purposes to any township in his own county, he must pay to the County Treasurer, on all his property situated in the township in which he resides, the same rate of school and poll taxes as is paid by the people of the township to which he is transferred, and for the use of that township. If he owns

property in another township, it must be taxed at the rate of other property in that township, and for the use of schools therein.—Johns *v.* State, 130 Ind. 522.

8. To What Taxes Liable. A transferred person is liable to all taxes levied for school purposes in the corporation to which he is transferred, and at the same rate as resident school patrons.—Johns *v.* State, 130 Ind. 522.

9. Constitutional. The provisions of this section authorizing the taxation of the person transferred is constitutional.—Kent *v.* Town of Kentland, 62 Ind. 291; Robinson *v.* Schenck, 102 Ind. 307, 315.

10. Must Receive. The person transferred must be received by the school corporation to which the transfer is made.—Edwards *v.* Trustee, etc., 143 Ind. 84.

11. Request Necessary. Unless the person to be transferred requests it, a transfer can not be made.—Edwards *v.* Trustee, etc., 143 Ind. 84.

12. Validity of Transfer—Estoppel. After a transfer has been made, and the school corporation to which it has been made has levied a tax upon the property of the transferred person, and collected such tax, it is estopped to set up that the transfer was illegal and not properly made.—Edwards *v.* Trustee, etc., 143 Ind. 84.

13. Appeal on Refusal to Make Transfer. The person desiring to be transferred has the right to appeal if his request be denied; and so has the corporation to which a transfer is made. The appeal must be taken within thirty days after the request is made and refusal given; or, in case of the school corporation, within thirty days after it is notified of the transfer. On appeal, the decision of the County Superintendent is final.—Edwards *v.* Trustee, etc., 143 Ind. 84.

120. Transfer to an adjoining county. 17. Each person so transferred, for educational purposes, to a township, town or city in an adjoining county, shall, annually, pay to the Treasurer of such township, town or city (when a tax is levied therein for the purposes aforesaid) a sum equal to the tax levied, computing the same upon the property and poll, liable to tax, of such persons in the township, town or city where he resides, according to the valuation thereof by the proper Assessor; which payment shall release his property from special school tax in the township in which he resides. In default of such payment he shall be debarred from educational privileges in the township, town or city to which he may have been transferred; and the Trustee thereof shall notify the Trustee of the township, town or city in which he (the person transferred) resides, of such exclusion. (R. S. 1881, § 4474; R. S. 1894, § 5960; R. S. 1897, § 6176.)

1. To What Corporations. The township to which a transfer is made, though in a different county, must be *adjoining* to the one in which the person resides, but it seems that he may be transferred to any town or city in a county upon which his own township borders.

2. This section is constitutional.—Kent *v.* Town of Kentland, 62 Ind. 291; Robinson *v.* Schenck, 102 Ind. 307.

3. Property of Transferred Persons Subject to Taxation for All School Purposes. The property of transferred persons shall be assessed for all school purposes, including the payment of bonds issued for indebtedness for school purposes.—Kent *v.* Town of Kentland, 62 Ind. 291.

[1895, p. 127. Approved March 5, 1895. In force June 28, 1895.]

121. Enumeration, where filed—Retaking. 18. Each Township Trustee and the President of the Board of School Trustees of towns and cities shall, on or before the first day of May, annually, report to and file with the County Superintendent of the proper county, a copy of the enumeration for school purposes of his township, town or city, with a list of transfers to such township, town or city, with his affidavit endorsed thereon to the effect that the same is, to the best of his knowledge and belief, full and accurate and taken in accordance with the provisions of the law governing the enumerations. When said County Superintendent, however, on an examination of the enumeration returns of any township, town or city, finds any evidence that the enumeration is excessive in number or in any other way incorrect, he may require the same to be retaken and returned, and if he deem it necessary he may, for this purpose, appoint persons to perform the service, who shall take the same oath, perform the same duties, and receive the same compensation out of the same funds as the person or persons who took the enumeration in the first place, and the school revenues shall be distributed to such school corporation upon the corrected returns. (R. S. 1897, § 6177.)

[1865, p. 3. Approved and in force March 6, 1865.]

122. Township in two or more counties—Report. 19. When a congressional township is located in two or more counties, the proper Trustees for each portion thereof in the several counties shall report, at the same time and in like manner as provided in the last preceding section, to the County Superintendent of the county in which the congressional township fund of such township is held in trust and managed. (R. S. 1881, § 4476; R. S. 1894, § 5962; R. S. 1897, § 6178.)

1. Explanation. This section requires that when a congressional township is located in two or more counties, the proper Trustees for each portion thereof shall make two separate and distinct reports of enumeration.

CHAPTER X.

APPORTIONMENT OF REVENUE.

Sec.		Sec.	
123.	To be semi-annually.	129.	Printed statement.
124.	Reports of County Auditors.	130.	Payment to counties.
125.	When and what County Auditor reports.	131.	Payment of excess.
126.	When Congressional township divided.	132.	Unapportioned balances.
127.	Auditor failing to report.	133.	County Auditor's apportionment.
128.	Apportionment among counties.	134.	Interest on Sinking Fund.
		135.	Surplus Dog Tax Fund.

[1897, p. 291. Approved and in force March 8, 1897.]

123. To be made semi-annually. 109. There shall be two apportionments of the school revenue for tuition made in each year by the State Superintendent of Public Instruction—one on the fourth Monday in June, and the other on the first day of January, unless the said day of the month should be Sunday, and, if so, on the day following. (R. S. 1897, § 6179.)

124. Reports of County Auditors. 110. To enable the Superintendent to make said apportionments, and to ascertain the amount of said revenue collected and ready for that purpose, the Auditors of the several counties of the State shall, promptly, after making the settlements with the County Treasurers of the respective counties in May for the amount collected on tax list, and in December for the amount of delinquent tax collected, make report to said Superintendent of the precise amount of school revenue for tuition collected in their respective counties and ready for apportionment and distribution; which report shall be verified by the oath or affirmation of the Auditor indorsed thereon. (R. S. 1897, § 6180.)

125. When and what County Auditor reports. 111. The first of said reports in each year shall not be delayed later than the third Monday in June, and the second not later than the twenty-fifth day of December. Said report shall show—

First. The amount of school tax collected since the last report, whether upon the current year's tax list or delinquent tax.

Second. The amount of interest collected since the last semi-annual report, and the amount, if any, not previously reported,

upon loans of common school funds, and on any indebtedness which is due or payable to said funds, arising from the sale of seminary property or otherwise.

Third. The amount derived from liquor licenses and unclaimed fees not previously reported.

Fourth. The total amount of school revenue thus collected and ready for apportionment.

Fifth. The income derived from the congressional township school fund, including the interest on loans of said fund, and on deferred payments for school lands which have been sold, and the rents and profits derived from the leasing or renting of any such lands, or otherwise.

Sixth. The amount of said income from the congressional township fund on hand for distribution in parts of the townships in the adjacent counties, specifying the amount on hand for each of the several counties. (R. S. 1897, § 6181.)

[1865, p. 3. Approved and in force March 6, 1865.]

126. When congressional township divided. 112. When the congressional township lies partly in one county and partly in another, the Auditor of the county in which the fund of such township is managed shall notify the Auditor of the county in which any portion is situated of the amount due to such portion. (R. S. 1881, § 4480; R. S. 1894, § 5966; R. S. 1987, § 6282.)

127. Auditor failing to report—Penalty. 113. On the failure of any County Auditor to make his said semi-annual report in time for said apportionments, his county shall be subject to a diminution of one hundred dollars in the next apportionment of said revenue by the Superintendent. The sum thus withheld may be collected from said Auditor, in a suit before a Justice of the Peace, prosecuted in the name of the State, by any person living in said county who has children enumerated for school purposes for the current year, who is aggrieved by said diminution. Said suit shall be commenced within two years from the time when said report was due, and not afterward: *Provided*, That said Auditor may discharge himself from liability to such suit by a certificate of the postmaster that said report was mailed in due time, together with his own affidavit of that fact. (R. S. 1881, § 4481; R. S. 1894, § 5967; R. S. 1897, § 6183.)

[1895, p. 153. Approved and in force March 7, 1895.]

128. Apportionment among counties. 114. The State Superintendent of Public Instruction shall, on the days fixed by section 109 of this act (123) for his apportionment of said revenue in each year, add to the sum total of said revenue in readiness in each county for apportionment any amount in the State Treasury ready for apportionment, and after said addition the Superintendent shall apportion the whole of said sum to the several counties of the State, according to the last enumeration of children therein, with due reference to the diminutions provided for by sections 41 and 113 of this act (80 and 127). (R. S. 1897, § 6184.)

1. OBJECT OF THIS SECTION. The equal distribution of the State school revenue to the several school corporations of the State, according to the number of school children therein, is a means, and not an end; but the great purpose for which this means may be used is that tuition shall be without charge and equally open to all the children of the State.—State *v.* McClelland, 138 Ind. 395.

2. CONSTITUTIONAL. This section is not in conflict with the State Constitution.—State *v.* McClelland, 138 Ind. 395.

3 AMOUNT TO BE RETURNED—HOW DETERMINED. To determine what part of the unexpended balance must be returned to the County Treasurer, the amount received from the State and the amount received from local sources must be prorated.—State *v.* McClelland, 138 Ind. 395.

[1865, p. 3. Approved and in force March 6, 1865.]

129. Printed statement. 115. Said Superintendent shall make out and have printed a statement showing—

First. The enumeration of children in each county.

Second. The amount of school revenue ready for apportionment in each county, and the source from which the same is derived, including said addition from the State indebtedness.

Third. The distributive share thereof apportioned to each county.

He shall file a copy of said statement with the Auditor of State and Treasurer of State, and he shall forward a copy thereof, by mail, to each of the County Auditors, County Superintendents and County Treasurers of the State. (R. S. 1881, § 4483; R. S. 1894, § 5969; R. S. 1897, § 6185.)

130. Payment to Counties. 116. The Auditor of State shall, at the time of making the semi-annual settlements with

the several County Treasurers, give them each a warrant on the State Treasury for the distributive share of said revenue apportioned to their respective counties, the amount of which shall be retained by said treasurers out of the money or revenue in their hands; and the balance ascertained to be due to the State, of ordinary State revenue or other revenue, together with said warrant, shall be paid into the State Treasury. The settlement between the respective County Treasurers and the Auditor of State, and the drawing of the warrants for the amounts apportioned to their respective counties; the ascertainment of the balance payable into the State Treasury, and the payment of said balance, and retention by the County Treasurers of their distributive shares of school revenue, according to said apportionment,—shall be concurrent acts, and shall be done and performed in such a manner as to effect a complete semi-annual disbursement, from the State Treasury to the several counties of the State, of all the school revenues then apportioned to them, and as soon as practicable after the apportionment is made. (R. S. 1881, § 4484; R. S. 1894, § 5970; R. S. 1897, § 6186.)

[1885, S. p. 208. Approved and in force April 13, 1885.]

131. Payment of excess. 1. The Auditor of State shall, at the time of making the semi-annual settlements with the several County Treasurers, give them each a warrant on the State Treasury for the State school revenues collected in their respective counties, the amount of which shall be retained by said Treasurers, and when the Superintendent of Public Instruction shall have made his semi-annual apportionments of school revenue for tuition to the several counties of the State, the Auditor of State shall draw his warrant upon the State Treasury to the respective County Treasurers to which there may be due a greater amount than the State school revenue which has been collected in said counties, and for which a warrant as hereinbefore provided has been issued to them, and said County Treasurers to whom warrants have been issued at the semi-annual settlements for more than their distributive share of said school revenue shall, upon notice being given them thereof by the Auditor of State, forthwith pay such excess into the State Treasury. (R. S. 1894, § 5971; R. S. 1897, § 6187.)

[1865, p. 3. Approved and in force March 6, 1865.]

132. Unapportioned balances. 117. If at any time, from any cause whatever, an unapportioned balance of school revenue shall appear in the State Treasury, other than that which is nominally therein at the passage of this act, the Superintendent of Public Instruction shall add said balance to the sum to be apportioned, and apportion it at the next succeeding apportionment after such balance so appears. (R. S. 1881, § 4485; R. S. 1894, § 5972; R. S. 1897, § 6188.)

[1897, p. 291. Approved and in force March 8, 1897.]

133. County Auditor's apportionment. 118. The Auditor of each county shall, semi-annually, on the second Monday of July and on the last Monday in January make apportionment of the school revenue, to which his county is entitled, to the several townships and incorporated towns and cities of the county; which apportionment shall be paid to the School Treasurer of each township and incorporated town and city by the County Treasurer. In making the said apportionment and distribution thereof, the Auditor shall ascertain the amount of the Congressional township school revenue belonging to each city, town or township, and shall apportion the other school revenue, so as to equalize the amount of available school revenue for tuition to each city, town and township, as near as may be, according to the enumeration of children therein, and report the amount apportioned to the Superintendent of Public Instruction, verified by affidavit: *Provided, however*, That in no case shall the income of the Congressional Township School Fund belonging to any Congressional township, or part of such township, be diminished by such apportionment, or diverted or distributed to any other township: *Be it also provided*, That in making the said apportionment and distribution of the State tuition revenues apportioned to the county by the Superintendent of Public Instruction, in case any school corporation shall not have expended for tuition purposes in any school year an amount as great as the amount of State tuition revenue apportioned and distributed to said corporation by the Auditor for said school year, then it shall be the duty of the Auditor, at the first apportionment, after the annual report of the receipts

and expenditures of said school corporation shall have been filed with the County Commissioners, to deduct from the whole amount of State tuition revenue apportioned to said school corporation an amount equal to the difference between the amount or State tuition revenue apportioned and distributed to said school corporation for use in such school year, and the whole amount shown by such annual report to have been actually expended for tuition purposes, and there shall be paid to the Treasurer of said school corporation the sum remaining after such amount shall have been deducted, and the County Auditor shall include all such deductions in his report to the State Superintendent of Public Instruction as tuition revenue collected in his county and ready for distribution at the next apportionment: *Provided*, That funds arising from the local tuition tax shall not be considered in making the deductions provided for in this section, nor included in the said report to the State Superintendent of Public Instruction. Any neglect or failure of any Auditor to comply with the provisions of this section of this act shall be and constitute a misdemeanor, and upon conviction of any such Auditor of the violation thereof, he shall be fined in any sum not less than the amount of such unexpended balance nor more than double the amount thereof. (R. S. 1897, § 6189.)

1. Method Constitutional. This method of apportionment is according to the command of the Constitution, and, *perhaps*, it requires the same principle to be applied to the distribution among the counties.—Quick *v.* Whitewater Tp., 7 Ind. 570; Quick *v.* Springfield Tp., 7 Ind. 636.

2. Teacher's Remedy. When a teacher obtains judgment against a school corporation, for services as such, and a return of execution thereon *nulla bona*, he may, by proper suit, obtain application of any school revenue in the county treasury belonging to such corporation to the payment of the judgment.—Trustees of the Town of Milford *v.* Simpson, 11 Ind. 520.

3. Trustee's Liability. If the Township Trustee receives funds, under this section, which belong to a school town within the township, he may, after demand, be compelled, by mandate, to pay the amount to the town.—Johnson *v.* Smith, 64 Ind. 275.

4. Rule for Making Apportionment. Auditors will find no trouble in adjusting the apportionment without the labor of giving in detail the specific amount of each township's share of the two funds, if they will ascertain what the whole amount of the school revenues for the county, both common and congressional, will give each scholar on a *per capita* division, and then ascertain whether any township's congressional revenue will yield a larger dividend to its children. If any township thus has a larger *per capita* than that of the whole county from

the combined revenues, exclude the children and congressional revenue of that township from the calculation, and distribute to the other corporations on the consolidation basis. An example may be presented, as follows:

Congressional Tp.	A—300	Children,	$375	Congressional Revenue,	$1.25	*Per Capita.*		
"	" B—200	"	150	"	"	75	"	"
"	" C— 84	"	42	"	"	50	"	"
"	" D—400	"	100	"	"	25	"	"
"	" E—250	"		"	"		"	"

The last four townships have 934 children, and $292 congressional revenue. The common school revenue of the county amounts to $875.50, which, added to the $292, will make $1,167.50. This will give the last four townships $1.25 per scholar, the same that A receives from her congressional revenue alone, in which case the same result is obtained with or without including A's children and revenue. But if the common school revenue were only $828.80, the last four townships would get only $1,120.80, or $1.20 per scholar. In this case A must receive the whole of her own revenue, which *must not be diminished* by any process of distribution; and the remaining revenues must be distributed among the other corporations.

5. Town Incorporated Within Township—Custody of School Funds. A distinct portion of a certain township of this State having become an incorporated town, and elected school trustees, under the laws of the State, the Trustee of such township, after the election, but before such School Trustees had qualified, demanded and received of the County Treasurer the school funds of the whole township, whereupon such School Trustees, after qualifying, demanded of him the payment to their treasurer of the proportion of such school funds belonging such town, which he refused; whereupon they filed an affidavit, reciting the foregoing facts, to compel him, by mandate, to pay over such moneys. It was decided that they were entitled to recover.—Johnson *v.* Smith, 64 Ind. 275.

[1865, S. p. 139. Approved and in force March 21, 1865.]

134. Interest on sinking fund. 1. All interest accrued or accruing on the sinking fund, or any other fund, held by this State for the benefit of the common schools of this State, on and after the first day of January, one thousand eight hundred and sixty-five, is hereby set apart for distribution as other revenues are distributed, for the support of the common schools of this State. (R. S. 1881, § 4487; R. S. 1894, § 5974; R. S. 1897, § 6190.)

[1897, p. 178. Approved March 6, 1897; in force April 14, 1897.]

135. Surplus dog tax fund. 13. The Trustee shall register all losses in the order in which they are reported: *Provided*, That no person shall receive pay for sheep, horses, cattle, swine or other live stock or fowls killed or maimed by any dog or dogs owned or harbored by himself: *Provided, further*, That

the Dog Fund heretofore collected shall be added to and applied with the fund arising under the provisions of this act. And when it shall so occur on the first Monday of March of any year in any township in the State of Indiana that said fund shall accumulate to an amount exceeding one hundred dollars over and above orders drawn on the same, the surplus aforesaid shall be paid and transferred to the County Treasurer of the county in which such township is located and the fund arising from such surplus from the township of the county shall constitute a County Dog Fund and shall be distributed among the townships of the county in which the orders drawn against the Dog Fund exceed the money on hand. This distribution shall be made on the second Monday in March of each year, and if said County Dog Fund be insufficient to pay for all the live stock or fowls maimed or killed by dogs of all the townships the distribution shall be made in the ratio of the orders drawn against the Dog Fund of the townships and unpaid and unprovided for, which ratio shall be obtained from the report of the Trustees of the townships made to the Auditor of the county which is hereby directed shall be made by each Township Trustee of the county upon the first Monday of March of each year, which report shall show all receipts into the Dog Fund of his township, and all orders drawn against the same in the order in which they were drawn. And when it shall occur again upon the second Monday in March of any year that there is a surplus left of the County Dog Fund after provisions have been made for the payment for all the live stock or fowls killed or maimed, of all the townships of the county, such surplus shall be distributed for the schools of the county in the same manner the common school revenue of such county is distributed. (R. S. 1897, § 2910.)

1. Towns and Cities. A town or city within a township is entitled to its proportionate share of the surplus Dog Fund.—Taggart *v.* State, 142 Ind. 668 (overruling School City of South Bend *v.* Jaquith, 90 Ind. 495); Maloy *v.* Madget, 47 Ind. 241.

2. How Apportioned. The County Auditor makes the apportionment according to the provisions of section 133.

CHAPTER XI.

SCHOOLS IN CITIES AND TOWNS.

SEC.
136. Bonds for school buildings.
137. Use of proceeds.
138. Special tax.
139. Condition for building.
140. Surplus special school revenue.

[1873, p. 80. Approved March 11, 1873, and in force July 7, 1873.]

136. Bonds for school buildings. 1. Any city or incorporated town in this State which shall, by the action of its School Trustees have purchased any ground and building or buildings; or may hereafter purchase any ground and building or buildings; or has commenced, or may hereafter commence, the erection of any building or buildings for school purposes; or which shall have, by its School Trustees, contracted any debts for the erection of such building or buildings, or the purchase of such ground and building or buildings; or such Trustee shall not have the necessary means with which to complete such building or buildings, or to pay for the purchase of such ground and building or buildings, or pay such debt, may, on the filing by the School Trustees of said city or town of a report, under oath, with the Common Council of such city, or the Board of Trustees of such town, showing the estimated or actual cost of any such ground and building or buildings, or the amount required to complete such building or buildings, or purchase such ground and building or buildings, or the amount of such debt, on the passage of an ordinance authorizing the same by the Common Council of said city or the Board of Trustees of such town, issue the bonds of such city or town to an amount not exceeding in the aggregate fifty thousand dollars, in denominations not less than one hundred nor more than one thousand dollars and payable at any place that may be designated in the bonds (the principal in not less than one year nor more than twenty years after the date of such bonds, and the interest annually or semi-annually, as may be therein provided) to provide the means with which to complete such building or buildings, and to pay for the purchase of such ground and

building or buildings, and to pay such debt. Such Common Council or Board of Trustees may, from time to time, negotiate and sell as many of such bonds as may be necessary for such purpose, in any place and for the best price that can be obtained therefor in cash: *Provided*, That such bonds shall not be sold at a price less than ninety-four cents on the dollar. (R. S. 1881, § 4488; R. S. 1894, § 5975; R. S. 1897, § 6191.)

1. Contract for Ground. Under this section the bonds may be issued although the Trustee has only contracted for the grounds or buildings.—Williams *v.* Town of Albion, 58 Ind. 329.

2. Valid. The above section is constitutional.—Clark *v.* Town of Noblesville, 44 Ind. 83; Gardner *v.* Haney, 86 Ind. 17.

3. Location of School Property. As a rule, the school grounds and houses should be located within the school corporation that owns them; but the bonds of such corporation, negotiated and sold to procure means for the erection and completion of such school houses, are not void merely because they are located without the limits of the corporation.—Gardner *v.* Haney, 86 Ind. 17.

4. Title to School Property—Control of. As to the title and control of school property three cases arise under the law *prior* to the act of 1893:

(1) When the school house is within the limits of the township the title is in the school township, and the Township Trustee controls and may sell.

(2) When the school house is situated within territory which is afterward incorporated into a town, then the title vests in the town, and the property is controlled by the School Trustees of the town.—Carson *v.* State, 27 Ind. 465; School Town of Leesburgh *v.* Plain School Tp., 86 Ind. 582; School Tp. of Allen *v.* School Town of Macy, 109 Ind. 559.

(3) When the school house is located on territory which is taken into a city by addition, then the Township Trustee controls and sells, and credits the special school fund with the amount of the sale.—Heizer *v.* Yohn, 37 Ind. 415; Reckert *v.* City of Peru, 60 Ind. 473. See now, however, on this subject § 183.

5. Petition Not Necessary. A petition of the taxpayers to the Board of Trustees or the Common Council is not necessary to enable the Board to levy a tax to complete school buildings.—Clark *v.* Town of Noblesville, 44 Ind. 83.

6. Can Not Be Enjoined. When the School Trustees have complied with the law (section 139) by filing with the Town Board or Common Council a verified report, showing that, as such School Trustees, they have contracted for the purchase of real estate on which to erect school buildings, and showing the amount of the debt incurred for such realty, and the estimated cost of such buildings, and asking the issuance of bonds, such Board or Common Council may, by ordinance, authorize the issue and sale of bonds of such city, equal in amount to the cost of such real estate and the estimated cost of such buildings, and such Board or Common Council can not be enjoined from so doing.—Williams *v.* Town of Albion, 58 Ind. 329.

137. Use of proceeds. 2. The proceeds of the sales of such bonds shall be paid to the said School Trustees, to enable

them to erect or complete such building or buildings and pay such debt. But before payment to them, such School Trustees shall file with the County Auditor a bond, payable to the State of Indiana, in a sum not less than the full amount of the said money so to be paid to them, and with security to be approved by said Auditor, conditioned for the faithful and honest application of such money to the purpose for which the same was provided; and such Trustees, and their surety or sureties, shall be liable to suit on such bond for any waste, misapplication, or loss of such money in the same manner as now provided for waste or loss of school revenue. (R. S. 1889, § 4489; R. S. 1894, § 5976; R. S. 1897, § 6192.)

[1875, p. 29. Approved and in force March 11, 1875.]

133. Special tax. 3. In addition to levying the tax by cities or incorporated towns for general purposes, now authorized by law, the Common Council of any such cities, and Boards of Trustees of any such incorporated towns as shall avail themselves of the provisions of this act, are hereby authorized and required to levy, annually, a special additional tax, at the same time and in the same manner as other taxes of such city or town are levied, sufficient to pay the interest and principal of said bonds falling due; which additional special tax shall be assessed and collected as the taxes for State and county revenue are assessed and collected. The Treasurer of said city or town shall keep accurate account of the revenue arising from said special tax, and shall in his reports, when required by the city or town authorities, show the amount thereof received, the amount disbursed, and the amount thereof, if any, remaining delinquent. He shall pay out the same only by the authority of the Common Council of said city or Board of Trustees of such town; and shall permit the same to be applied to no other purpose than the payment of the principal and interest of such bonds; and official bonds of City and Town Treasurers shall be construed to cover and include revenue arising from this source. Persons residing outside of any such city or town, and electing to be transferred to such town or city for educational purposes, or who shall send their children to the school taught in any such building, shall, with their property, be liable to such tax, as if they resided in such city or town, on all property owned by said

person in the township where such city or town is located: *Provided, always*, That nothing in this act shall be construed to prevent the School Trustees of such town or city from admitting pupils into such schools from outside such city or town, in their discretion, upon the payment of tuition therefor, and without subjecting the property of their parents to such taxation, when such schools are not crowded and their admission shall, in no way, interfere with the progress of the children within such city or town: *Provided further*, That the additional special tax, hereby authorized, shall not, in any one year, exceed fifty cents on any one hundred dollars of taxable property and one dollar on each poll. (R. S. 1881, § 4490; R. S. 1894, § 5977; R. S. 1897, § 6193.)

1. SECTION CONSTITUTIONAL. The provision subjecting to this tax persons residing outside the town or city, who, though not transferred, send to the school in the building for which the bonds were issued, is not unconstitutional.—Kent *v.* Kentland, 62 Ind. 291.

2. LEVY OBLIGATORY. It is the duty of Trustees to levy annually a special additional tax sufficient to pay the interest and principal of bonds issued for school buildings and falling due; and where it appears that they have failed, neglected and refused to discharge their statutory duty, a writ of mandate is the proper legal remedy.—Gardner *v.* Haney, 86 Ind. 17.

3. PROPERTY SUBJECT TO TAXATION WHETHER TRANSFERRED OR NOT IF CHILDREN ARE SENT TO SCHOOL. Having voluntarily enjoyed the benefit of the adjoining school by sending his children there to be taught, we think he is bound to pay the tax, whether he caused himself to be transferred to such adjoining district for educational purposes or not. The fact that he failed to have himself so transferred can not affect the law by which he made himself liable to taxation by sending his children to be taught at the adjoining school; and he can not avoid the payment of the tax by merely failing to be transferred for educational purposes.—Kent *v.* Town of Kentland, 62 Ind. 291.

4. Property of transferred person or persons who take advantage of the schools subject to this tax.—Kent *v.* Town of Kentland, 62 Ind. 271.

[1879, S. p. 76. Approved and in force March 20, 1879.]

139. Condition before building. 1. Before the School Trustees of any incorporated town or city in this State shall purchase any ground for school purposes, or enter into any contract for the building of any school building or buildings, they shall file a statement with the Trustees of such incorporated town, or Common Council of such city, showing the necessity for such purchase of ground, or the erection of such building or buildings, together with an estimate of the cost of such

ground or building or buildings, and the amount of means necessary to be provided to pay for such ground or building or buildings. And they shall not purchase any ground, or enter into any contract for the building of any school building or buildings, until such action be approved by the Trustees of such incorporated town, or by the Common Council of such city: *Provided, however*, That there shall be nothing in this act so construed as to affect any purchase of grounds, or contract made for the erection of any building or buildings for school purposes, prior to the taking effect of this act. (R. S. 1881, § 4491; R. S. 1894, § 5978; R. S. 1897, § 6194.)

[1879, S. p. 95. Approved March 31, 1879, and in force May 31, 1879.]

140. Surplus special school revenue. 1. It shall be the duty of the Board of School Trustees of any city or incorporated town in this State to pay over to the Common Council or Board of School Trustees of such city or town any surplus special school revenue in the hands of such School Trustees, not necessary to meet current expenses; such excess of the revenue aforesaid to be applied for the payment of the interest or principal, or both, of any indebtedness incurred under the provisions of the act of March 8, 1873, authorizing cities and incorporated towns to negotiate and sell bonds to procure means to erect and complete unfinished school buildings, and to purchase any ground and building for school purposes, and to pay debts contracted for the erection and purchase of buildings and grounds. (R. S. 1881, § 4492; R. S. 1894, § 5979; R. S. 1897, § 6195.)

CHAPTER XII.

SCHOOL SYSTEM IN LARGE CITIES.

SEC.
141. School system.
142. School districts.
143. Organization—Term—Vacancies.
144. Duties and powers.
145. Tax Collectors and payments.
146. Sessions—Record—No pay.
147. General School Law in force.
148. Temporary loans.
149. Bonds to pay debts.
150. Bonds in cities.
151. Manual training schools.
152. Teachers and instructors.
153. Tax to support schools.

[1871, p. 20. Approved and in force March 1, 1871.]

141. School system. 1. In all cities of this State of thirty thousand or more inhabitants according to the United States census for the year eighteen hundred and seventy, there shall be elected, by the qualified electors of each school district of such city, one school Commissioner, to serve as a member of the Board of School Commissioners of such city. The first regular election for School Commissioners, under this act, shall be held on the second Saturday in June, in the year eighteen hundred and seventy-one, at the places to be fixed on for holding such election in the school districts of such city by the Common Council. All elections for School Commissioners shall be held in the same manner as elections are now held, and shall be governed by the same laws that now govern general and municipal elections. The persons declared elected shall have issued to them, by the City Clerk, certificates of election; and they shall, within ten days thereafter, take an oath of office, and file the same with the City Clerk. All regular elections for School Commissioners shall, thereafter, be held annually, on the second Saturday in June. (R. S. 1881, § 4457; R. S. 1894, § 5936; R. S. 1897, § 6157.)

1. Indianapolis is the only city which has organized its schools under the sections of this chapter.

142. School districts. 2. It is hereby made the duty of the Common Council of any such city, on or before the first Monday in May, 1871, by ordinance, to district the city into as many school districts as there are wards, and to define the

boundaries of each district, and such boundaries may be the present ward boundaries, or otherwise, as the Common Council may determine. Such school districts shall, however, be subject to change by the Board of School Commissioners at any time after its organization; and in case the number of districts is increased, each additional district shall be entitled to elect one School Commissioner for such district at the annual election for School Commissioners. The Common Council shall, at the time such ordinance is adopted creating such districts, order an election to be held in each of such districts for School Commissioners thereof, on the second Saturday in June following; and shall direct the City Clerk to give ten days' notice thereof in some daily newspaper of such city. (R. S. 1881, § 4458; R. S. 1894, § 5937; R. S. 1897, § 6158.)

143. Organization—Term—Vacancies. 3. On the first Monday in July following the first election of School Commissioners herein provided for, such School Commissioners shall assemble at the office of the Board of School Trustees of such city, and proceed to organize the Board of School Commissioners of such city, by electing one of their number as a president, one of their number as a treasurer, and one of their number as a secretary; each of which officers shall serve for one year and until his successor is elected and qualified. The members of such Board of School Commissioners shall then determine, by lot, which three of their number shall hold office for three years, and which three shall hold office for two years; and, after having so determined, the president of the Board shall issue to the persons so determined certificates entitling them to hold office for the terms respectively allotted; and the remaining members shall receive, from the president of the Board, certificates showing that each is entitled to hold office for one year; and all persons elected as School Commissioners at the annual elections thereafter shall be entitled to hold office for three years each. All vacancies occurring at any time prior to the annual election shall be filled by a ballot vote of a majority of the members of such Board; and the persons so elected to fill such vacancies shall serve until the next annual election for School Commissioners. All persons elected at any regular annual election, or by the Board to fill any vacancy, shall serve until their

successors are elected and qualified. It is hereby made the duty of the Board of School Trustees in office at the time of the organization of the Board of School Commissioners, to at once turn over to the Board of School Commissioners all books and papers pertaining to their trust, and to place in possession of the Board of School Commissioners all moneys, title papers, and property belonging to the School Trustees of Common Schools of such city; and such Board of School Trustees shall thereafter cease to perform any and all duties whatever connected with the schools of such city. (R. S. 1881, § 4459; R. S. 1894, § 5938; R. S. 1897, § 6159.)

144. Duties and powers. 4. Such Board of School Commissioners is hereby authorized—

First. To district the city for the purpose of electing School Commissioners therein, and also to subdivide the city for general school purposes.

Second. To levy all taxes for the support of the schools within such city, including such taxes as may be required for paying teachers, in addition to the taxes now authorized to be levied by the General Assembly of this State by the general laws thereof: *Provided*, No such tax levy, in any one year, shall exceed the sum of twenty-five cents on each one hundred dollars of the taxable property, as assessed for city taxes by the City Assessor, for purchasing grounds, building school houses, and furnishing supplies for such buildings; or twenty-five cents on each one hundred dollars of such taxable property, for the purpose of paying teachers.

Third. To levy a tax, each year, of not exceeding one-fifth of one mill on each dollar of taxable property assessed for city taxes by the City Assessor, for the support of free libraries in connection with the common schools of such city; and to disburse any and all revenue raised by such tax levy in the purchase of books, and in the fitting up of suitable rooms for such libraries, and for salaries to librarians; also to make and enforce such regulations as they may deem necessary for the taking out from and returning to, and for the proper care of, all books belonging to such libraries, and to prescribe penalties for the violation of such regulations.

Fourth. To examine, either by a committee of such Board of School Commissioners or by an officer of such Board, selected for that purpose, all teachers applying for positions in the schools of the city; and to license such as may be qualified—such license to be limited to the city in which the same is granted.

Fifth. To purchase grounds, construct school buildings, purchase supplies, employ and pay teachers, appoint Superintendents, and disburse, through the treasurer of the Board of School Commissioners, moneys for all school and library expenses.

Sixth. To require the treasurer of the Board of School Commissioners to give bond in such sum, and with such surety, as the Board may determine, for the faithful discharge of his duties, and for the safe-keeping and faithful accounting for all moneys that may come into his hands as such treasurer.

Seventh. To establish and enforce regulations for the grading of and course of instruction in the schools of the city, and for the government and discipline of such schools.

Eighth. To prepare, issue and sell bonds to secure loans, not exceeding in the aggregate the sum of one hundred thousand dollars, in anticipation of the revenue, for building school houses, to bear such rate of interest, not exceeding ten per cent. per annum, and payable at such time, within five years from date, as the Board may determine; and the money obtained as a loan on any such bonds shall be disbursed by order of such Board, in payment of expenses incurred in building school houses: *Provided*, That until all the bonds of any one issue shall have been redeemed, such Board shall not be authorized to make another issue; nor shall any such bonds be sold at a less rate than ninety-five cents on the dollar. (R. S. 1881, § 4460; R. S. 1894, § 5939; R. S. 1897, § 6160.)

1. Can Not Levy Poll Tax. The Board of School Commissioners has no power to levy a poll tax for the support of the common schools of the city, or for a special fund for the support of such schools.—The Board *v.* Magner, 84 Ind. 67.

2. Fifth and Eighth Clauses. Under the fifth clause the School Commissioners have power to contract for the erection and completion of school houses, and to agree to pay therefor partly in cash and partly on time, and to make and deliver their notes for the deferred payments, which are valid obligations, binding upon their school cities, notwithstanding the fact that there may be at the time ontstanding bonds to the amount of $100,000, issued and sold under the eighth clause, to secure loans in anticipation of the revenue, for building school houses,

and that such money had been disbursed for that purpose. The powers conferred under the fifth clause are limited only by the educational wants of the school corporations under the Board's control, in the exercise of a sound and reasonable discretion. The eighth clause was not intended to be, and is not, a limitation upon the general powers conferred upon the Board by the fifth clause. It confers additional and extraordinary powers not conferred upon school corporations generally, and the proviso therein contained is a limitation only on the Board's exercise of such additional and extraordinary powers.—Fatout *v.* Board, 102 Ind. 223.

3. NOTES. Notes executed by the Board in settlement of just debts fairly contracted for the legitimate purposes of the school corporation, do not come within the meaning of the eighth clause, or of the proviso, and are valid.—Fatout *v.* Board, 102 Ind. 223.

4. TAX LEVY. See Acts 1885, p. 17, Sec. 9. (R. S. 1894, § 3752; R. S. 1897, § 4277.)

5. MECHANIC'S LIEN—PUBLIC POLICY. A mechanic's lien for work done, or materials furnished, in the erection of a public school house, can not be acquired or enforced. It is against public policy.—Fatout *v.* Board, 102 Ind. 223, overruling Shattell *v.* Woodward, 17 Ind. 225.

145. Tax collection and payment. 5. All levies of taxes made by order of the Board of School Commissioners shall be certified by its president and secretary to the City Clerk, who shall cause the same to be placed on the tax duplicate against all property assessed for city taxes; and the City Treasurer shall collect the same as city taxes are collected, and shall, once in each month, pay over all such taxes so collected to the treasurer of the Board of School Commissioners of such city. All taxes hereafter collected by the County Treasurer for school purposes on levies hereafter made, and all moneys that may be hereafter distributed as a part of the common school fund by county officers, to which the common schools of such city shall be entitled, shall be paid over by the County Treasurer to the treasurer of the Board of School Commissioners; and all taxes hereafter collected by the City Treasurer on levies heretofore made for school purposes, shall be paid over by such Treasurer, once in each month, to the treasurer of the Board of School Commissioners of such city. (R. S. 1881, § 4461; R. S. 1894, § 5943; R. S. 1897, § 6161.)

146. Sessions—Record—No pay. 6. The said Board of School Commissioners shall hold its sessions at such times as it may determine, and shall keep a record of all its proceedings. The members of such Board shall serve without any compensa-

tion whatever. (R. S. 1881, § 4462; R. S. 1894, § 5945; R. S. 1897, § 6162.)

147. General school law in force. 8. All parts of the general school laws of this State, not inconsistent herewith, and which may be applicable to the general system of the common schools in such city, herein provided for, shall be in full force and effect in such city. (R. S. 1881, § 4463; R. S. 1894, § 5946; R. S. 1897, § 6163.)

[1877, p. 123. Approved and in force March 3, 1877.]

148. Temporary loans. 1. The Board of School Commissioners of any city embraced within the provisions of sections 4457 to 4463 may, whenever the funds for the support of the common schools in such city throughout the regular school year shall be insufficient or exhausted, make temporary loans for the support of such schools during such time, and until the receipt of the school revenue of the current year; but no more than is sufficient for such purpose, nor the amount of such revenue for the current year, shall be borrowed at any one time, and no further loan shall be made until such temporary loan shall be paid. (R. S. 1881, § 4464; R. S. 1894, § 5947; R. S. 1897, § 6164.)

[1889, p. 101. Approved and in force March 5, 1889.]

149. Bonds to pay debts. 1. Boards of School Commissioners in all cities of this State having thirty thousand or more inhabitants, according to the United States census for the year eighteen hundred and seventy, are hereby authorized to prepare, issue and sell bonds to secure loans not exceeding in the aggregate, at any one time, the sum of two hundred and fifty thousand dollars, in anticipation of the revenue for purchasing grounds and building school houses, to bear such rate of interest, not exceeding six per cent. per annum, and payable at such time within ten years from date as the Board may determine; and the money obtained as a loan on any such bonds shall be disbursed by the order of said Board in payment of indebtedness incurred in the purchasing of grounds, or building of school houses, or in refunding any bonds or other evidence of indebtedness issued for such purpose. Such bonds may be issued in such

denominations and in such sums as the Board of School Commissioners may deem to be expedient: *Provided*, That at no time shall the amount of such bonds so issued by any such Board of School Commissioners, then outstanding, exceed said sum of two hundred and fifty thousand dollars: *And provided further*, That such bonds shall not be sold for less than their par value. (R. S. 1894, § 5940; R. S. 1897, § 6165.)

1. Library Tax. For a tax to build and support libraries in large cities, see §§ 200 to 205.

[1889, p. 101. Approved and in force March 5, 1879.]

150. Bonds in cities. 1. Boards of School Commissioners in all cities of this State having thirty thousand, or more, inhabitants, according to the United States census for the year eighteen hundred and seventy, are hereby authorized to prepare, issue and sell bonds to secure loans not exceeding in the aggregate, at any one time, the sum of two hundred and fifty thousand dollars, in anticipation of the revenue, for purchasing grounds and building school houses, to bear such rate of interest, not exceeding six per cent. per annum, and payable at such time within ten years from date, as the Board may determine; and the money obtained as a loan on any such bonds shall be disbursed by the order of said Board in payment of indebtedness incurred in the purchasing of grounds, or building of school houses, or in refunding any bonds or other evidence of indebtedness issued for such purpose. Such bonds may be issued in such denominations and in such sums as the Board of School Commissioners may deem to be expedient: *Provided*, That at no time shall the amount of such bonds so issued by any such Board of School Commissioners, then outstanding, exceed said sum of two hundred and fifty thousand dollars: *And, prorided further*, That such bonds shall not be sold for less than their par value. (R. S. 1894, § 5940; R. S. 1897, § 6165.)

[1891, p. 348. Approved and in force March 7, 1891.]

151. Manual training schools. 1. In all cities of the State of Indiana having a population of one hundred thousand or over, as shown by any census taken, by lawful authority, it shall be lawful for the Board of School Commissioners, or other

school authorities having charge and management of the common schools of said city, to establish in connection with and as part of the system of common schools therein, a system of industrial or manual training and education wherein shall be taught the practical use of tools and mechanical implements, the elementary principles of mechanical construction and mechanical drawing. (R. S. 1894, § 5948; R. S. 1897, § 6142.)

152. Teachers and instruction. 2. Such Board of School Commissioners, or other school authorities, upon establishing such system of manual or industrial training and education, shall employ competent instruction in the various subjects to be taught, and establish such general rules and regulations for the admission of pupils and the conduct of the schools wherein the same shall be taught as in their judgment will produce the best results, and give instruction to the largest number of pupils practicable. They may provide for such instruction in separate rooms, or separate buildings, as in their judgment may be most advantageous. (R. S. 1894, § 5949; R. S. 1897, § 6143.)

153. Tax to support schools. 3. Any such Board of School Commissioners or other school authorities, having decided to establish such system of industrial or manual training, shall have authority, in addition to all other taxes now authorized to be levied, to levy a tax of not exceeding five cents on each one hundred dollars of property liable for taxation for school purposes, to be levied and collected as other taxes for school purposes are levied and collected, for the purpose of purchasing grounds and erecting buildings, or for renting buildings wherein such instruction shall be given, the purchase of all necessary tools, implements and apparatus, and for the payment of instructors and other expenses incident to the maintenance thereof: *Provided*, That no portion of the taxes so levied and collected shall be applied to any other purpose. (R. S. 1894, § 5950; R. S. 1897, § 6144.)

CHAPTER XIII.

SCHOOLS AND SCHOOL HOUSES.

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175.	He has charge of the school house.
176.	Visits school—May exclude pupil.
177.	Appeal to teacher.
178.	Insulting teacher.
179.	Title to school property.
180.	Use of school house.
181.	Use of school house.
182.	School house, when sold.
183.	School house in annexed territory.
184.	School house for several townships,
185.	Cost of erecting.
186.	Donations and bequests.
187.	Majority of voters.
188.	Sale of bonds.
189.	Site for school house—Eminent domain.
190.	Appraisers.
191.	Appraisement—Payment.

[1865, p. 3. Approved and in force March 6, 1865.]

154. Bible. 167. The Bible shall not be excluded from the public schools of the State. (R. S. 1881, § 4493; R. S. 1894, § 5980; R. S. 1897, § 6196.)

1. Use of the Bible. The Bible, without note or comment, is installed in the common schools of Indiana. Its continuance as the moral class book in these nurseries of her future citizens will as surely mark the period of her prosperity and grace the zenith of her glory, as its exclusion would prove the precursor of her decline, the herald of her shame.

2. Teacher Independent. Neither the Examiner nor the Trustee should ever inquire into the peculiar religious belief of a teacher, yet an Examiner should not license an immoral person, nor one who is a scoffer at the teachings of the Bible and things sacred.

Our law, therefore, wisely leaves the whole matter of Bible reading and prayers with the good judgment and conscience of the teachers. To obligate them by contract to read the sacred Scriptures and hold prayers in their schools would be in exceedingly bad taste, if not sacrilegious; to refuse them the right, when they, in good faith and conscience, desire to do so, would be the very worst of tyranny.

3. Devotional Exercises Can Not Be Enforced. You ask if a rule of the Board requiring "the reading of the Scriptures, with devotional exercises," can be enforced. As officers you should be governed by the Constitution and statutes

and not by any personal views you may hold. It is true the statute says: "The Bible shall not be excluded from the public schools of the State." But the State Constitution also says:

(1) "All men shall be secured in their natural right to worship Almighty God according to the dictates of their own consciences." (R. S. 1881, § 47; R. S. 1894, § 47; R. S. 1897, § 47.)

(2) "No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience." (R. S. 1881, § 48; R. S. 1894, § 48; R. S. 1897, § 48.)

(3) "No preference shall be given, by law, to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent." (R. S. 1881, § 49; R. S. 1894, § 49; R. S. 1897, § 49.)

(4) "No religious test shall be required as a qualification for any office of trust or profit." (R. S. 1881, § 50; R. S. 1894, § 50; R. S. 1897, § 50.)

In view of these provisions of the State Constitution, it seems that the only thing the Legislature intended to authorize school authorities to do in section 4493, is to put the Bible in the School and leave the use of it to the good judgment and conscience of the teacher.

Under the law you are as a corporate body authorized to make and enforce all reasonable rules (not in conflict with the Constitution or statutes) for the successful conduct of the business entrusted to your care. The statute (section 154 above) clearly does not directly authorize such a rule, and I think it does not authorize it by implication. Such a rule might "interfere with the rights of conscience" either of the teacher, some of the pupils or parents, and it is, therefore, not warranted. Clearly the statute and the Constitution authorize the reading of the Bible, and prayer in the public schools, but it should be done by choice and not by compulsion; and when done it should be done in such a discreet way as not to "interfere with the rights of conscience." Complete religious liberty is what the Constitution guarantees to every one, and this is what should be aimed at by the School Board and the teacher. This thought is aptly expressed in the Constitution of Virginia: "It is the mutual duty of all to practice Christian forbearance, love and charity toward each other." The School Board should practice forbearance, love and charity toward the teacher, the pupils and parents. The opinion of any one, in connection with the school, of whatever religious faith, should be respected and held inviolate, as the Board would have its own opinions respected.—Department decision.

155. Uniformity as to time—Numbering. 14. All schools in a township shall be taught an equal length of time, as nearly as the same can be done, without regard to the diversity in the number of pupils at the several schools, or the cost of the school; and each of said schools shall be numbered, by the proper Trustees, as School No. ——. (R. S. 1881, § 4494; R. S. 1894, § 5981; R. S. 1897, § 6197.)

1. UNIFORMITY. The statute only requires the schools in the townships to be taught an equal length of time, as nearly as the same can be done.—Harmony School Tp. *v.* Moore, 80 Ind. 276. See also Maloy *v.* Madget, 47 Ind. 241.

156. Calendar. 163. A school term of three months shall be sixty days, a school month twenty days, and a school week five days. (R. S. 1881, § 4495; R. S. 1894, § 5982; R. S. 1897, § 6198.)

[1877, p. 124. Approved and in force March 5, 1877.]

157. Colored children. 3. The Trustee or Trustees of such township, town or city may organize the colored children into separate schools of the township, town or city, having all the rights, privileges and advantages of all other schools of the township, town or city: *Provided*, That in case there may not be provided separate schools for the colored children, then such colored children shall be allowed to attend the public schools with white children: *Provided further*, That when any child attending such colored school shall, on examination and certificate of his or her teacher, show to the Trustee or Trustees of any township, town or city, that he or she has made sufficient advancement to be placed in a higher grade than that afforded by such colored school, he or she shall be entitled to enter the school provided for white children of a like grade, and no distinction shall therein be made on account of race or color of such colored child. (R. S. 1881, § 4496; R. S. 1894, § 5983; R. S. 1897, § 6199.)

1. State's Power—Separate Schools. The system of common schools in this State has its origin in, and is provided for by, the Constitution and laws of the State. It is purely a domestic institution, and subject to the exclusive control of the constituted authorities of the State. The Federal Constitution does not provide for any general system of education to be conducted and controlled by the federal government, nor does it vest in the Congress any power to exercise a general or special supervision over the States on the subject of education. The classification of pupils on the basis of race or color, and their education in separate schools, involve questions of domestic policy which are within the legislative discretion and control, and does not amount to an exclusion of either class; but since the ratification of the fourteenth amendment of the Federal Constitution, no system of schools would be general, uniform and equally open to all, as required by our own Constitution (R. S. 1881, § 182; R. S. 1894, § 182; R. S. 1897, § 182), which did not provide for the education of the colored children.—Corey *v.* Carter, 48 Ind. 327; State *v.* Gray, 93 Ind. 303; see Lewis *v.* Henley, 2 Ind. 332.

2. Compulsion. The Township Trustee will not be required by mandate to establish separate schools for colored children, unless it is shown to be practicable. —State *v.* Grubb, 85 Ind. 213; State *v.* Gray, 93 Ind. 303.

3. Separate Schools Permitted. The constitutionality of the law for the establishment of separate schools for colored and white children is settled. The discretion given to school officers to establish separate schools for colored children

can not be controlled by the courts, in the absence of malice or corruption, nor can the courts compel the admission of a child to a school already overcrowded, nor consider the competency of teachers, or the necessity of the graded schools, nor determine the grade to which a child is qualified to be admitted.—State *v.* Gray, 93 Ind. 303.

[1881 S., p. 580. Approved and in force April 7, 1881.]

158. Indigent children. 3. It shall be the duty of each matron selected and appointed under the provisions of this act to provide the children committed to her care and custody with suitable and sufficient food and clothing, and to give them proper home training and education; and, in furtherance of this object, she shall send to the common schools in the districts most convenient to the place where such children are kept, where they shall be received and taught at least three months in each year, all of such children under her care as are of the proper age to be admitted into such schools, and to give personal attention to the instruction of those not of sufficient age to be received into such schools. It shall further be her duty, at all proper times when such children are not in school, nor engaged in study, to engage them in some active labor suited to their age and strength, to the end that they may become useful, industrious and self-supporting citizens. (R. S. 1881, § 6105; R. S. 1894, § 8181; R. S. 1897, § 8640.)

1. School Privileges—Enumeration. Such children are entitled to school privileges in the corporation in which the statute establishes their home, and should be enumerated accordingly.

[1885, p. 125. Approved April 2, 1885, and in force July 18, 1885.]

159. Appropriations for indigent children. 1. The Boards of Commissioners in the several counties of this State are hereby authorized to make suitable appropriations for the education, in the common school branches of learning, of the pauper children of their respective counties whenever, in the judgment of the Board of Commissioners, justice to the school district or districts wherein such pauper children are kept demands such assistance; and all expenditures authorized by this act, shall be made and paid out of the County Treasury, on warrants drawn by the Auditor on the order of the Board of Commissioners: *Provided*, That where there is no provision for a matron, or an insufficient number of children to require the services of a matron, or the establishment of a separate school for the inmates

of such asylums, it shall be the duty of the Board of Commissioners to require the Superintendent of such asylum to send such children to the township schools. (R. S. 1894, § 6033; R. S. 1897, § 6315.)

[1869, S., p. 40. Approved May 5, 1869, and in force August 16, 1869.]

160. Branches taught. 147. The common schools of the State shall be taught in the English language; and the Trustee shall provide to have taught in them orthography, reading, writing, arithmetic, geography, English grammar, physiology, history of the United States, and good behavior, and such other branches of learning and other languages as the advancement of the pupils may require and the Trustees from time to time direct. And whenever the parents or guardians of twenty-five or more children in attendance at any school of a township, town or city shall so demand, it shall be the duty of the School Trustee or Trustees of said township, town or city to procure efficient teachers and introduce the German language, as a branch of study, in such schools; and the tuition in said schools shall be without charge: *Provided*, Such demand is made before the teacher for said district is employed. (R. S. 1881, § 4497; R. S. 1894, § 5984; B. S. 1897, § 6200.)

1. Trustee's Duty—Mandate. In the Circuit Court of Johnson County the plaintiff asked for a writ of mandate to compel the defendants to have their children taught algebra and Latin in an ordinary district school. The court issued the mandate in regard to algebra, and refused it in regard to Latin, solely on the ground that the plaintiffs had not made a suitable demand on the Trustee in regard to that study, holding that it was his duty to cause Latin to be taught, if the attainments of the pupils required it, and that he could be compelled to do so by suitable proceedings. The court argued that sections 4497 and 4499 were not inconsistent with each other. The intent of the Legislature was that "other branches of learning and other languages" should be taught in the public schools whenever the pupils therein were sufficiently advanced in the elementary branches, and in order that the legislative intent might be made effective two modes of acting were provided for: (1) The voters were empowered to act. But, lest from any cause they failed in their duty and left those entitled to the benefits of the public schools without a remedy, then (2) the School Trustee shall act, and, they being public officers, could be compelled by the courts to perform their duty in case they neglected to do the same.—Grubbs *v.* Williams, Johnson Co., 1880.

2. Additional Studies. It has been asked whether it is the duty of School Trustees to provide a course of study adapted to the preparation of pupils for college. The question should be answered in the affirmative. It is fair to assume that the Trustees must provide suitable instruction for all the children who have

a right to attend school; that is, they must afford them such instruction as their attainments demand. If a child has mastered all the primary branches, and being less than twenty-one years of age, still desires to attend schools, the Trustees must provide suitable instruction for him. It is not reasonable to expect him to spend further time on branches which he has mastered. The fact that the law permits children to attend school until they are twenty-one years of age is presumptive proof that the Trustees may be required to furnish such instruction as is suitable to their attainments till they reach that age. I think the argument here adduced equally applicable to Trustees in cities as to those in townships, as the language of the statute applies to both alike.

3. Music. The trustees may require all pupils to study music, to provide themselves with a certain kind of music books, and may prohibit the attendance of any pupil that refuses to comply with such requirement.—State *v.* Webber, 108 Ind. 31.

4. License for Teachers of Special Subjects. When a teacher is employed to teach special subjects, he should be examined only on the subjects he is required to teach.

5. Statute Construed. The words "any school" means any place where a public school is taught, with its complement of teachers and scholars.—City of Indianapolis *v.* State *ex rel.* Sander, 129 Ind. 14.

6. German Must be Taught When Demand is Made. Where the requisite demand is made for the teaching of German in a certain school of the city, the requirement of the statute is not met by providing that the language shall be taught in another school of the city when the pupils have reached a certain grade; but it must be taught in the particular school where the demand is made. And the Board can not set up a lack of funds as an excuse for their refusal to introduce the study of German, where it appears that studies not named in the statute as required studies are taught at an expense greater than would be necessary for the teaching of German.—Board of School Commissioners of the City of Indianapolis *v.* State *ex rel.* Sander, 129 Ind. 14.

[1895, p. 375. Approved March 14, 1895. In force June 28, 1895.]

161. Effect of alcoholic drinks and narcotics. 1. The nature of alcoholic drinks and narcotics and their effects on the human system in connection with the subjects of physiology and hygiene, shall be included in the branches to be regularly taught in the common schools of the State and in all educational institutions supported wholly or in part by money received from the State; and it shall be the duty of the Boards of Education and boards of such educational institutions, the township trustees, the Board of School Trustees of the several cities and towns in this State to make provisions for such instruction in the schools and institutions under their jurisdiction, and to adopt such methods as shall adapt the same to the capacity of the pupils in the various grades therein; but it shall

be deemed a sufficient compliance with the requirements of this section if provision be made for such instruction orally only, and without the use of text-books by the pupils. (R. S. 1897, § 6201.)

162. Teachers examined concerning. 2. No certificate shall be granted to any person (on) or after the first day of July, 1895, to teach in the common school or in any educational institution supported as aforesaid who does not pass a satisfactory examination as to the nature of alcoholic drinks and narcotics and their effects upon the human system. (R. S. 1897, § 6118.)

163. Failure to teach effects—Dismissal. 3. Any Superintendent or Principal of, or teacher in any common school or educational institution supported as aforesaid who willfully refuses or neglects to give the instruction required by this act shall be dismissed from his or her employment. (R. S. 1897, § 6202.)

[1865, p. 3. Approved and in force March 6, 1865.]

164. Voters' meeting—School Director. 25. The voters shall meet, annually, on the first Saturday in October, and elect one of their number Director of such school; who shall, before entering upon duty, take an oath faithfully to discharge the same. The Director so elected shall, within ten days after said election, notify the Trustee of his election; and, in case of failure to elect, the Trustee shall forthwith appoint a Director of said school. But any Director so appointed may be removed, upon a petition of three-fourths of the persons attached to said school who are entitled to vote at school meetings. (R. S. 1881, § 4498; R. S. 1894, § 5985; R. S. 1897, § 6203.)

1. Voters at School Meetings. Voters at the school meetings of a district are all taxpayers, male and female, except married women and minors, who have been listed as parents, guardians or heads of families, and attached to such district. Taxpayers are those persons who are *liable* to pay taxes, either poll or upon property. Any voter at the school meeting, a woman if unmarried, is eligible to the office of Director.

Transferred persons are voters in the district to which they are attached.

Persons who have moved into the district since the enumeration are voters.

2. Officers—Elected and Appointed. It is only elected officers that hold until their successors are elected and qualified. An appointee to fill a vacancy can only serve out the unexpired term.

3. LISTED AND ATTACHED. To be "listed as parents, guardians or heads of families" means that the Trustee in taking the enumeration listed them, that is, put them on the enumeration list or report, and "attached," that is, assigned them to a certain district for school purposes.

4. This section has no application to incorporated towns and cities.—City of Crawfordsville *v.* Hays, 42 Ind. 200.

[1873, p. 68. Approved and in force March 8, 1873.]

165. Other meetings—Powers. 26. The voters at school meetings may hold other school meetings at any time upon the call of the Director or any five voters. Five days' notice shall be given of such meeting, by posting notices in five public places in the vicinity; but no meeting shall be illegal for want of such notice, in the absence of fraud; and the legality of such proceedings, if called in question, shall be determined by the Trustee of the township, subject to an appeal to the County Superintendent, whose decision shall be final. Such school meetings shall have power to determine what branches, in addition to those mentioned in section thirty-four of this act [§ 74], they desire shall be taught in such school, and the time at which such school shall be taught: *Provided, however*, That the tuition revenue apportioned to the school shall be expended within the school year for which it was apportioned: *Provided, further*, That such school year shall begin on the first Monday of July. Such school meetings shall likewise have the power to fill vacancies that may occur in the office of Director; to direct such repairs as they may deem necessary in their school house; to petition the Township Trustee for the removal of their school house to a more convenient location, for the erection of a new one, or the sale of an old one and the lands belonging thereto, and upon any other subject connected therewith; and at such meetings all taxpayers of the district shall be entitled to vote, except married women and minors: *Provided*, That nothing herein contained shall prevent the Trustee from exercising a sound discretion as to the propriety or expediency of making such repairs, removing or erecting school houses, and the cost thereof. (R. S. 1881, § 4499; R. S. 1894, § 5986; R. S. 1897, § 6204.)

1. SCHOOL MEETINGS IN CITIES. The machinery of school meetings and School Directors is unprovided for and unknown in cities and towns.—City of Crawfordsville *v.* Hays, 42 Ind. 200.

2. Appeal to County Superintendent—Location of School House. An appeal lies in the matter of locating a school house from the decision of the Township Trustee to the County Superintendent, and the decision of the Superintendent is final, although not entered in the Superintendent's record until after it is made. On such an appeal the Superintendent may affirm or revoke the decision of the Trustee to build or not build at a certain place; but he can not direct that the school house be built in an entirely different place.—Knight *v.* Woods, 129 Ind. 101.

3. Ownership of Land. A Township Trustee can not, by mandate, be required to locate and build a school house on land that does not belong to the township, notwithstanding the County Superintendent, on an appeal from his decision, has rendered a judgment requiring him to erect a school house on said land. It is not enough that a petition by certain inhabitants of the proper school district to the Trustee, praying for such location and building, states that the land will be deeded to the township on the acceptance of the location by the Trustee and his order to build.—Koontz *v.* State, 44 Ind. 323.

4. Appeal — Reversal — Location — Private Buildings. On appeal, a County Superintendent reversed the decision of the Trustee, locating a school house. Again, on appeal, he reversed another decision by such Trustee, refusing to locate the school house at a place designated by the Superintendent in his first reversal. Thereupon the Trustee located the house at an entirely different place, but near (150 yards from) where he had first located it. The court decided that he could not be prohibited from locating the school house at the place last chosen, and that the County Superintendent can not make the location, and that his decision on appeal is final only for the time.—State *v.* Mewhinney, 67 Ind. 397. (This case overrules Trager *v.* State, 21 Ind. 317, and State *v.* Custer, 11 Ind. 210, on this point.)

5. Private Schools. The facts in this case were that the legal voters and patrons of school district No. 16 held a meeting, and by resolution requested the Township Trustee to fit up an additional school room and procure a teacher for said room. The Trustee declined to comply, and an appeal was taken to the County Superintendent, who reversed the Trustee's decision. This action was by mandate to compel the Trustee to comply with the request. The Trustee answered that the land whereon the said school had been conducted did not belong to the township, but was individual property, which had not been leased or otherwise secured by the township; that said district never had a school building; that other schools had been established, and an arrangement made to accommodate the children of No. 16, which had been abolished. The complaint, it was decided, stated no cause of action. The statutes permitting the voters to hold school meetings and direct the repairs, etc., of the school buildings has only reference to public schools. The statute has no reference to private schools, nor to private buildings of any kind not leased to the township for school purposes. Where the voters direct repairs to be made elsewhere than the public school building, the Trustee has no right to obey, and the decision of the County Superintendent otherwise is a nullity. The Trustee had authority to abolish No. 16 and provide other educational facilities for the children thereof. State *v.* Sherman, 90 Ind. 123; Tufts *v.* State, 119 Ind. 232.

6. Decision of County Superintendent Final. The decision of the County Superintendent is final as to the location selected by the Trustee.—Knight *v.* Woods, 129 Ind. 101. See note 2.

7. Notice is Jurisdictional. Until the notices provided for have all been given and posted as required, giving the time, place and purpose of the meeting, the meeting will be illegal.

8. Plurality Will Control. In this country it is generally understood that, in the absence of any statutory provision expressly requiring more, a plurality of the votes cast will elect.

9. Discretion of Trustee. The question as to where a township school house shall be located, and when land shall be acquired for that purpose, is left to the discretion of the School Trustee.—Braden *v.* McNutt, 114 Ind. 214.

10. Removal—Statute Repealed. So much of the above statute as relates to the *relocating* or *removal* of a school house has been repealed by sections 166, 167 and 168.

[1865, p. 3. Approved and in force March 6, 1865.]

166. Estimate of expenses. 27. When such meetings shall petition the Trustee in regard to repairs, removal or erection of a school house, they shall also furnish to such Trustee an estimate of the probable cost of such repairs, removal or erection. (R. S. 1881, § 4500; R. S. 1894, § 5987; R. S. 1897, § 6205.)

1. Petition of Patrons. A petition for the location, etc., of a school house may be signed and presented to the Trustee, and an appeal taken therefrom, although such petition did not originate, nor was it signed, at a school meeting.—Trager *v.* State, 21 Ind. 317.

2. Subscription—Liability. Where citizens of a school township petition for the location of a school district and the erection of a school house therein, designating the size of the house, location, etc., and subscribing sums of money to aid in its construction, to be paid when the walls are erected to the square, and the subscription is accepted by the Trustee, before the amounts subscribed can be recovered, the school township must substantially comply with the terms of the subscription.—Sult *v.* Warren School Township, 8 Ind. App. 655.

3. Injury to Pupil by Reason of Defect in School House. Neither a school city, town nor township is liable to a pupil (or any other person) for an injury occasioned by a defect in a school house, although such defect could have been repaired and the injury prevented.—Freel *v.* School City of Crawfordsville, 142 Ind. 27.

[1893, p. 17. Approved February 7, and in force May 18, 1893.]

167. Changing site of school house. 1. Whenever it becomes necessary for the Trustee of any township in this State to change and re-establish the site of any school building and remove said building to a new site and location therefor, such Trustee shall first present to the County Superintendent of Schools of the county in which such township is situated, a petition setting forth therein the place and particular point to where it is desired to change and relocate the site of any such building, and to remove the same thereto, together with a brief

statement of the purposes and reasons for such proposed change of location of said school building, and upon such petition shall first procure an order from such County Superintendent, authorizing him to change the site and location of such school building, and remove said building to its new site and location: *Provided*, That said petition shall be signed by said Trustee and the majority of the patrons of the school where said building is located, and satisfactory proof shall be made to said County Superintendent that the persons signing said petition constitute a majority of the patrons of said school. (R. S. 1894, § 5920a; R. S. 1897, § 6219.)

168. Notice of petition to change. 2. Before such County Superintendent shall grant such order such Trustee shall make and file with said Superintendent his affidavit that he has caused notice to be given of such petition, the purposes thereof, the place of the change of location of such school building, and the time when the same will be presented to the said County Superintendent by posting notices in not less than five public places in his township, three of which shall be in the immediate neighborhood from where such school building is to be removed, at least twenty days prior to the time when the same is to be heard by said County Superintendent. (R. S. 1894, § 5920b; R. S. 1897, § 6220.)

169. Misdemeanors. 3. The Trustee of any township in this State violating the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than fifty nor more than five hundred dollars. (R. S. 1894, § 5920c; R. S. 1897, § 6221.)

[1891, p. 111. Approved and in force March 5, 1891.]

170. Doors must swing outward. 243. Whoever, being the owner, manager, lessee, trustee, or person having the charge of any theater, opera-house, museum, college, seminary, church, school house, or other public building, refuses or neglects to cause all the doors thereof, constructed for the purpose of ingress and egress, whether inner or outer doors, to be so hung that the same shall swing outwardly, shall be fined in any sum not exceeding one thousand dollars nor less than ten dollars,

to which may be added imprisonment in the county jail for any period not exceeding six months: *Provided*, That this section shall not apply to the outer doors of one-story churches and school houses. (R. S. 1894, § 2276; R. S. 1897, § 2312.)

[1883, p. 30. Approved February 27, 1883, and in force June 5, 1883.]

171. Teachers, employment and dismissal. 28. Trustees shall employ no person to teach in any of the common schools of the State of Indiana, unless such person shall have a license to teach, issued from the proper State or county authority, and in full force at the date of the employment. Any teacher who shall commence teaching any such school without a license, shall forfeit all claim to compensation out of the school revenue for tuition for the time he or she teaches without such license; but if a teacher's license shall expire by its own limitation within a term of employment, such teacher may complete such term of employment within the then current year. The said Trustee shall not employ any teacher whom a majority of those entitled to vote at school meetings have decided at any regular school meeting, they do not wish employed; and at any time after the commencement of any school, if a majority of such voters petition such Trustee that they wish the teacher thereof dismissed, such Trustee shall dismiss such teacher, but only upon due notice, and upon good cause shown; but such teacher shall be entitled to pay for services rendered. (R. S. 1894, § 5988; R. S. 1897, § 6206.)

1. LICENSE ESSENTIAL. A valid contract for the teaching of a public school can not be made by a Trustee with one who, at the time, has no license to teach in the county, and the subsequent procurement of a license does not validate the contract.—Butler *v.* Haines, 79 Ind. 575. And a person can neither recover compensation for services rendered as teacher, nor damages for breach of contract for such services, unless he was licensed to teach as prescribed by the statutes.—Jackson School Township *v.* Farlow, 75 Ind. 118. See also Harrison Township *v.* Conrad, 26 Ind. 337, and Putnam *v.* School Town of Irvington, 69 Ind. 80.

2. TEACHERS' CONTRACTS. A contract to teach school, which is left blank in respect to the terms of employment, and contains no stipulation as to how the blanks shall thereafter be filled is not binding; but if treated as a contract of employment for an indefinite time the damages for its breach would be nominal only.—Atkins *v.* Van Buren School Township, 77 Ind. 447; Marion School Township *v.* Carpenter, 12 Ind. App. 191.

The fact that a Trustee has no funds is no defense to a teacher's claim for compensation, nor an excuse for refusing to allow him to complete his term of employment.—Harmony School Township *v.* Moore, 80 Ind. 276.

The court, after a failure to make the money on execution, may order the judgment in favor of the teacher to be paid out of the school funds of the township in the county treasury.—Town of Milford *v.* Simpson, 11 Ind. 520.

A teacher of a common school is entitled to compensation, if failure to actually conduct the school each day of the term was caused by the act or omission of the school authorities; and where the evidence shows that a strict performance by the teacher of the conditions of the contract has been prevented or waived by such act or omission, a recovery can not be defeated by such failure.—Charlestown School Township *v.* Hay, 74 Ind. 127.

To recover for his services, the teacher must sue the school township, and not the civil township.—Harrison Township *v.* McGregor, 67 Ind. 380. If the contract be with the "Township Trustee," the contract may be reformed by alleging and proving that it was with the school township, and when so reformed it may be enforced.—Sparta School Tp. *v.* Mendell, 138 Ind. 188.

If the number of days to be taught be left blank, the actual number agreed upon may be shown by oral evidence, in a suit on the contract for a breach of its terms.—Marion School Tp. *v.* Carpenter, 12 Ind. App. 191.

3. Signing Contract. Where a School Board in session passed, and entered of record, an order employing a teacher, this was a valid employment, and the subsequent signing by the Trustees at different times can not affect it.—School Town of Milford *v.* Zeigler, 1 App. 138.

4. Protest Against Teacher. A protest against a teacher to be binding must be made at a school meeting regularly called and conducted according to law before the employment of the teacher, and by a majority of all the persons entitled to a vote at such meeting, not merely a majority of those present. The persons entitled to vote at the school meeting of a district are all tax payers, male and female, except married women and minors, who have been listed by trustees as parents, guardians, or heads of families, and attached to such district. (§ 4498–1.) The patrons are by law entitled to protest against the employment of any teacher. It is the Trustee's duty to allow them an opportunity to make their protest in the manner provided by law, and, if he is notified that a school meeting will be called for that purpose, any contract he may make with a teacher will be subject to the action of such meeting. Patrons are not empowered to select teachers (§ 4444–2), and they can not effect a selection indirectly by protesting against all the world except a certain person. The protest must name definitely the person or persons against whom it is directed.

5. Dismissal of Teachers. A teacher employed for a definite time may be discharged for incompetency; but if he is competent, and is, in all things, fulfilling his contract, he can not be, without his consent.—School City of Crawfordsville *v.* Hays, 42 Ind. 200. But when the teacher is improperly discharged, the school corporation, not the Trustees personally, is liable.—Morrison *v.* McFarland, 51 Ind. 206; Butler *v.* Haines, 79 Ind. 575. If a teacher be employed to teach a particular school, and he is not permitted to do so, it is no defense in a suit for a breach of contract, that he was offered another school in the same township, unless it be shown that the conditions and number of children at the latter were such that it would certainly not be discontinued before the other.—Sparta School Tp. *v.* Mendell, 138 Ind. 188.

This is the language of the Supreme Court, and, although made with reference to a city, is an enunciation of the common law principle, and is, I think, applicable to the case of dismissal of a teacher by a Township Trustee, without a

petition from the patrons. If the teacher breaks the contract, it seems to me that the Trustee should not be bound by it. The law *requires* the Trustee to investigate charges made against a teacher by a majority of the voters of the district, but it is held that he *may* investigate charges made by any number of responsible patrons. The decision of the Supreme Court, upon an analagous question, in Thager *v.* State, 21 Ind. 317, justifies this opinion.

6. Holidays. Recognized holidays can not be deducted from the time for which a school teacher contracts to teach, and his pay reduced accordingly. He is entitled to pay for such days, even though he does not teach.

7. In Cities and Towns. The latter part of this section (concerning the power of school meetings and the employment and discharge of teachers) has no application to cities and incorporated towns. But if, in such cities and towns, the teacher be incompetent, or fail in the duties of teacher, he may be dismissed by the School Trustees.—School City of Crawfordsville *v.* Hays, 42 Ind. 200; Putnam *v.* School Town of Irvington, 69 Ind. 80.

8. Unlicensed Person May Recover Reasonable Wages. If a Trustee permits an unlicensed person to begin teaching, and pays such person out of the tuition revenue, the amount so paid may be recovered by any person interested. County Commissioners should allow no credit for money so paid. But a person so permitted to teach may enforce the payment of reasonable compensation from the Trustee as an individual.—Morrison *v.* McFarland, 51 Ind. 206.

9. Contract Must Not Conflict with Law. A contract with a teacher must not conflict with the law in any particular.—Atkinson *v.* Allen, 29 Ind. 375; Rafert *v.* Scroggins, 40 Ind. 195; Spears *v.* Wood, 48 Ind. 541. A teacher contracts with reference to the statute.—Owen School Township *v.* Hay, 107 Ind. 351.

10. Epidemics—No Reductions from Teachers' Salary for Time Lost by Reason of. Small-pox is not *actus Dei* in such a sense as to excuse a school district from liability on a contract with a teacher, the performance of which the district has prevented by closing the school. The act of God which will release one from the obligation of a contract is one which renders its performance impossible.—School Town of Carthage *v.* Gray, 10 Ind. App. 428.

11. Contract with De Facto Board Binding Unless Fraud is Proven. When trustees, with the acquiescence of the town, continue to act as such, after the expiration of their term and before their successors are appointed, they are officers de facto, and their contract with a teacher is binding. Such contract can not be assailed by their successors subsequently appointed, when it is not alleged and proven that the teacher was a party to the fraud to forestall them.—School Town of Milford *v.* Zeigler, 1 Ind. App. 138.

12. Employment of Teacher. A finding that the plaintiff was employed as a teacher by K., who was at the time Trustee of the township, sufficiently shows that the employment was by the School Trustee, the Township Trustee being *ex officio* School Trustee.—White *v.* Kellog, 119 Ind. 320. But this would not be so of incorporated towns, as they have a Board of Civil Trustees and a Board of School Trustees.

13. Abolishing Department Does Not Affect Contract. A teacher is not discharged by abolishing the department in which he is engaged, or removing him to another and lower grade.—School Town of Milford *v.* Zeigler, 1 Ind. App. 138; 27 N. E. Rep. 303; White *v.* Kellogg, 119 Ind. 320.

14. Cash Advanced to Teachers. A Township Trustee who, in good faith, employs necessary and proper teachers, and when it is unexpectedly found that

the public funds provided are insufficient to pay them in full, advances the deficit out of his own money, has a demand against the school township which he may recover.—Kiefer *v.* Troy School Township, 102 Ind. 279.

15. Injunction to Restrain Execution of Contract. A Board of School Trustees can not be enjoined from violating its contract with a person for his personal services as a teacher.—Schwier *v.* Zetike, 136 Ind. 210.

16. Slander—Charge that Teacher is Cruel. A County Superintendent and a Township Trustee are not liable for falsely charging a teacher with cruelty, incompetency and neglect in the exercise of his duties, if they act in good faith.—Branaman *v.* Hinkle, 137 Ind. 496.

[1893, p. 34. Approved and in force February 17, 1893.]

172. Terms for which teachers may be employed. After the passage of this act it shall be unlawful for any Township Trustee to contract with any teacher to teach in any common school if the actual term of service of such teacher under such contract does not begin before the expiration of the term of office of such Trustee. Every contract made in violation of the provisions of this section shall, as to the township represented by such Trustee, and the school fund thereunto belonging, be absolutely void; but such Trustee shall be personally liable to such teacher for all services rendered under such contract, and for all damages which he may sustain by reason thereof. (R. S. 1894, § 5989; R. S. 1897, § 6207.)

1. Contract of Predecessor. A School Trustee can not ignore his predecessor's contract because of mere formal and technical errors.—Sparta School Tp. *v.* Mendell, 138 Ind. 188.

2. Contracts Before 1893. Prior to the passage of the above section a contract by a retiring Township Trustee was valid, although the term of school did not begin until after such Trustee's successor had come into his office.—School Town of Milford *v.* Zeigler, 1 Ind. App. 138; Reubelt *v.* School Town of Noblesville, 106 Ind. 478; Litten *v.* Wright School Tp., 1 Ind. App. 92. As to sufficiency of a complaint in an action by a teacher for pay for his services, see School Town of Rochester *v.* Shaw, 100 Ind. 268, and Owen School Tp. *v.* Hay, 107 Ind. 351.

[1865, S., p. 143. Approved and in force December 20, 1865.]

173. Special examination. 35. If the persons attached to and forming a school district have, at their school meeting, designated other or a less number of branches of learning than those in section thirty-four of this act (§ 74) mentioned, which they desire to have taught in their school, the Trustee, in employing a teacher for said school, shall require said teacher to be examined as to his qualifications to teach the branches

of learning required by said school meeting. (R. S. 1881, § 4502; R. S. 1894, § 5990; R. S. 1897, § 6208.)

[1865, p. 3. Approved and in force March 6, 1865.]

174. Director's duties. 29. The Director of each school shall preside at all meetings of the inhabitants connected therewith, and record their proceedings. He shall also act as the organ of communication between the inhabitants and the Township Trustee. (R. S. 1881, § 4503; R. S. 1894, § 5991; R. S. 1897, § 6209.)

175. He has charge of the school house. 30. He shall take charge of the school house and property belonging thereto, under the general order and concurrence of the Trustee, and preserve the same; and shall make all temporary repairs of the school house, furniture and fixtures, and provide the necessary fuel for the school, reporting the cost thereof to the Trustee for payment. (R. S. 1881, § 4504; R. S. 1894, § 5992; R. S. 1897, § 6210.)

1. Possession of House. We think the Trustee has charge and possession of the school house, for although the Director has the charge for certain purposes, he acts under the order and concurrence of the Trustees.—Hurd *v.* Walters, 48 Ind. 148.

176. Visits school—May exclude pupils. 31. He shall visit and inspect the school, from time to time, and, when necessary, may exclude any refractory pupil therefrom; but the exclusion of any pupil from the school for disorderly conduct shall not extend beyond the current term, and may be, in the discretion of the Director, for a shorter period. (R. S. 1881, § 4505; R. S. 1894, § 5993; R. S. 1897, § 6211.)

1. Teacher's Power as to Discipline. The law is well settled, as it seems to us, that the teacher has the right to exact from his pupils obedience to his lawful and reasonable commands, and to punish disobedience. In a recent Wisconsin case it was well said: "In the schools, as in the family, there exists on the part of the pupils the obligations of obedience to lawful commands, subordination, civil deportment, respect for the rights of other pupils, and fidelity to duty. These obligations are inherent in any proper school system, and constitute, so to speak, the common law of the school. Every pupil is presumed to know this law, and is subject to it, whether it has or has not been reënacted by the District Board in the form of written rules and regulations."—Danenhoffer *v.* State, 69 Ind. 295.

2. Teacher and Pupil—Rules for Government of School—Unreasonable Rule. A rule established by the teacher of a public school, requiring pupils to pay for the wanton and careless destruction of school property, is unreasonable, and a teacher has no right to enforce such a rule by chastisement.

Carelessness on the part of children is one of the most common and yet one of the least blameworthy of their faults. In simple carelessness there is no purpose to do wrong. To punish a child for carelessness in any case, is to punish it where it has no purpose or intent to do wrong or violate rules. But beyond this no rule is reasonable which requires of the pupils what they can not do. The vast majority of pupils, whether small or large, have no money at their command with which to pay for school property which they injure or destroy by carelessness or otherwise. If required to pay for such property they would have to look to their parents or guardians for the money. If the parent or guardian should not have the money, or if they should refuse to give it to the child, the child would be left subject to punishment for not having done what it had no power to do.—State *v.* Vanderbilt, 116 Ind. 11.

3. Corporal Punishment. A teacher may punish a pupil with kindness, prudence and propriety, for disobedience of his proper commands; and when the punishment is reasonable, he can not be prosecuted for assault and battery.—Cooper *v.* McJunkin, 4 Ind. 290; Danenhoffer *v.* State, 69 Ind. 295.

The teacher may exact compliance with all reasonable commands, and enforce obedience by inflicting corporal punishment, in a kind and reasonable manner, upon a pupil for disobedience. Such punishment must be within the bounds of moderation, and apportioned to the gravity of the offense; but when complaint is made, the judgment of the teacher as to what the situation required should have weight, as in the case of a parent under similar circumstances, and the reasonableness of the punishment must be determined upon the facts of the particular case. The presumption is that the teacher did nothing more than his duty. The legitimate object of chastisement is to inflict punishment by the pain which it causes, as well as by the degradation it implies; and it does not follow that chastisement was cruel or excessive because pain was produced, or abrasions of the skin resulted from a switch used by the teacher. When a proper weapon has been used, the character of the chastisement with reference to any alleged cruelty or excess, must be determined by the nature of the offense, the age, physical and mental condition, as well as the personal attributes, of the pupil, and the deportment of the teacher.—Vanvactor *v.* State, 113 Ind. 276; Danenhoffer *v.* State, 79 Ind. 75.

4. Damages. Public officers to whom matters may be submitted for their determination, the consideration of which requires an exercise of their deliberative judgments, are not answerable in damages for mere errors of judgment, unaccompanied with malice or bad faith.—Fertich *v.* Michener, 111 Ind. 472.

5. Mandamus. Mandamus lies to compel the restoration of a pupil illegally suspended or expelled.—State *v.* White, 82 Ind. 278.

6. Not Contempt of Court. A boy was suspended for violation of a rule and readmitted by order of the court. He was suspended a second time for violation of the same rule, and it was held that the second suspension was not a contempt of court.—Bowers *v.* State, 127 Ind. 272.

177. Appeal to Trustee. 32. The decision of a Director in excluding a pupil shall be subject to appeal to the Township Trustee, whose decision shall be final. (R. S. 1881, § 4506; R. S. 1894, § 5994; R. S. 1897, § 6212.)

1. How Appeal Taken. The parent or guardian, or the pupil himself, may appeal. No formal documents are necessary, and the Trustee has the right to make an investigation upon a verbal statement. But he should make a record of the facts in the case and of his decision thereon.

178. Insulting teacher. 162. If any parent, guardian, or other person, from any cause, fancied or real, visit a school with the avowed intention of upbraiding or insulting the teacher in the presence of the school, and shall so upbraid or insult the teacher, such person, for such conduct, shall be liable to a fine of not more than twenty-five dollars, which, when collected, shall go into the general tuition revenue. (R. S. 1881, § 4507; R. S. 1894, § 5995; R. S. 1897, § 6213.)

1. Part Unconstitutional. The provision that the proceeds of the fine shall go into the general tuition revenue is void, since the Constitution (viii, 2) makes fines assessed for breaches of penal laws of the State a part of the common school fund.

2. Assault on Teacher. A Township Trustee and the School Director, upon the refusal of a duly employed teacher to allow a vacation of the school for a time, which they and certain patrons of the school had demanded, entered the school house, of which the teacher was in rightful, peaceable possession, seized him, and pulled, dragged and threw him out of the building, and inflicting serious injuries upon him; they were held guilty of a wrongful assault and battery, and liable for the damage he sustained.—White *v.* Kellogg, 119 Ind. 320.

179. Title of school property. 157. The title to all lands acquired for school purposes shall be conveyed to the township, incorporated town, or city for which it is acquired, in the corporate name of such township, town or city, which is used for school purposes, for the use of common schools therein. In all cases in which the title to any such land is vested in any other person or corporation than as above provided, it shall be the duty of the Trustee, for school purposes of the township, town, or city, to procure the title to be vested as in this section provided. (R. S. 1881, § 4508; R. S. 1894, § 5996; R. S. 1897, § 6214.)

1. Trust Title—Change of Trustee. The corporation (township, town, or city) holds the title in trust for school purposes, and upon the incorporation of

a town, it becomes the trustee, and entitled to such real estate as lies within its boundaries—Carson *v.* State, 27 Ind. 465; School Town of Leesburg *v.* Plain School Township, 86 Ind. 582—and can compel the Trustee of the township to convey the school-house and lot to it.—School Township of Allen *v.* School Town of Macy, 109 Ind. 559. A town organized as a school corporation is the proper plaintiff in an action to recover land previously deeded for school purposes to the school township in which it is situated. Newpoint Lodge *v.* School Town of Newpoint, 138 Ind. 141.

2. Formation of Town—Revenue. If a town is formed out of a portion of a township, the School Trustees of the town are entitled to demand and receive of the Township Trustee the proportion of school moneys belonging to the town, and it is the duty of the Township Trustee to ascertain the amount and pay it over to the Town School Board.—Johnson *v.* Smith, 64 Ind. 275.

So when a new township is created by a division of the territory of an existing township, the former is entitled to an equitable division of the school fund belonging, or to be apportioned, to the township as originally constituted; and if there be no debt to be provided for, the new township should receive its proportionate share of the special school revenue and tuition fund, which should be apportioned upon the basis of the enumeration of school children residing in the territory constituting such new township.—Towle *v.* Brown, 110 Ind. 65, 599.

3. Corporate Limits—Conditional Deed. A school corporation can not establish a school outside of its territorial limits.—State *v.* Shields, 56 Ind. 521.

You say that a lot was deeded to a township "for school purposes," and ask if the house built thereon will revert to the original owner if the Trustee decides to change the location of the school house. If the above quotation is all that is expressed in the deed upon that subject, then I think the property will not revert to the original owner. If the deed should say "*so long as used* for school purposes," then I suppose it might revert to the original owner.—Newpoint Lodge *v.* School Town of Newpoint, 138 Ind. 141.

4. Highways. Real estate and buildings held by a school township for school purposes are subject to appropriation for highways, as other private property.—Rominger *v.* Simmons, 88 Ind. 453.

180. Use of school house. 158. When a school house is unoccupied by a common school of the State, and the people who form the school at such house desire that a private school be taught therein, and a majority of them make application to the Trustee having charge of such house for the use of it for such private school, it shall be the duty of the Trustee to permit said school house to be used for such private school by such teacher as may be mentioned in the application, but not for a longer time than until said house may be wanted for a public school; and such permission and use shall be upon the condition that the teacher employed in said school shall report, in writing, to the Trustee—

First. The number of teachers employed, distinguishing between male and female.

Second. The number of pupils admitted into the school within the term, and the average daily attendance.

Third. The cost of tuition, per pupil per month, in said school. (R. S. 1881, § 4509; R. S. 1894, § 5998; R. S. 1897, § 6215.)

[1859, p. 181. Approved March 3, 1859, and in force Aug. 6, 1859.]

181. Use of school house. 6. If a majority of the legal voters of any school district desire the use of the school house of such district for other purposes than common schools, when unoccupied for common school purposes, the Trustee shall, upon such application, authorize the Director of such school district to permit the people of such district to use the house for any such purpose, giving equal rights and privileges to all religious denominations and political parties, without any regard whatever to the numerical strength of any religious denomination or political party of such district. (R. S. 1881, § 4510; R. S. 1894, § 5999; R. S. 1897, § 6216.)

1. Use of School House. The Trustee, upon application of a majority of the legal voters of a school district, may authorize the Director to permit the use of the house for other than school purposes, and a complaint to enjoin such use must aver that a majority of the legal voters of the district have not expressed a desire therefor.—Hurd *v.* Walters, 48 Ind. 148.

2. Trustee's Power and Duty. The Trustee is made responsible for the care, management and preservation of the school houses in his school corporation. This trust he can not alienate. It is true that it is his duty to permit the school house to be used for other than school purposes when the terms of the law have been complied with, but it is equally true that it is contemplated by the law that the Trustee shall retain such control of the school house as will enable him to enforce the provisions of the law. Inasmuch as the Trustee must give equal rights and privileges to all religious denominations and political parties, it is clear that he can not make a contract with any party by reason of which one denomination or one political party shall obtain possession of the house to the exclusion of any other, except for the time being, or by which the control of the house shall pass from his hands.

It is not necessary that the voters of a district petition the Trustee on each separate occasion that the house is desired for other than school purposes, but if a general petition be filed with the Trustee, in proper form, requesting, for example, that the house be used for religious purposes, he may then permit the house to be so used as occasions may require. In the absence of an expressed desire on the part of the voters of a district, it is held that the Trustee may, through the spirit of accommodation, rather than by a strict construction of the law, permit school houses to be used for religious and other public meetings when he is satisfied that a majority of the district does not object.

In all cases when school houses are used for such purposes, it is the duty of the Trustee to prescribe and enforce such rules and regulations as will protect the property from injury. It is evident that the provisions of this section apply only to districts in townships, and not to cities and incorporated towns.

[1865, p. 3. Approved and in force March 6, 1865.]

182. School house, when sold. 149. The proper Trustee may, whenever a school house shall have been removed to a different location, or a new one erected for the school in a different place, if the land whereon the same is situated belongs unconditionally to the township, town or city, sell the same, when, in his opinion, it is advantageous to the township, town or city, so to do, for the highest price that can be obtained therefor; and upon the payment of the purchase money to the township, town or city Treasurer, he shall execute to the purchaser a deed of conveyance, which shall be sufficient to vest in such purchaser all the title of such township, town or city thereto. The money derived from such sale shall be a part of the special school revenue. R. S. 1881, § 4511; R. S. 1894, § 6000; R. S. 1897, § 6217.)

1. CONVEYANCES. A deed to the school township for the use of the township for school purposes is an absolute and not a conditional conveyance; and the township may sell the property so deeded. The deed of the township should be made in the name of the school township, and signed by the Trustee. School Boards of cities and towns may sell and convey a school lot upon the conditions named in this section.—§§ 85, 86, 179.

2. In the administration of the law set out in section 182, three cases arise:

First. When the school-house is within the limits of the township, the Township Trustee controls and sells it.

Second. When the school-house is situated within territory which is afterward incorporated into a town, then the title vests in the town, and the property is controlled by the School Trustees of the town.—§ 183; see Carson *v.* State, 27 Ind. 465; School Township of Allen *v.* School Town of Macy, 109 Ind. 559; School Town of Leesburgh *v.* Plain School Township, 86 Ind. 582.

Third. When the school-house is located on territory which is taken into a city by addition, then the School Trustees of the city control it.—See Heizer *v.* Yohn, 37 Ind. 415; Reckert *v.* City of Peru, 60 Ind. 473.

3. CONVEYANCE TO CITY OR TOWN. When a school-house is taken within a city or town it is the duty of the Township Trustee to convey it to such city or town.—§ 183.

[1893, p. 194. Approved and in force March 3, 1893.]

183. School-house in annexed territory. 1. Whenever there has been, or may hereafter be, by proper proceedings, any territory annexed to any city or incorporated town of this State,

which territory included within such boundary as annexed any real estate which, prior to such annexation, was the property of the school township adjoining such town or city, and used for school purposes by such school township, such real estate shall, by virtue of such annexation, at once become in fee simple the property of the school corporation of such town or city within the corporate boundaries of which it is found after such annexation of territory, and it is hereby made the duty of the Township Trustee to at once execute and deliver to the school corporation of such town or city a deed conveying such title as his school township has for all school property which has passed, by such proceedings, from the territorial jurisdiction of the township to that of a town or city. (R. S. 1894, § 5997. R. S. 1897, § 6218.)

1. Section Valid. The above section is valid, even if the old township is in debt for the school-house, and the annexing city or town is not bound to contribute to the payment of the debt. If the Township Trustee refuses or neglects to convey the property to such annexing city or town he may be compelled to do so by mandate of the courts.—Board *v.* Center Township, 143 Ind. 391. This decision modifies the following cases: Carson *v.* State, 27 Ind. 465; Heizer *v.* Yohn, 37 Ind. 415; State *v.* Shields, 56 Ind. 521; Rechert *v.* City of Peru, 60 Ind. 473; School township of Leesburg *v.* Plain School Township, 86 Ind. 582; School Township of Allen *v.* School Town of Macy, 109 Ind. 559; Newpoint Lodge *v.* School Town of New Point, 138 Ind. 141.

[1877, p. 125. Approved and in force March 6, 1877.]

184. School-house for several townships. 1. The Trustees of two or more adjacent counties or townships may establish a new school district and build a school-house therein at the joint expense of their several townships, whenever, in their judgment it shall appear necessary for the better accommodation of the people of their respective townships: *Provided*, That such necessity must be set forth in a petition of the persons making the request—such petition to be presented to each of said Trustees. And said Trustees shall, at the time agreed upon by them, not less than ten days nor more than thirty days from the time of receiving such petition, hold a joint meeting, for the purpose of declaring whether such petition shall be granted, and take such further action as the case may require. (R. S. 1881, § 4512; R. S. 1894, § 6001; R. S. 1897, § 6222.)

1. ADJUSTMENT OF REVENUE. It would seem from the language of the statute that when a joint district school is established, parents and guardians living in the vicinity would have the right to elect to send their children to it, even though it be out of their own township. Such a choice would generally necessitate several transfers, but transfers can not be made except at the time of taking the enumeration (sections 119, 120). The proper way to settle the difficulty would be for the Trustees of the several townships to pay to the Trustee of the one in which the house is located the revenue then on hand and afterward received for the benefit of the children sent to the school from their several townships, till the next enumeration. The matter will thereafter adjust itself.

185. Cost of erecting. 2. Each township shall bear part of the expense of establishing such joint district school as the number of children of school age residing in each township, and attaching themselves to said new district at the time of the formation, bears to the whole number of children of school age who are attached to said district at its formation; and each township shall assume its share of the debt so incurred. But when said school shall be established, it shall be supported by the township in which it is established, in the manner already prescribed by law. (R. S. 1881, § 4513; R. S. 1894, § 6002; R. S. 1897, § 6223.)

1. TITLE, JOINT. The deed for the property should be in the name of all the corporations interested; but, after the building is completed and paid for, the partnership ceases, and the school-house passes under the control of the Trustee of the township within whose limits the house is situated.

[1877, p. 126. Approved and in force March 7, 1877.]

186. Donations and bequests. 1. Whenever any person shall give or bequeath unto Trustees any sum of money exceeding five thousand dollars, for the purpose of erecting a public school building or seminary in any unincorporated town in this State, and upon the express or implied condition contained in said bequest that an amount equal thereto shall be raised by the citizens of said town or township for a like purpose, the Township Trustee of said township in which said town is situated shall, upon the petition of a majority of the legal voters of said township, be authorized to prepare, issue and sell the bonds of said township, to secure a loan not exceeding fifteen thousand dollars, in anticipation of the revenue for special school purposes, for the purpose of complying with the condition annexed to such gift or devise—said bonds to bear a rate of interest not

exceeding seven per cent. per annum, payable at such time, within seven years from date, as such Trustee may determine: *Provided*, That until all the bonds of any one issue shall have been redeemed, such Township Trustee shall not be authorized to make another issue, nor shall any such bonds be sold at a less rate than ninety-five cents on the dollar. (R. S. 1881, § 4514; R. S. 1894, § 6003; R. S. 1897, § 6224.)

1. POWER OF COUNTY. The County Board has no power to appropriate money out of the general fund of the county to build a school-house. Rothrock *v.* Carr, 55 Ind. 334.

187. Majority of voters. 2. The whole number of votes cast for candidates for Congress at the last preceding congressional election in the township shall be deemed to be the whole number of legal voters of such township, a majority of whose names shall be signed to the petition presented to such Township Trustee; to which petition shall be attached the affidavit or affidavits, as such Trustee may deem necessary, of a competent and credible person or persons that the signature of all the names to said petition are genuine, and that the persons whose names are thereto signed are, as he believes, legal voters of such township. (R. S. 1881, § 4515; R. S. 1894, § 6004; R. S. 1897, § 6225.)

188. Sale of bonds. 3. The Township Trustee shall record such petition, together with the names attached, in the record-book of his township, and carefully file away and preserve said petition, and shall enter in such record a statement of the time when such petition was filed; and, if said Trustee shall then be satisfied that said petition contains the names of a majority of the legal voters of said township, he shall then prepare, issue, and sell bonds to the amount petitioned for in such petition, as provided in section 1 of this act (section 4514), and shall accurately keep a record of all proceedings in and about the issue and sale of such bonds, to whom, and for what amount sold, the rate of interest they bear, and the time when they become due. (R. S. 1881, § 4516; R. S. 1894, § 6005; R. S. 1897, § 6226.)

[1881, p. 592. Approved and in force April 16, 1881.]

189. Site for school-house—Eminent domain. 1. Whenever, in the opinion of Trustees of school corporations or of the

Township Trustee of any township in this State, it shall be considered necessary to purchase any real estate on which to build a school-house, or for any other purpose connected therewith, such Township Trustee or School Trustees, or a majority of them, may file a petition in the Circuit Court of said county, asking for the appointment of appraisers to appraise and assess the value of said real estate. (R. S. 1881, § 4517; R. S. 1894, § 6006; R. S. 1897, § 6227.)

1. LOCATIONS. The question as to where school-houses shall be located, and where land shall be acquired for that purpose, is left to the sound discretion of the Trustee; and, upon an application by the Trustee to the Circuit Court to acquire land for a school-house, questions respecting the location selected are not triable. The method of trying such questions is by appeal to the County Superintendent, as provided by section 216.—Braden *v.* McNutt. 114 Ind. 214.

2. SCHOOL TOWNSHIP BUILDS. The school township, and not the civil township, must build the school-house; and a note given by the civil township for the cost of constructing a school-house is void.—Wingate *v.* Harrison School Township, 59 Ind. 520.

3. DISAGREEMENT AMONG TRUSTEES. In cities and towns the School Trustees determine where and when a school-house is necessary and convenient, and a contract by the Trustees for the building of such school-house is binding, although one of the Trustees protested against it.—Crist *v.* Brownsville Township, 10 Ind. 461.

4. FRAUD. An action may be maintained to enjoin the construction of a school-house, on the ground of fraud on the part of the Township Trustee, in the making of the contract, in the name of the State for the use of the civil township; and the remedy provided for an appeal to the County Superintendent, is not in such a case exclusive, and does not prevent the bringing of the action. State *v.* Earhart, 27 Ind. 119.

5. COUNTY BOARD OF COMMISSIONERS.. A County Board of Commissioners can not make an allowance to build a school-house.—Rothrock *v.* Carr, 55 Ind. 334.

190. Appraisers. 2. Upon said petition being filed (the owner or owners of said real estate having had ten days' notice of the pendency thereof), the Court shall appoint three freeholders, resident in said school corporation or said township where said real estate is situate, to appraise and assess the value thereof. (R. S. 1881, § 4518; R. S. 1894, § 6007; R. S. 1897, § 6228.)

191. Appraisement—Payment. 3. Said appraisers, before making said assessment and appraisement, shall take an oath before the Clerk of said court to make a fair, true, and honest appraisement of said real estate; and shall then proceed to

examine said real estate, hear such evidence as they may consider necessary, and make report of their appraisement within five days after their appointment. Upon said report being filed, the owner or owners of said real estate may except to the same for any cause, and a trial thereon may be had in said court. When the value of said real estate is finally determined in said court, the Township Trustees or School Trustees may pay to the Clerk of said court, for the use of the owner of said real estate, the amount so determined, and, upon payment thereof, the title to said real estate vest in said school corporation for said purposes. (R. S. 1881, § 4519; R. S. 1894, § 6008; R. S. 1897, § 6229.)

LOCATION OF SCHOOL-HOUSE. The question when and where a school shall be located is left to the discretion of the Trustees; and that question can not be tried on condemnation proceedings.—Braden *v.* McNutt, 114 Ind. 214.

CHAPTER XIV.

TEACHERS' INSTITUTES.

SEC.		SEC.	
192.	Township Institutes.	194.	Schools closed.
193.	County Institutes.	195.	Sessions.

[1889, p. 67. Approved and in force March 2, 1889.]

192. Township Institutes. 9. At least one Saturday in each month during which the public schools may be in progress shall be devoted to Township Institutes, or model schools for the improvement of teachers; and two Saturdays may be appropriated, at the discretion of the Township Trustee of any township. Such Institute shall be presided over by a teacher, or other person, designated by the Trustee of the township. The Township Trustee shall specify, in a written contract with each teacher, that such teacher shall attend the full session of each Institute contemplated herein, or forfeit one day's wages for every day's absence therefrom, unless such absence shall be occasioned by sickness, or such other reason as may be approved by the Township Trustee, and for each day's attendance at such Institute each teacher shall receive the same wages as for one

day's teaching: *Provided*, That no teacher shall receive such wages unless he or she shall attend the full session of such Institute and perform the duty or duties assigned. (R. S. 1894, § 6009; R. S. 1897, § 6230.)

[1865, p. 3. Approved and in force March 6, 1865.]

193. County Institutes. 159. In order to the encouragement of Teachers' Institutes, the County Auditors of the several counties of this State shall, whenever the County Superintendent of such county shall file with said Auditor his official statement, showing that there has been held, for five days, a Teachers' Institute in said county, with an average attendance of twenty-five teachers, or of persons preparing to become such, draw his warrant on the County Treasurer, in favor of said County Superintendent, for thirty-five dollars; and in case there should be an average attendance of forty teachers, or persons preparing to become such, then the said County Auditor shall draw his warrant on the Treasurer for fifty dollars, for the purpose of defraying the expenses of said Institute: *Provided, however*, That but one of said payments be made in the same year. (R. S. 1881, § 4521; R. S. 1894, § 6010; R. S. 1897, § 6231.)

1. Superintendent's Duty and Pay. Such an institute as is contemplated by the law is not a voluntary association, but a teachers' meeting, at the head of which is the County Superintendent. He, therefore, has no right to surrender it into the hands of an incompetent director, nor to permit a course of procedure by any one, or by the Institute itself, by which time shall be wasted or unsatisfactory work done. The teachers are there to be instructed, and the Superintendent must necessarily take the responsibility of the Institute upon himself. The money which the Auditor is authorized to pay is to defray the expenses of the Institute exclusive of the *per diem* of the Superintendent, whose compensation must be obtained in the usual way. He is also entitled to his *per diem* for reasonable services in making preparations for the Institute.

194. Schools closed. 160. When any such Institute is in session, the common schools of the county in which said Institute shall be held shall be closed. (R. S. 1881, § 4522; R. S. 1894, § 6011; R. S. 1897, § 6232.)

195. Sessions. 161. The several County Superintendents are hereby required, as a part of their duty, to hold, or cause to be held, such Teachers' Institutes at least once in each year in their respective counties. (R. S. 1881, § 4523; R. S. 1894, § 6012; R. S. 1897, § 6233.)

CHAPTER XV.

FREE LIBRARIES.

Sec.	
196.	In cities and towns.
197.	Libraries in certain cities.
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199.	Real estate.
200.	Real estate for libraries.
201.	School and library tax in cities of 30,000.
202.	County Treasurer reports to Board of School Commissioners.
203.	County Treasurer's credits.
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206.	Township Trustee in charge.
207.	Trustee's duties.
208.	Use of books.
209.	Where kept.
210.	When open.
211.	Tax levy for library.
212.	Tax levy for large library.

[1883, p. 103. Approved March 5, 1883, and in force June 5, 1883.]

196. In cities and towns. 1. In all the cities and incorporated towns in this State the Board of School Trustees, Board of School Commissioners, or whatever Board may be established by law to take charge of the public or common schools of such city or incorporated town, shall have power, if in their discretion they deem it to the public interest, to establish a free public library in connection with the common schools of such city or incorporated town, and to make such rules and regulations for the care, protection and government of such library, and for the care of the books provided therefor, and for the taking from and returning to said library of such books, as the said Board may deem necessary and proper, and to provide penalties for the violation thereof: *Provided*, That in any city or incorporated town where there is already established a library open to all the people, no tax shall be levied for the purpose herein named. (R. S. 1894, § 6013; R. S. 1897, § 6234.)

[1885, p. 120. Approved and in force April 2, 1885.]

197. Libraries in certain cities. 1. Wherever the Board of Directors of a library heretofore situate within the limits of any incorporated town may have filed the agreement and request with the Board of Trustees of said town, provided for in an act entitled "An act supplementary to an act entitled an act to establish public libraries," approved February 16, 1852, approved March 8, 1883, and the Board of Trustees of such town may have levied a tax for the support of such library in pursuance

of such request and agreement and in accordance with said act, and such town may afterward have become incorporated as a city, the Common Council of such city shall have all the powers to levy tax, and do all other things granted by said act above named to Trustees of towns, and all the provisions of said act applicable to such library, and its relations to the town before its incorporation as a city shall, after such incorporation, be applicable to such library, and its relations to such city. (R. S. 1894, § 4999; R. S. 1897, § 5164.)

[1881, p. 47. Approved and in force March 7, 1881.]

198. Tax to maintain. 2. Such Board shall also have power to levy a tax of not exceeding one-third of a mill on each dollar of taxable property assessed for taxation in such city in each year; which tax shall be placed on the tax duplicate of such city, and collected in the same manner as other taxes; and, when said taxes are collected, they shall be paid over to the said Board for the support and maintenance of said public library. Such Board shall have power, and it shall be its duty, to disburse said fund, and all revenues derived from gift or devise, in providing and fitting up suitable rooms for such library; in the purchase, care and binding of books therefor; and in the payment of salaries to a librarian and necessary assistants. (R. S. 1881, § 4525; R. S. 1894, § 6014; R. S. 1897, § 6235.)

199. Real estate. 3. Any such city in which a free public library may be established in accordance with the terms of this act may acquire by purchase, or take and hold by gift, grant, or devise, any real estate necessary for, or which may be donated or devised for, the benefit of such library; and all revenues arising therefrom, and the proceeds of the same, if sold, shall be devoted to the use of said library. (R. S. 1881, § 4526; R. S. 1894, § 6016; R. S. 1897, § 6236.)

[1885, p. 160. Approved and in force April 8, 1885.]

200. Real estate for libraries. 1. In any case in which the Board of School Trustees of any city of this State have purchased any real estate for the use of a public library of said city, under sections 4524, 4525 and 4526 [§§ 196, 197 and 198]

of the Revised Statutes of 1881, and the revenue derived from taxation under said sections may have been or shall be insufficient to pay for such real estate, then said Trustees be and they are hereby authorized to pay for the same out of any money in the treasury of such school city belonging to the special school fund thereof. (R. S. 1894, § 6017; R. S. 1897, § 6237.)

[1891, p. 37. Approved and in force February 26, 1891.]

201. School and library tax in cities of 30,000. 1. In all cities of the State of Indiana where Boards of School Commissioners have been elected and are managing the school affairs of said city under an act of the General Assembly of the State of Indiana, entitled "An act providing for a general system of common schools in all cities of thirty thousand, or more, inhabitants, and for the election of a Board of School Commissioners for such cities, and defining their duties and prescribing their powers, and providing for common school libraries within such cities, approved March 3, 1871, and the various acts of the General Assembly amendatory thereof, and supplemental thereto, and in which the office of City Treasurer has been, or, hereafter, may be, abolished under and by virtue of an act of the General Assembly of the State of Indiana, entitled, 'An act concerning taxation for city and school purposes in cities containing a population of over seventy thousand, as shown by the last census of the United States; to abolish the offices of City Assessor and City Treasurer in such cities, and provide for the discharge of the duties of such offices, and repealing laws in conflict therewith, approved February 21, 1885," such Boards of School Commissioners be and they are hereby authorized and empowered, in the manner and form in which they are now by law authorized to levy taxes, levy taxes for the support of the schools within such city, including such taxes as may be required for paying teachers, in addition to the taxes now authorized to be levied by the General Assembly of the State of Indiana, not to exceed, however, in any one year, the sum of twenty-five cents on the one hundred dollars of the taxable property as shown by the certificate showing the assessment and valuation for taxation of all taxable real and personal and railroad property of such city, required to be delivered to said Board of School Commissioners by section 8 of the said act of the General Assembly

of the State of Indiana, approved February 21, 1885, and also to levy a tax each year not exceeding four cents on each one hundred dollars of the taxable property in said city, as shown by said certificate, for the support of free public libraries, in connection with the common schools of said city, and to disburse any and all revenues raised by such tax levied for library purposes, in the purchase of books and in the fitting up of suitable rooms for such libraries, salaries to librarians and other expenses necessarily incident to the maintenance of such library; also, to make and enforce such regulations as they may deem necessary for the taking out, and returning to, and for the proper care of all books belonging to such libraries, and to prescribe penalties for the violation of such regulations. (R. S. 1894, § 5944; R. S. 1897, § 6240.)

1. To What Cities Applicable. This and the next four sections at present apply only to the city of Indianapolis.

202. County Treasurer reports to Board of School Commissioners. 2. In all cities in the State of Indiana, where Boards of School Commissioners have been elected and are managing the school affairs of said city, under and by virtue of said act of the General Assembly of the State of Indiana, approved March 3, 1871, and in which the office of City Treasurer has been, or may hereafter be, abolished, under and by virtue of said act of the General Assembly of the State of Indiana, approved February 21, 1885, as mentioned and described in the first section of this act, it shall be the duty of the County Treasurer, on and after making his settlement with the County Auditor on the third Monday of April, 1891, and the payment to the Board of School Commissioners of the amount by such settlement found to be due to it, as required by section 13 [R. S. 1894, § 3758; R. S. 1897, § 1283; Acts 1885, p. 13] of the last above named act, at the close of each calendar month, to make report, duly verified by his oath, to said Board of School Commissioners of all taxes and delinquent taxes collected within said month, and thereafter, upon demand of the Treasurer of said Board of School Commissioners, to pay to him, for the use of said Board of School Commissioners, the full amount of said taxes and delinquent taxes shown by said report to have been collected. Upon such payment being made, the Treasurer of

the Board of School Commissioners shall execute to said County Treasurer his receipt for the amount of money so paid, which receipt the latter shall deliver to the Secretary of the Board of School Commissioners, who shall give him a *quietus* therefor, and credit said County Treasurer with the amount thereof, and charge such amount to the Treasurer of said Board of School Commissioners. (R. S. 1894, § 5745; R. S. 1897, § 6241.)

203. County Treasurer's credits. 3. Said County Treasurer shall, thereafter in his settlement with the County Auditor, made as required by law, on the third Monday of April, and the first Monday of November, in each year, present such *quietuses* to the County Auditor, who shall give such County Treasurer credit therefor as against the sums with which he is chargeable upon account of the collection of such school taxes. (R. S. 1894, § 5746; R. S. 1897, § 6242.)

1. REPEALING SECTION. The fourth section expressly repeals the act of 1889, p. 432, on the same subject.

[1891, p. 35. Approved and in force February 26, 1891.]

204. Bonds for library buildings. 1. In all cities of the State of Indiana where Boards of School Commissioners have been elected and are managing the school affairs of said city under an act of the General Assembly of the State of Indiana, entitled "An act providing for a general system of common schools in all cities of thirty thousand or more inhabitants, and for the election of a Board of School Commissioners for such cities, and defining their duties and prescribing their powers, and providing for common school libraries within such cities," approved March 3, 1871, and the various acts of the General Assembly amendatory thereof and supplemental thereto, such Board of School Commissioners be and they are hereby authorized and empowered to issue bonds in any sum not exceeding one hundred thousand dollars, for the purpose of erecting buildings for library and school offices, to be used in connection with the common schools of said city. Such bonds to bear interest, not exceeding five per cent. per annum, payable after eleven years from the date thereof, and within twenty years from the date thereof, as follows, to wit: One-tenth thereof to be paid eleven years from date, and one-tenth thereof to be paid each

succeeding year until all are paid; the money obtained from the sale of such bonds shall be disbursed by said Board of School Commissioners in the erection of a building for the library and school offices, to be used in connection with the common schools of said city. Such bonds shall be designated "Library Building Bonds," and may be issued in such denominations and in such sums, from time to time, as the Board of School Commissioners may deem expedient; and each of said bonds shall upon its face designate the date of the maturity thereof: *Provided*, That at no time shall the amount of bonds so issued for such purpose by any such board exceed the sum of one hundred thousand dollars, and that said Board of School Commissioners shall have no power to issue any renewal thereof, but the same shall be paid at maturity, as hereinafter provided: *And provided further*, That such bonds shall not be sold for less than their par value. (R. S. 1894, § 5941; R. S. 1897, § 6238.)

1. The act referred to is §§ 141 to 153.

205. Payment of bonds. 2. If the Board of School Commissioners in any city shall exercise the powers granted to it by this act, it shall provide for the payment of said bonds as follows: At the time of the levying of the taxes for the year which shall be collectible immediately before the maturity of the first maturing of said bonds, said Board of School Commissioners shall levy, in addition to the levy of taxes they may be authorized to make for other purposes, a tax upon all property subject to taxation by it, sufficient to pay the first maturing of such bonds, and apply the money raised thereby to the payment thereof; and each year thereafter said Board of School Commissioners shall levy such tax, and apply the proceeds thereof to the payment of the bonds successively maturing until all have been paid. (R. S. 1894, § 5242; R. S. 1897, § 6239.)

[1865, p. 3. Approved and in force March 6, 1865.]

206. Township Trustee in charge. 136. Such library shall be in charge of the Township Trustee, shall be deemed the property of the township, and shall not be subject to sale or alienation from any cause whatever. (R. S. 1881, § 4529; R. S. 1894, § 6020; R. S. 1897, § 6245.)

207. Trustee's duties. 137. Such Trustee shall be accountable for the preservation of said library; may prescribe the time of taking and the period of retaining books; assess and recover damages done to them by any person; and adopt regulations necessary for their preservation and usefulness. He shall provide book-cases; also, blank books, ruled, in which to keep an account of books taken out and returned; and report the number each year to the County Superintendent. At the commencement of each school term, at each school house in the township, he shall cause a notice to be posted up, stating where the library is kept, and inviting the free use of the books thereof by the persons of the township. (R. S. 1881, § 4530; R. S. 1894, § 6021; R. S. 1897, § 6246.)

208. Use of books. 138. Every family in the township shall be entitled to the use of two volumes at a time from said library, whether any member of such family shall attend school or not. (R. S. 1881, § 4531; R. S. 1894, § 6022; R. S. 1897, § 6247.)

209. Where kept. 139. The Trustee may deposit the library at some central or eligible place in the township, for the convenience of scholars and families, and may appoint, for that purpose, a librarian to have the care and superintendence thereof. (R. S. 1881, § 4532; R. S. 1894, § 6023; R. S. 1897, § 6248.)

210. When open. 140. The library shall be open to all persons entitled to its privileges throughout the year, without regard to school sessions, Sundays and holidays excepted. (R. S. 1881, § 4533; R. S. 1894, § 6024; R. S. 1897, § 6249.)

[1885, p. 9. Approved and in force February 18, 1885.]

211. Tax levy for library. 1. Any township in which there has been, or may hereafter be, established by private donations, a library of the value of one thousand dollars, or more, for the use and benefit of all the inhabitants thereof, the Township Trustee of such township shall annually levy and collect not more than one cent on the hundred dollars upon the taxable property within the limits of such township, which shall be paid to the trustees of such library, and be applied by them to

the purchase of books for said library, and may, with the consent of the Board of Commissioners of the county, when it shall become necessary to erect or enlarge a library building, annually, for such period as may be necessary, levy and collect not more than five cents on the one hundred dollars upon the taxable property of said township, for not more than three years successively, which shall be expended by the trustees in the erection or enlargement of a library building. (R. S. 1894, § 4986; R. S. 1897, § 5150.)

[1895, p. 240. Approved March 11, 1895. In force June 28, 1895.]

212. Tax levy for large library. 1. In any township in which there has been, or may hereafter be established by private donations a library of the value of twenty-five thousand dollars or more, including the real estate and buildings used for said library, for the use and benefit of all the inhabitants thereof, the Township Trustee of such township shall annually levy and collect not more than six cents on the hundred dollars upon the taxable property within the limits of such township, which shall be paid to the trustees of such library, and be applied by them to the purchase of books for said library and to the cost of the maintenance thereof, and said trustee may, with the consent of the Board of Commissioners of the county, when it shall become necessary to purchase additional ground for the extension or protection of library buildings already established by such private donation, annually levy and collect not more than five cents on the hundred dollars upon all taxable property of said township for not more than three years successively, which shall be expended by said trustees in the purchase of said property and the erection and enlargement of the library building thereon. (R. S. 1897, § 5151.)

CHAPTER XVI.

GENERAL PROVISIONS.

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[1865, p. 3. Approved and in force March 6, 1865.]

213. Suits, how brought. 145. Suits brought on behalf of the schools of any township, town or city, shall be brought in the name of the State of Indiana, for the use of such township, town or city. (R. S. 1881, § 4534; R. S. 1894, § 6025; R. S. 1897, § 6250.)

1. HOW SUIT MAY BE BROUGHT. An action brought in the name of the State, for the use of a city, "as a distinct municipal corporation for school purposes," is rightly brought.—Hadley *v.* State, 66 Ind. 271.

2. HOW SHOULD BE BROUGHT. Bringing an action in favor of the township without designating it as a school township will be construed as bringing it in favor of the civil township, and not in favor of the school township.—Utica Tp. *v.* Miller, 62 Ind. 230; Jarvis *v.* Shelby Tp., 62 Ind. 257.

214. Costs. 146. Any person who shall sue for, or on account of, any decision, act, refusal or neglect of duty of the Township Trustee, for which he might have had an appeal, according to the provisions of the preceding section, shall not recover costs. (R. S. 1881, § 4535; R. S. 1894, § 6026; R. S. 1897, § 6251.)

1. NOTE. The "preceding section" here referred to evidently means § 216. The costs are the costs made in the court.

215. Process, how executed. 144. Process in such suits against a school township, town or city, shall be by summons,

executed by leaving a copy thereof with the Trustee [or School Trustees] of such township, town or city, ten days before the return-day thereof; and in case of an appeal, similar notice of the time of hearing thereof shall be given. (R. S. 1881, § 4536; R. S. 1894, § 6027; R. S. 1897, § 6252.)

216. Appeals from Township Trustees. 164. Appeals shall be allowed from decisions of the [Township] Trustees, relative to school matters, to the County Superintendents, who shall receive and promptly determine the same, according to the rules which govern appeals from Justices of the Peace to Circuit Courts, so far as such rules are applicable; and their decisions of all local questions relating to the legality of school meetings, establishment of schools, and the location, building, repair, or removal of school-houses or transfer of persons for school purposes, and resignation and dismissal of teachers, shall be final. (R. S. 1881, § 4537; R. S. 1894, § 6028; R. S. 1897, § 6253.)

1. Location of Houses. The County Superintendent has no power, on appeal, to require a school-house to be erected on land not belonging to the township. Otherwise his decision is final, but only as to the particular case before him. The Trustee may at once relocate at a different place.—Koontz *v.* State, 44 Ind. 323; State *v.* Mewhinney, 67 Ind. 397.

After the location has been fixed by the County Superintendent, on appeal, the Township Trustee may change it, subject to appeal. But if there be no subsequent change after the County Superintendent has determined upon the location, the Trustee may be compelled, by mandate, to execute the order.—Trager *v.* State, 21 Ind. 317.

No appeal to the Superintendent can be taken from the action of a Trustee in making a contract with any one, either for building a school-house, or like contracts, nor in regard to any criminal or fraudulent act of a Trustee, nor upon the mere breach of a contract, nor upon the dismissal of a teacher in a city or town. This is a question for the courts.—City of Crawfordsville *v.* Hays, 42 Ind. 200.

A suit to set aside a contract for the building of a school-house, and to enjoin the doing of the work, on the ground of fraud on the part of the Township Trustee in making the contract, is properly brought in the name of the State for the use of the township; for the remedy provided by an appeal to the County Examiner is not exclusive in such cases, the matter involved not being "a local question relating to the building of school-houses."—State *v.* Earhart, 27 Ind. 119. But the remedy of appeal to the Superintendent is exclusive when "relative to school matters," and for the purpose of preventing vexatious and expensive litigation it is provided that his dicision shall be final in regard to certain enumerated subjects.—Fogle *v.* Gregg, 26 Ind. 345.

Regulations adopted by persons in charge of a school are analogous to by-laws enacted by municipal and other corporations, and both will be annulled by the

courts, when found to be unauthorized, against common right, or palpably unreasonable. State *v.* White, 82 Ind. 278.

2. Extent of Jurisdiction of Courts. Upon any question arising out of the dismissal of a teacher, if the teacher has suffered any damages, he may bring a suit against the township to recover whatever loss he has sustained. The court can only examine whether just cause existed for his dismissal, in order to see if he is entitled to damage for a wrongful dismissal, but can not reinstate him as a teacher, for as to that the Superintendent's decision is final. But on all those questions relating to the government and control of schools and school buildings, and school regulations, such as the establishment of schools, and the location, building, repair or removal of school-house, or transfer of persons for school purposes, or even the attachment of a person to a certain school, and resignation of teachers, his decision is final, and no action can be maintained in the courts touching the same. This must necessarily be so, for courts can not undertake the superintendency of school matters. Upon a question of fraud in holding a school meeting, it is difficult to see how any question can arise so that courts can exercise any jurisdiction over it; it is believed there is none.

3. Trial of Appeals. When the County Superintendent has received a complete transcript of the case in controversy, he should fix a day for the trial, and all parties to the case should be notified of the subject matter and the time and place of the trial. The case should then be tried *de novo*. No case should be decided by the Superintendent from the transcript alone, without first giving all parties an opportunity to be heard. If after sufficient notice either appellee or appellant fails to appear, then, and only then, should the case be decided from the transcript. Upon appeal the case is tried *de novo* upon its merits.

4. Superintendent's Decision Final. The Superintendent's decision prohibiting the erection of a school-house on a location selected by the Trustee is within his jurisdiction, and is final and binding on the Trustee.—Knight *v.* Woods, 129 Ind. 101.

5. Trustee's Discretion. If a Trustee, acting in good faith, discontinues a school on account of the smallness of the attendance, the courts will not review his decision, nor will mandamus lie to compel him to re-establish the school.—Tufts *v.* State, 119 Ind. 232.

217. Appeals from County Superintendent. 165. Appeals shall be allowed from the decisions of County Superintendents to the Superintendent of Public Instruction on all matters not otherwise provided for in the next preceding section: and the rules that govern appeals from Justices of the Peace to the Circuit Courts as to the time of taking an appeal, giving bonds, etc., shall be applicable in appeals from County Superintendents to the Superintendent of Public Instruction. (R. S. 1881, § 4538; R. S. 1894, § 6029; R. S. 1897, § 6254.)

1. Procedure. The same rules in regard to the time allowed for taking an appeal and for making transcript, etc., apply in case of appeals to the State Superintendent as to the County Superintendent. The County Superintendent

should make a transcript of the record, and send it, together with all papers in the case, to the State Superintendent, with his certificate indorsed thereon. He must specifically certify to the facts, for example, that A B applied for a certificate on a certain day, that upon examination a license was refused on certain grounds, that the inclosed papers are those made by the applicant, upon which he was rejected. A copy of the questions used and the appeal bond should also be sent. In case a refusal to license is based upon the County Superintendent's personal knowledge, he should make a statement of the facts, verified by affidavit, and forward it, together with corroborative testimony, and the testimony given in favor of the accused. If an appeal is taken in due form, the State Superintendent may require the County Superintendent to forward the papers to him, and, upon refusal, may visit the county and make an examination into the facts of the case, and render a decision that will be binding on all parties interested.

2. Trial by State Superintendent. The appeal is tried by the Superintendent of Public Instruction upon the papers sent up. Additional affidavits may be filed with him and witnesses examined. Parties may appear before him, and a complete trial be had, the same as before the County Superintendent. An applicant for a license, who desires to appeal, should be allowed thirty days from the time the County Superintendent's decision is rendered, not from the time of examination. If the license is denied because of immorality, the County Superintendent should specify in what particular the immorality consists. On appeal the Superintendent of Public Instruction can not grant a license; he can only order the County Superintendent to grant one. Should the latter refuse to grant it, a mandamus, at the instance of the teacher, would lie to compel him to obey the direction of the State Superintendent. If an appeal is taken and the County Superintendent refuses to send up the papers, a mandamus will lie to compel him to send them. Or the Superintendent of Public Instruction can visit the county and try the case there. Merely writing a letter to the Superintendent of Public Instruction by the party desiring to appeal, and stating that he appeals from the decision of the County Superintendent, does not constitute an appeal. The initiatory steps must be taken in the matter with the County Superintendent.

3. Appeal as to Whole Cause. An appeal must be taken as to the whole case.—State v. Miller, 63 Ind. 475.

4. Case Tried De Novo. On appeal the case is tried *de novo* on its merits.

218. Oaths. 166. School officers are hereby authorized and empowered to administer all oaths relative to school business appertaining to their respective offices. (R. S. 1881, § 4539; R. S. 1894, § 6030; R. S. 1897, § 6255.)

[1881 S., p. 718. Approved April 14, 1881. In force September 19, 1881.]

219. Women eligible to school offices. 1. Any woman, married or single, of the age of twenty-one years and upwards, and possessing the qualifications prescribed for men, shall be eligible to any office under the general or special school laws of this State. (R. S. 1881, § 4540; R. S. 1894, § 6031; R. S. 1897, § 6256.)

220. Bond binding. 2. Any woman elected or appointed to any office under the provisions of this act, before she enters upon the discharge of the duties of the office shall qualify and give bond as required by law, and such bond shall be binding upon her and her securities. (R. S. 1881, § 4541; R. S. 1894, § 6032; R. S. 1897, § 6257.)

[1883, p. 81. Approved March 3, 1883. In force June 5, 1883.]

221. Traffic in examination questions. 1. Whoever shall sell, barter, or give away, to applicants for license, or to any other person, the questions prepared by the State Board of Education, to be used by County Superintendents in the examination of teachers, or in any way dispose of said questions contrary to the rules prescribed by said State Board of Education, shall be deemed guilty of a misdemeanor; and on conviction, shall be fined in any sum not less than ten, nor more than two hundred dollars. (R. S. 1894, § 2152; R. S. 1897, § 2178.)

[1897, p. 69. Approved February 25, 1897. In force April 14, 1897.]

222. When township trustee elected. 1. The time of holding the election of Township Trustees and Assessors shall be changed from the general election on the first Tuesday after the first Monday in November, 1898, to the general election on the first Tuesday after the first Monday in November, 1900, and at the general election on the first Tuesday after the first Monday in November of every fourth year thereafter. Said Township Trustees and Assessors shall qualify as now provided by law, and enter upon the discharge of the duties of their respective offices at the expiration of ten days after such election.

(4) The names of the different candidates for said township offices shall be printed on separate ballots of a yellow color and deposited in separate ballot boxes from that of the State and county ballots. Said ballot boxes shall be painted yellow, and said ballots and ballot boxes shall be prepared in conformity with the law governing said general election. (R. S. 1897, § 6590.)

1. LEGALIZED. The appointment of a successor for a Trustee who had become insane was legalized in 1895.—Acts 1895, p. 57.

[1859, p. 220. Approved and in force February 15, 1859.]

223. County Commissioners fill vacancy. 9. All vacancies in the office of Township Trustee shall be filled by the Board doing county business in term time, or by the [County] Auditor in vacation; and every Trustee so appointed shall continue in office till his successor is elected and qualified. (R. S. 1881, § 5996; R. S. 1894, § 8071; R. S. 1897, § 8462.)

1. STILL IN FORCE. This act is still in force, and the Commissioners can fill vacancies that occur during a regular session of the Board.—Cooper *v.* State, 113 Ind. 70.

[1875, p. 162. Approved March 11, 1875. In force August 24, 1875.]

224. Power of Township Trustee to incur debt. 1. Whenever it becomes necessary for the Trustee of any township in this State to incur, on behalf of his township, any debt or debts whose aggregate amount shall be in excess of the fund on hand to which such debt or debts are chargeable, and of the fund to be derived from the tax assessed against his township for the year in which such debt is to be incurred, such Trustee shall first procure an order from the Board of County Commissioners in which such township is situated authorizing him to contract such indebtedness. (R. S. 1881, § 6006; R. S. 1894, § 8081; R. S. 1897, § 8481.)

1. EFFECT. A Township Trustee can not, without first procuring an order of the Board of County Commissioners, in accordance with these sections, incur a debt in behalf of a school township for school supplies in excess of "the fund on hand" (which means money actually in the hands of the Trustee), to which such debt is chargeable, and of "the fund to be derived from the tax assessed against his township for the year in which such debt is to be incurred" (which means the amount to be derived from the school tax assessed in the prior calendar year and collectible during the year in which the debt is to be incurred).—Jefferson School Tp. *v.* Litton, 116 Ind. 467; Roseboom *v.* Jefferson School Tp., 122 Ind. 377; Middleton *v.* Greeson, 106 Ind. 18; Boyd *v.* Black School Tp., 123 Ind. 1; State *v.* Hawes, 112 Ind. 323; (*contra*, Miller *v.* White River School Tp., 101 Ind. 503). See notes to § 226.

225. Petition to incur debt. 2. Before the Board of Commissioners shall grant such order the Township Trustee shall file, in the Auditor's office of his county, a petition setting forth therein the object for which such debt or debts are to be incurred, and the approximate amount required, and shall make affidavit that he has caused notice to be given of the pendency of such

petition by posting notices in not less than five public places in his township, at least twenty days prior to the first day of the session of said Board. (R. S. 1881, § 6007; R. S. 1894, § 8082; R. S. 1897, § 8482.)

226. Notice of days of business. 3. Such Township Trustee shall designate certain days in each week or month, as may be required, in which he will attend to the business of his township, and cause notice thereof to be given to the inhabitants of such township; and all contracts, and auditing, and payment of claims shall be made only on such designated days. (R. S. 1881, § 6008; R. S. 1894, § 8083; R. S. 1897, § 8483.)

1. Validity of Contract. A contract or payment made upon a day not designated in the notice is as valid as if made upon one of the days so designated. The only effect the above section can have is to limit the pay of the Trustee by requiring him to have a few designated days upon which he will transact township business and charge therefor, and not permitting him to charge a day for his services whenever he may chance on such a day to sign a contract or pay a debt of the township.

2. To What Contracts Apply. The above first two sections have no application to the ordinary debts of a school corporation contracted before the passage of the statute, incurred by the Trustee for the usual and necessary furniture, apparatus and other supplies of its common schools—Miller *v.* White River School Township, 101 Ind. 503; but it does have application to all debts contracted since its passage. It applies both to the civil and school township. The Trustee can not build a school-house, if its cost will make the aggregate debts chargeable to the special school fund exceed the amount of that fund on hand and to be derived from the tax assessed against the township for the year in which the debt is to be incurred, and he may be enjoined from so doing by a taxpayer of the township, unless he first obtain an order of the Board of County Commissioners authorizing the contracting of such a debt.—Middleton *v.* Greeson, 106 Ind. 18; Boyd *v.* Black School Township, 123 Ind. 1; Roseboom *v.* Jefferson School Township, 122 Ind. 377; Jefferson School Township *v.* Litton, 116 Ind. 467; Grimsley *v.* State, 116 Ind. 130.

3. Township Benefited. But if the Trustee disregard the above sections, and the property he purchased is received by the township, is retained by and is beneficial to it, the township will be liable for its value, whatever that may be, not to exceed its purchase price.—Boyd *v.* Black School Tp., 123 Ind. 1; Clinton School Tp. *v.* Lebanon National Bank, 47 N. E. Rep. 349.

4. "Fund on Hand." By the phrase "the fund on hand," is meant the money actually in the hands of the Trustee; and by the provision "the fund to be derived from the tax assessed against his township for the year in which such debt is to be incurred," is meant the amount to be derived from the tax assessed in the first calendar year and collectible during the year in which the debt is to be incurred.—Jefferson School Tp. *v.* Litton, 116 Ind. 467.

5. Legalizing Act of 1883. By an act of 1883 (Acts 1883, p. 114) an indebtedness incurred prior to the date, and in violation of the above sections, was legalized; and the legalizing act is valid.—Jefferson School Tp. *v.* Litton, 116 Ind. 467.

6. Trustee's Liability Under Act of 1883. The act of 1883 (Acts 1883, p. 114) makes a Township Trustee who contracts any debt in the name or on the behalf of either his civil or school township contrary to the provisions of the above two sections personally liable therefor, as well as liable on his official bond; but to render him thus liable the debt must have been contracted in the name or on the behalf of the township, and in violation of these sections; and if the contract is made pursuant to these sections, he is not liable.—State *v.* Hawes, 112 Ind. 323.

7. See note to § 224.

8. Funds on Hand. So long as the Trustee has funds on hand applicable to the purpose for which he desires to bind the township, he can not bind his township for such purpose, but must pay the cash.—Clinton School Tp. *v.* Lebanon National Bank, 47 N. E. Rep. 349.

[1895, p. 159. Approved March 7, 1895. In force June 28, 1895.]

227. Record of warrants issued. 1. Every Township Trustee in this State shall immediately after the taking effect of this act procure, at the expense of his township, a book having suitable headings and properly ruled columns, in which he shall register and number in consecutive order, as issued by him, all township orders, or warrants, showing the fund on which such order or warrant is drawn, the number, date and amount of each order, or warrant, to whom issued, for what purpose, and when redeemable, which account shall also contain a complete statement of all outstanding indebtedness of the township incurred in the purchase of road, office and school supplies, and when and to whom payable; and on the first Monday of August of each year he shall post up a statement, in a conspicuous place in the vicinity of his office, showing such indebtedness in detail, giving the numbers and total amount of outstanding orders, warrants and accounts chargeable to each fund, which statement shall be sworn to before an officer authorized to administer oath, and each Township Trustee shall, within ten days after filing his annual report, cause a copy of his said report in full to be published for one week in one weekly newspaper having general circulation in his county, if any there be, together with a transcript of the above account, and on failure so to do he shall be liable upon his bond, in the sum of one hundred dollars, to be recovered upon an action, brought in the name of the State of Indiana, on the relation

of such township against the Trustee failing to so publish such report, and said Trustee shall also record at length a copy of such report in the township record. (R. S. 1897, § 8477.)

[1897, p. 222. Approved and in force March 8, 1897.]

228. Auditing board—Investigate township trustees' accounts. 1. The Board of Commissioners of each county in this State shall constitute an Auditing Board to audit the warrants of the various Township Trustees within said county as hereinafter specified. Said Board shall meet the first Tuesday of the month following the passage of this act, and the first Tuesday in March of each year thereafter, at the Auditor's office in such county and organize by the election of one of their number President, who shall be the one having the shortest time to serve, and one of their number Secretary. They shall also meet at the same place and time, as now fixed by law, in some public room in the court house on such days, or in the absence of a court house, in the office of the Auditor of said county, and shall proceed to audit each and every warrant drawn by the several Trustees of said [county] except for the payment of teachers. And it shall be the duty of said Board to investigate and learn for what purpose said warrant is drawn, whether or not it is a proper and reasonable charge against any of the funds of said township, whether or not the article for which any such warrant is drawn is a proper and legitimate purchase of said township, or whether or not said township had use therefor, and whether or not the amount named in any warrant is a reasonable compensation for the article furnished, or labor or service performed, or whether or not there was any occasion for the purchase of or contracting for said article, or the procurement of said labor and services, and said Board shall audit said amounts and determine what warrants shall be issued by said several Trustees and for what amounts and shall write or stamp on the face of each warrant that it audited and approved the amount for which allowed, and which shall be signed by the President and Secretary of said Board. Any taxpayer of any township in the county may appear before said Board and except to any warrant drawn by the Trustees in such township being audited and issued, in whole or in part, stating his reasons therefor, and which exceptions the said Board shall hear in determining

whether or not any warrant should be issued, or in what amount issued, in payment of the said indebtedness for which drawn by said Trustees. (R. S. 1897, § 8464.)

229. Record book of auditing board. 2. The Board of Commissioners of the proper county shall provide a record book for said Auditing Board for the proper registration of all warrants presented for their examination to be audited, showing in whose favor drawn, for what article or thing it is in payment, against what fund the amount asked, whether rejected or allowed, and if allowed, for what amount, whether protested or not, and name of exceptor with the date of the incurrence of liability and of examination, and which said record as to each township when all warrants are examined for the preceding month shall be signed by the said Board and shall constitute a public record. (R. S. 1897, § 8465.)

230. Report to the Circuit Court—Controverted claims. 3. The said Board, when all said warrants for one month shall have been examined, shall make a report to the Circuit Court containing so much of their registry as relates to the warrants which have been rejected, such as have been allowed in part and all of which have been protested, and which shall be signed by them and transmitted, together with said warrants so allowed in part or rejected, or protested, to the then or first ensuing term of court, where the matters involved therein shall be heard and determined by said court at the earliest practicable moment. All questioned or controverted vouchers in any report for any one month shall be set down for hearing and trial at the same time and shall be heard and determined *de novo*, as near as practicable under the same rules as governed the trial of exceptions to reports in decedents' estates: *Provided*, That any one or more taxpayers of any township may appear and contest the payment of any warrant drawn by the Trustee of such township on such terms as to costs as the court trying the case may prescribe. And the court on final hearing may make such contestor a reasonable allowance to reimburse him for the expense incurred and trouble had as it may deem just to be paid out of the proper fund of such township. (R. S. 1897, § 8466.)

231. Order of Circuit Court. 4. The said court trying such report of said Board may make such orders as to such warrant as in its judgment the law and facts justify, and may order the warrants already drawn and certified by said Board to be delivered to said claimants, or may order the Trustee to draw and deliver warrants for such amounts as may to it seem proper, but in all cases such warrants, when accepted, shall be in full satisfaction for all claims and demands of every kind included in and which went to make up the amount for which said warrant was originally drawn by said Trustee. (R. S. 1897, § 8467.)

232. Accepting warrant as payment. 5. Any person in whose favor any warrant may be drawn and which has been allowed by said Board for a sum less than claimed by him, but not protested, and to which no exceptions have been filed in the Circuit Court on demand at any time before the same is heard by the court, or the same delivered to him, which, when accepted, shall be in full satisfaction of all claims and demands of every kind included in and which went to make up the amount for which said warrant was originally drawn by said Trustee. (R. S. 1897, § 8468.)

233. Appeal. 6. Any claimant, contestor, or any taxpayer who may have contested the payment of any claim, may appeal to the proper court from any order or judgment given by the court on the trial of any report of such Board under the same rules that appeals are had in other cases. (R. S. 1897, § 8469.)

234. Liability of Township Trustee. 7. Any Township Trustee who shall deliver to any person any warrant, contrary to the provisions of this act, or who shall pay any warrant which may have been delivered, which has not been audited or ordered drawn, as provided in this act, shall be liable on his official bond in double the amount of such warrant so delivered or paid, to be recovered by any taxpayer of such township for the use of the particular fund of said township on which drawn or from which paid, and which, after the deduction of such amount as the court shall determine reasonable to compensate the plaintiff for any expenses incurrred, including attorneys' fees in the

prosecution of such suit and the collection of the judgment to be set out in the order of the court rendering the judgment, shall be paid to the Trustee of the proper township, and by him credited to the said fund, and the amount allowed by the court for prosecuting such suit shall be paid over to the party prosecuting the suit. (R. S. 1897, § 8470.)

235. Compensation of Auditing Board. 8. The compensation of said Board shall be $3.50 (three dollars and fifty cents) each per day for the time actually employed. In counties of less than 50,000 (fifty thousand) inhabitants as it appears by the census of 1890, the members of said Board shall be allowed for only one day each in each calendar month. In all counties containing a population of more than 50,000 (fifty thousand) as appears by the census of 1890, two days each in each calendar month may be allowed, if necessary, for the completion of the work. Said amounts to be paid only on verified itemized claims, duly allowed by the Board of Commissioners of the proper county. (R. S. 1897, § 8471.)

236. Act construed. 9. The provisions of this act shall apply to all warrants drawn by the Township Trustee, both as to the civil and school township. (R. S. 1897, § 8472.)

237. Laws repealed. 10. All laws and parts of laws in conflict with the provisions of this act are hereby repealed. (R. S. 1897, § 8473.)

CHAPTER XVII.

COMPULSORY EDUCATION.

SEC.
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239. County Truant Officers—Duties—Misdemeanor.
240. Truant Officers in cities and towns.
241. Compensation of Truant Officers.
242. Terms of Truant Officers.
243. Reports of appointments.
244. Poor children, assistance.
245. "Parental home"—Incorrigible child.
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[1897, p. 248. Approved March 8, 1897. In force April 14, 1897.]

238. All children must attend school—Age. 1. Every parent, guardian or other person in the State of Indiana, having control or charge of any child or children between the ages of

eight and fourteen years, shall be required to send such child or children to a public, private or parochial school, or to two or more of these schools, each school year, for a period of at least twelve (12) consecutive weeks in each school year: *Provided*, That any and all children that have completed the first eight years of work of the common schools of the State of Indiana and have received certificates of graduation from the common schools shall be exempt from the provision of this act: *Provided*, That children who are physically or mentally incapacitated for the work of the common schools are exempt from the provisions of this act; but the school authorities shall have the right and duty where such exemption from the provisions of this act is claimed by any parent, guardian, custodian or child, to cause an examination of such child by a physician or physicians employed for such purpose by such officers, and if such physician or physicians hold that such child is capable of doing the work in the common schools, then such child shall not be exempt from the provisions of this act. (R. S. 1897, § 6259.)

239. County Truant Officers—Duties—Misdemeanor. 2. It shall be the duty of the County Superintendent of Schools for township, and of the City Superintendent of Schools in a city or town, together with the Secretary of the State Board of Charities and one member of the State Board of Education designated for such purpose by said Board, to appoint one or more Truant Officers, not exceeding five in number in any county, who shall be assigned to duty by districts composed of townships. The Truant Officer shall see that the provisions of this act are complied with, and when from personal knowledge or by report or complaint from any resident of the township or townships under his supervision, he believes that any child subject to the provisions of this act is habitually absent from school, he shall immediately give written notice to the parent, guardian or custodian of such child that the attendance of such child at school is required, and if within five days such parent, guardian or custodian of child does not comply with the provisions of this section, then such Truant Officer shall make complaint against such parent, guardian or custodian of such child, in any court of record, for violation of the provisions of this act, and any such parent, guardian or custodian of child who shall violate the

provisions of this act shall be adjudged guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten nor more than fifty dollars, to which may be added, in the discretion of the court, imprisonment in the county jail not less than two nor more than ninety days. (R. S. 1897, § 6260.)

240. Truant officers in cities and towns. 3. For every city or incorporated town it shall be the duty of the Superintendent of Schools of such city or town, together with the Secretary of the State Board of Charities and one member of the State Board of Education, designated for such purpose by the said Board, to appoint one or more truant officers for the enforcement of the provisions of this act in such city or incorporated town in the manner and under such penalties as are prescribed by section 2 of this act. (R. S. 1897, § 6261.)

241. Compensation of truant officers. 4. The truant officers provided for in this act shall receive from the County Treasury two dollars for each day of actual service, to be paid by the County Treasurer upon warrants drawn by the County Auditor. (R. S. 1897, § 6262.)

242. Terms of truant officers. 5. The truant officers provided for by this act shall serve one year from the date of their appointment, unless sooner discharged by the Board which is by this act provided for their appointment. R. S. 1897, § 6263.)

243. Reports of appointments. 6. All school officers are hereby required to make and furnish all reports that may be required by the Superintendent of Public Instruction, or by the Board for the appointment of truant officers with reference to the workings of this act. (R. S. 1897. § 6264.)

244. Poor children, assistance. 7. If any parent, guardian or custodian of any child or children is too poor to furnish such child or children with the necessary books and clothing with which to attend school, then the School Trustee of the township or the Board of School Trustees or Commissioners of the city or incorporated town where such parent, guardian or custodian resides, shall furnish temporary aid for such purpose to such child or children, which aid shall be allowed and paid

upon the certificate of said officers by the Board of County Commissioners of said county. Such Township Trustee or Board of School Trustees shall at once make out and file with the Auditor of the county a full list of the children so aided, and the Board of County Commissioners, at their next regular or special meeting, shall investigate such cases and make such provisions for such children as will enable them to continue in school as intended by this act. (R. S. 1897, § 6265.)

245. "Parental home"—Incorrigible child. 8. School Commissioners, Trustees, and Boards of Trustees, are empowered to maintain either within or without the corporate limits of their corporations a "Parental Home" for incorrigible and truant children. Any child not being over twelve years of age, who shall be truant or incorrigible, may, with the common consent of the School Trustee, or Boards of School Trustees or Commissioners and parent, guardian or person having charge of such child, be compelled to attend such "Parental Home" for an indeterminate time. If the parent, guardian or person having charge of such incorrigible or truant child, shall refuse his consent to the attendance of such incorrigible or truant child at such "Parental Home," the Superintendent of Schools, or the Principal, Supervisor or teacher of any school, may file complaint in the Circuit or Superior Court of the county, and such courts shall have the power, upon hearing of the case, to order the compulsory attendance of such incorrigible or truant in such "Parental Home" for an indeterminate time, not longer than 120 days. (R. S. 1897, § 6266.)

246. Tax. 9. For the purpose of defraying the increased expenditure necessary for the carrying out of the purposes of this act, Trustees of school townships, Boards of School Trustees or Commissioners of cities and towns and Boards of School Commissioners, are hereby empowered to levy, in addition to any and all sums heretofore provided by law, any amount of special school revenue not exceeding ten cents on the hundred dollars of taxable property; such taxes to be levied and collected as all other special school revenue. (R. S. 1897, § 6267.)

247. When child exempt. 10. If any child live more than two miles from the nearest public school, he shall not be subject to the provisions of this act. (R. S. 1897, § 6268.)

CHAPTER XVIII.

THE FUND.

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[1865, p. 3. Approved and in force March 6, 1865.]

248. What constitutes. The funds heretofore known and designated as the Surplus Revenue Fund, all funds heretofore

appropriated to the common schools, the Saline Fund, the Bank-Tax Fund, the fund which has been derived or may be derived from the sale of county seminaries and the property belonging thereto, the moneys and properties heretofore held for such seminaries, all fines assessed for breaches of the penal laws of the State, all forfeitures which may accrue, all lands and other estate which shall escheat to the State for want of heirs or kindred entitled to the inheritance thereof, all lands which have been granted, or may be granted hereafter, to the State, when no special object is expressed in the grant, the proceeds of the sales of the swamp lands granted to the State of Indiana by the act of Congress of September, 1850, the taxes which may be assessed from time to time upon the property of corporations for common school purposes, and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana, shall be denominated the "Common School Fund." The fund derived from the sale of Congressional township school lands, and the unsold Congressional township school lands, at the reasonable value thereof, shall be denominated the "Congressional Township School Fund," and shall never be diminished in amount, the income of which, together with the taxes mentioned and specified in the first section of this act [§ 4465], the money and income derived from licenses for the sale of intoxicating liquors, and unclaimed fees, as provided by law, shall be denominated the "School Revenue for Tuition," the whole of which is hereby appropriated, and shall be applied exclusively to furnishing tuition to the common schools of the State, without any deduction for the expense of collection or disbursement. (R. S. 1881, § 4325; R. S. 1894, § 5750; R. S. 1897, § 6011.)

1. Two Distinct Funds. This section, in conformity with the decisions cited under section 1, provides that there shall be two distinct funds, the "Common School Fund" and the "Congressional Township School Fund," which must be kept apart and managed separately (§ 251). Under the former title are consolidated all the funds named in the Constitution, except the Congressional Township Fund, and in addition thereto "all funds heretofore appropriated to common schools," referring to all moneys arising from the sale of estray animals, and property taken up adrift, which were, by an act approved January 15, 1844 (§ 249), transferred to the Common School Fund of the county to be ratably apportioned among the several school districts thereof. Neither of these funds shall ever be diminished, for the term Common School Fund in the Constitution includes both. —Davee *v.* State, 7 Ind. App. 71.

2. Revenues. Of the "School Revenue for Tuition" the interest on the Common School Fund, the proceeds of the State tax, and the unclaimed fees are paid into the State treasury and apportioned to the counties by the Superintendent of Public Instruction semi-annually on the basis of school population.—§§ 123-128. The revenues derived from the Congressional Township Fund and from county liquor licenses are distributed by the County Auditors to the townships and counties to which they respectively belong.—§ 133 and R. S. 1881, § 5316; (R. S. 1894, § 7281; R. S. 1897, § 7626); State *v.* Forkner, 70 Ind. 241.

3. Fees of Officers. No deduction shall be made from the school revenues for expense of collection or disbursement, but the county auditors shall receive from the general funds of the counties the amount of one per cent. on the permanent school funds held in trust by their several counties, as compensation for the management of them.—R. S. 1881, § 5909; Hanlon *v.* The Board, 53 Ind. 123.

4. Illegal Deductions Recoverable. Statute of Limitations. By the school law of 1855, and also of 1865, still in force (§ 248), the income of the Common School Fund and the taxes levied and collected for tuition are required to be applied exclusively to furnishing tuition in the common schools of the State. Provision is made for payment out of the county fund of the fees of officers for collecting, managing and dispensing the tuition fund. (R. S. 1881, §§ 5909, 5927, 5928.) From the constitutional and statutory provisions it is manifest that, with reference to common school funds, the State and county act simply as trustees for the benefit of the school children of the State. The county can not repudiate or disavow its trust, and where it misappropriates common school funds, no failure of the proper officers to bring suit for any length of time after notice of the misappropriation can be set up by way of limitation to the action to the prejudice of the beneficiaries of the trust.—State *v.* St. Joseph Co., 90 Ind. 359; Board *v.* State, 103 Ind. 497; Board *v.* State, 106 Ind. 270; Board *v.* State, 106 Ind. 531.

5. Estrays. Under the first clause of the schedule annexed to the Constitution of 1851, the act of January 15, 1844 (p. 86 of act of 1844) (§ 247), entitled "An act converting the moneys arising from the sale of estrays and property taken up adrift into the Common School Fund, not being inconsistent with the Constitution and not having expired or been repealed, has remained and is in force;" and under its provisions and those of § 248, all moneys arising from the sale of estray animals and property taken up adrift, "so soon as the same shall have vested absolutely in any county," becomes a part of the Common School Fund of the State.—Board *v.* State, 92 Ind. 353.

6. Recovery of Deductions. The statute of limitations of 1852 does not bar a recovery against a county for misappropriation of funds donated by the Constitution and laws exclusively to tuition in the common schools; and the appropriation of any part of it to the payment of officers' fees for collecting or managing the funds is wholly unauthorized, and a violation of a trust which is not in the power of a county to deny.—State *v.* Board, 90 Ind. 359; Board *v.* State, 103 Ind. 497; Vanarsdall *v.* State, 65 Ind. 176, 184.

7. Fines. A fine for contempt is as much a part of the School Fund as any other fine.—Alexander *v.* State, 9 Ind. 337; Swift *v.* State, 63 Ind. 81.

8. Escheat. The provisions of the Constitution with reference to escheats are not self-executing; and money paid into the State Treasury for want of heirs under § 2411 to § 2415, R. S. 1881; R. S. 1894, § 2622; R. S. 1897, § 2618, does not escheat.—State *v.* Meyer, 63 Ind. 33.

9. Belongs to Inhabitants. The school law does not conflict with the act of Congress granting the sixteenth section in the several congressional townships in the State to the inhabitants of such townships for the use of schools.—Quick *v.* Springfield Township, 7 Ind. 636; State *v.* Springfield Township, 6 Ind. 83; Quick *v.* Whitewater Township, 7 Ind. 570; Daggett *v.* Bonewitz, 107 Ind. 276.

10. Liquor License Fees. Liquor license fees belong to the county, there to be wholly expended for tuition purposes, and not to the permanent Common School Fund of the State.—R. S. 1881, § 5316; R. S. 1894, § 7626; R. S. 1897, § 7626; State *v.* Forkner, 70 Ind. 241.

11. Mandate. Mandate lies to compel the proper application of the funds. —State *v.* Cooprider, 96 Ind. 279.

12. Property Found on Dead Bodies. The proceeds of effects found by the Coroner on the bodies of dead persons do not belong to the Common School Fund, but go to the support of the common schools of the county, and an action to compel its proper application can not be prosecuted on the relation of the Attorney-General.—State *v.* Board of Commissioners, 85 Ind. 489.

13. Lotteries. Lotteries, in aid of schools, and gift exhibitions are illegal. —Whitney *v.* State, 10 Ind. 404.

14. Tax Penalty. The provision of the tax law (R. S. 1881, § 6339; R. S. 1894, § 8465; R. S. 1897, § 8995), inflicting a penalty for a false tax list and turning the penalty into the County Treasury for the use of the county, instead of for the School Fund, is constitutional.—Burgh *v.* State, 108 Ind. 132.

15. Sale of Escheated Lands. Sale of escheated and other lands and transfer of proceeds to Permanent School Fund by Auditor of State. [See Acts 1889, p. 309, § 9.] An act of 1883 authorized the County Commissioners to sell escheat lands. [See Acts 1883, p. 79.]

[1844, p. 86. Approved and in force January 15, 1844.]

249. Estrays and property adrift. 1. All moneys arising from the sale of estray animals and property taken up adrift, so soon as the same shall have vested absolutely in any county, shall be by the proper officers transferred to the Common School Fund of the county, and shall be ratably apportioned amongst the several school districts [corporations] thereof. (R. S. 1897, § 6012.)

1. In Force. The above section is still in force.—Board *v.* State, 92 Ind. 353

[1865, p. 3. Approved and in force March 6, 1865.]

250. Counties liable. 3. The several counties of this State shall be held liable for the preservation of so much of said fund as is intrusted or may have been intrusted to them, and for the payment of the annual interest thereon, at the rate established by law, the payment of which interest shall be full and complete every year, and shall so appear in the Auditor's report to

the Superintendent of Public Instruction; and the said Superintendent shall, at any time, when he discovers, from the report or otherwise, that there is a deficit in the amount collected, for want of prompt collection, or otherwise, direct the attention of the Board of County Commissioners and the County Auditor to the fact, and said Board of Commissioners are hereby authorized and required to provide for such deficit in their respective counties. (R. S. 1881, § 4326; R. S. 1894, § 5751; R. S. 1897, § 6013.)

1. INTEREST. This section is designed to carry out the requirements of the Constitution (§ 6). The interest on the school funds is at the rate of six per cent.

2. DEFICITS MADE UP. The Board of County Commissioners is required to make up losses to both the principal and interest of the funds, at their June meeting (§ 329), by authorizing the Auditor to draw a warrant for the amount of the deficit upon the general fund of the county in favor of the particular school fund found deficient, and upon failure of the board so to act they become liable to an action in the name of the State upon the relation of the Superintendent of Public Instruction, who may notify the proper prosecuting attorney to bring such action.

3. ATTORNEY-GENERAL AS RELATOR. When suit is brought by the State to recover any part of its common school fund, the Attorney-General is a proper officer to bring such suit, and is a proper relator therein.—Board *v.* State, 92 Ind. 353; State *v.* Board, 5 Ind. App. 220.

4. ATTORNEY'S FEES. A county may, and it is its duty, to employ an attorney to protect the school fund; but it can not pay him out of that fund; it must pay him out of the general county fund.—Board *v.* State, 116 Ind. 329.

5. COUNTY LIABLE. The school fund is intrusted to the county, and it is charged with the amount it receives; if loss occurs the county has to make that loss good; and if the money is not loaned the county is chargeable with the interest thereon, and must pay it; when this is done the obligation of the county has been fully met. It never was the intention of the framers of the Constitution that the school fund should be enhanced at the expense of the county, but simply that the fund should be preserved intact, and the interest annually paid.—Board *v.* State, 122 Ind. 333; Davee *v.* State, 7 Ind. App. 71; State *v.* Board, 5 Ind. App. 220.

6. DIVERSION OF FUNDS. If money, instead of being added to the permanent school fund of the county, has been applied to other purposes for the benefit of the county, it is a virtual conversion of the money to the use of the county, and the Attorney-General may file an account before the Board of County Commissioners, demanding that it be receipted back into the county treasury. State *v.* Board, 5 Ind. App. 220.

7. MANDAMUS. Mandamus is not the proper remedy to recover funds due from the county to the school fund.—State *v.* Board, 5 Ind. App. 220.

251. Account of fund. 151. The County Auditors of the several counties of this State shall, immediately upon the taking effect of this act, open an account upon their books with each

of the congressional townships of their respective counties whose funds are managed by them, and transfer to such account from the Common School Fund account the principal of the Congressional Township Fund, as it existed before its consolidation with the Common School Fund, and shall thereafter keep a separate account of the principal and interest of the Congressional Township Fund of each township. (R. S. 1881, § 4327; R. S. 1894, § 5752; R. S. 1897, § 6014.)

1. Separation of Funds. This section requires the separation of the Congressional Township Fund from the Common School Fund, with which it had been consolidated by the school law of 1852, in accordance with the Constitution (§ 1). But the courts have held that the proceeds of the sale of the school sections could not be diverted from the use of the inhabitants of the congressional townships, to whom they had been granted by the United States.—State *v.* Springfield Tp., 6 Ind. 83; same, 22 How. U. S. 56; Quick *v.* Whitewater Tp., 7 Ind. 570; Quick *v.* Springfield Tp., Ind. 636.

2. Proceeds of Lands. When the school sections have been sold the proceeds of the sale are managed by the County Auditor, and the interest thereon distributed by him through the county treasury to the proper School Trustees.—Davis *v.* State, 44 Ind. 38; affirmed, 94 (4 Otto) U. S. 792.

[1873, p. 79. Approved and in force March 7, 1873.]

252. Custody of lands—Report of income. 44. The custody and care of all lands belonging to the Congressional Township Fund shall be with the Trustee of the civil township in which the same shall be situated; who shall report, annually, to the Auditor, by the fourth Monday in March, the annual income derived therefrom, to the township. And the report shall embrace a fully itemized statement of his rent account of such lands; to whom and for what amount the same was rented to each tenant; and whether the rents have been collected or not; and if any portion has not been collected, he should state fully the reasons why the same has not been collected. Any Trustee who has heretofore failed and neglected to so report shall embrace in his first report such itemized statement and showing for each preceding year not so reported, whether by himself or his predecessors; and the amount of School Funds for any year, to which such township might otherwise be entitled, shall be withheld, and not paid over to such Trustee, if the rental value of such lands for such terms shall equal or exceed the township's otherwise portion of the School Fund; and it shall be

the duty of such Trustee to pay into the county treasury all rents collected and reported by him as aforesaid. (R. S. 1881, § 4328; R. S. 1894, § 5753; R. S. 1897, § 6015.)

1. RENTS DISTRIBUTED. The rents of school lands shall be paid into the county treasury, to be distributed by the Auditor together with, and in the same manner as, the interest on the Congressional Township Fund. And a Township Trustee who fails to pay the rents into the county treasury, as therein required, is, with his county, liable on his bond for the amount, with ten per cent. damages, in a suit in the name of the State on relation of the Board of Commissioners.—Davis *v.* State, 44 Ind. 38; Davis *v.* Indiana, 94 U. S. (4 Otto) 792.

2. JUDICIAL NOTICE. Courts will not take judicial notice what lands were substituted for the sixteenth section, when that section has been sold and other lands substituted for it. It must be shown that such substituted lands were actually selected by the Secretary of the Treasury, as required by the statute of the United States.—Peck *v.* L., N. A. & C. R. R. Co., 101 Ind. 366; Daggett *v.* Bonewitz, 107 Ind. 276.

3. THE EQUALIZATION OF REVENUE among the civil townships by taking into consideration the congressional township revenue is constitutional. Quick *v.* Whitewater Township, 7 Ind. 570; City of Lafayette *v.* Jenner, 10 Ind. 70; Adamson *v.* Auditor, 9 Ind. 174; Quick *v.* Laurel Township, 17 Ind. 344.

4. SCHOOL LANDS NOT SUBJECT TO ASSESSMENT FOR DRAINS. The congressional township lands in this State are not subject to assessments in aid of construction of public ditches or drains.—Edgerton *v.* Huntington School Township, 126 Ind. 261.

5. WHERE LANDS WERE SELECTED BY THE SECRETARY OF THE TREASURY FOR SCHOOL PURPOSES, under act of Congress of May 20, 1826, the title vested in the inhabitants of that congressional township, and a cause of action to recover the possession of the lands from one holding them adversely accrued at that time. The fact that the claimant entered into possession of the land while the title was in the U. S. did not prevent his holding from becoming adverse to the township so soon as the title vested in it.—Hargis *v.* Inhabitants, etc., 29 Ind. 70.

[1865, p. 3. Approved and in force March 6, 1865.]

253. Leasing lands. 45. He shall have power, when directed so to do by a vote, or by the written direction of a majority of the voters of the congressional township to which the same belongs, to lease such lands for any term not exceeding seven years, reserving rents, payable in money, property, or improvements upon the land, as may be directed by a majority of such voters. (R. S. 1881, § 4329; R. S. 1894, § 5754; R. S. 1897, § 6016.)

1. VOTERS. The voters here intended are such persons as are entitled to vote at general and township elections, as defined in the Constitution (R. S. 1881, § 84; R. S. 1894, § 84; R. S. 1897, § 84). As the law does not provide how such

vote shall be taken, a petition is the better mode of procedure. If signed by a majority of the voters of the township the Trustee is bound to comply with it.—Anderson *v.* Prairie School Tp., 1 Ind. App. 34.

2. Power of Township Trustee. A Township Trustee has no power to lease the lands belonging to a congressional township, unless the voters of such township direct their leasing; and a tenant taking a lease without such directions having been given, does so at his peril.—Anderson *v.* Prairie Tp., 1 Ind. App. 34.

3. Authority to Incur Debts. No authority is given Township Trustees to incur debts in improving school lands. Anderson *v.* Prairie School Tp., 1 Ind. App. 34.

4. Contract—Condition Precedents. Wherever the authority of a Trustee to bind his corporation by contract depends upon precedent conditions, one who seeks to establish rights under such contract must show affirmatively that all of the antecedent requirements were strictly complied with.—Anderson *v.* Prairie School Tp., 1 Ind. App. 34.

254. Divided school section. 46. When the sixteenth section, or the section which may be granted in lieu thereof, shall be divided by a county or civil township line, or where the substituted section lies in any other county in the State, the voters of the congressional township to which the same belongs shall designate, by vote or by the written direction of a majority, the Trustee of one of the civil townships including a part of said section, to have the care and custody of said section, and to carry out the directions of the voters of the township in relation thereto; and the Trustee so designated shall have the same powers and perform the same duties as if the entire section was situated within the limits of the civil township, and receive from the County Treasurer the revenue derived from funds accrued from said sale. (R. S. 1881, § 4330; R. S. 1894, § 5755; R. S. 1897, § 6017.)

255. Boundaries of townships. 148. The County Commissioners of each county are required to conform the boundary of their civil townships to those of congressional townships, so far as it is practicable to do so. (R. S. 1881, § 4331; R. S. 1894, § 5756; R. S. 1897, § 6018.)

[1877 S., p. 66. Approved and in force March 12, 1877.]

256. School township, when county lines divide. 1. Where county lines divide a congressional township, the proper officer in the county in which the congressional school lands are situated, or would be situated if unsold, shall control such lands

and the funds arising therefrom, as in this act is provided. (R. S. 1881, § 4332; R. S. 1894, § 5757; R. S. 1897, § 6019.)

257. Auditor's statement as to children. 2. When the enumeration is made of children, under the school laws, the Auditor of each county shall furnish to the Auditor of the other a statement showing the number of children in each congressional township; and to enable him to do this correctly, the person or officer making the enumeration shall correctly state the number of children in the congressional township so divided by county lines. (R. S. 1881, § 4333; R. S. 1894, § 5758; R. S. 1897, § 6020.)

258. Auditor's duty. 3. The Auditor of the county having control of the fund shall open an account with the other county as to each congressional township, and credit said other county with all money on hand, all securities for lands sold, and, if any lands be unsold, with the proceeds when sold; and, from time to time, as money comes in, shall credit such county with such money—that is to say, shall divide such money *pro rata* on the basis of such enumeration and enter the credit; and shall pay over such money, be it little or much, to the Treasurer of such other county, file his receipt with the Auditor and take a quietus, and so continue until the whole portion due such other county is paid over. Such payments shall be made quarterly, to correspond with the fiscal year. (R. S. 1881, § 4334; R. S. 1894, § 5759; R. S. 1897, § 6021.)

1. Auditor Borrowing. In Ware *v.* State, 74 Ind. 181, it was held that a loan made by the Auditor of a county to himself was void, but this was so modified in State *v.* Levi, 99 Ind. 77, as to make the mortgage valid or invalid at the option of those having a supervisory control over such fund. Such mortgage remains a subsisting security for the loan against the mortgagor or his residue, for value, and without notice, notwithstanding the reimbursement of the School Fund out of the county revenues.—State *v.* Greene, 101 Ind. 532. The judgment of foreclosure bore the same rate of interest as the mortgage (Stockwell *v.* State, 101 Ind. 1); but this rate was modified by the act approved February 17, 1893. See p. 41, Acts 1893; R. S. 1894, § 5796; R. S. 1897, § 6058.

2. Auditor Borrowing. A County Auditor can not lawfully both lend and borrow from the School Fund, and loans so made and mortgages so executed are without authority of law.—State *v.* Greene, 101 Ind. 532.

259. Account and distribution. 4. Such Auditor to the county controlling such lands and fund shall also open an account with such lands and with the township in his own county

divided by county line, and shall debit and credit such accounts as he receives money or securities from sales or collections from lands forfeited and resold, and all expenses in full and regular order of entry and accounting, so he can tell, at any time, the condition of the lands, funds and securities. He shall collect in, as fast as possible, all moneys outstanding, make proper distribution as per enumeration, and credit the proper account in said county, and continue to pay over to the other county, as above provided, until each county has its proper proportion of said funds. (R. S. 1881, § 4335; R. S. 1894, § 5760; R. S. 1897, § 6022.)

260. Duties of the other Auditor. 5. The Auditor of such other county shall open an account with the proper township in his county, and credit such fund as fast as received; and, when in sufficient amount, shall loan the same as now required by law. Both Auditors shall make a statement of the condition of the fund annually, at the end of the proper fiscal year, and file one copy with the Superintendent of Public Instruction, lay one before the County Commissioners (which latter shall be spread upon their record), and both shall be sworn to by the Auditor. (R. S. 1881, § 4336; R. S. 1894, § 5761; R. S. 1897, § 6023.)

261. Account—Re-adjustment. 6. The process contemplated by this act shall continue so long as any lands remain unsold, or any securities are uncollected, and until each county shall have become possessed of its proper share of such fund in money, when the accounts here required to be kept shall be closed and reported as aforesaid: *Provided*, That in the year 1890, and every two years thereafter, there shall be a re-adjustment of said fund belonging to such congressional township, upon the basis of the number of children enumerated in each part of such congressional township, as hereinbefore provided; and the Auditor having a surplus of such fund, according to such basis, shall pay to the Treasurer of the county interested the amount of money due said county upon the *per capita* basis then existing. For the services here provided for, the Auditor shall be allowed the same fees for records, certificates and other

labor, as is allowed by law for other similar services. (R. S. 1881, § 4337; R. S. 1894, § 5762; R. S. 1897, § 6024.)

1. The Auditor's fee must be paid out of the general fund of the county.—Hanlon v. Board, 53 Ind. 123.

[1867, p. 3. Approved and in force March 6, 1865.]

262. Power of Trustee. 47. The proper Trustee shall have all the rights and powers of a landlord, in his official name, in coercing fulfillment of contracts relating to such lands, and preventing waste or damage, or for the recovery of the same when committed. (R. S. 1881, § 4338; R. S. 1894, § 5763; R. S. 1897, § 6025.)

263. Sale of school lands. 48. At any time when five voters of any congressional township shall, by petition to the Trustee having charge of the school lands belonging to such township, set forth their desire for the sale of all or any part of the school land, the Trustee shall give public notice, in five public places in such township, of the time and place in such township when and where balloting will be had to determine whether the lands shall be sold as petitioned for or not; which notice shall be given at least twenty days before the time specified therein. (R. S. 1881, § 4339; R. S. 1894, § 5764; R. S. 1897, § 6026.)

1. When Petition Necessary. A petition is only necessary where land is sold the first time, and is not necessary where it is sold to recover the purchase-money.—McPheters v. Wright, 110 Ind. 519.

2. Public Ditch. Congressional Township land can not be assessed for the construction of a public ditch.—Edgerton v. Huntington School Tp., 126 Ind. 261.

264. Proceedings to sell. 49. A copy of such petition shall be entered on the book containing the record of the proceedings of such Trustee; and his action thereon shall, also, be recorded. (R. S. 1881, § 4740; R. S. 1894, § 5765; R. S. 1897, § 6027.)

265. Ballots. 50. If a voter favor the sale of such lands, he shall write on his ballot the word "sale;" if he opposes the sale, he shall write the words "No sale." (R. S. 1881, § 4341; R. S. 1894, § 5766; R. S. 1897, § 6028.)

266. Results of election. 51. No sale shall be allowed unless a majority of all the votes cast at such election shall be in favor of such sale; nor unless the number of votes constituting such majority shall exceed fifteen. (R. S. 1881, § 4342; R. S. 1894, § 5767; R. S. 1897, § 6029.)

267. Certificate of vote. 52. The Trustee shall attend at the time and place specified, and shall make out a certificate showing the number of votes given for and against the sale; which shall be signed by him and filed in his office; and he shall enter the same upon his record-book. (R. S. 1881, § 4343; R. S. 1894, § 5768; R. S. 1897, § 6030.)

268. Trustee's duty. 53. Said Trustee, if satisfied that a majority of all, and more than fifteen, voters have voted for such sale, shall enter the same on his record-book, and proceed--

First. To divide the lands, so voted to be sold, into such lots as will secure the best price.

Second. To affix a minimum price to each lot, not less than one dollar and twenty-five cents per acre, below which it shall not be sold.

Third. To certify such division and appraisement to the proper County Auditor, together with a copy of all his proceedings in relation to the sale of said lands. (R. S. 1881, § 4344; R. S. 1894, § 5769; R. S. 1897, § 6031.)

1. WHERE PETITION WAS NOT NECESSARY. When school land which was sold in 1847, and for non-payment of taxes on the purchase-money was again sold in 1883, four weeks' notice of the latter sale was sufficient under the law then in force, and no petition from the voters of the township was necessary, such petition being required only when the land is first offered for sale.—McPheters *v.* Wright, 110 Ind. 519.

269. Order and conduct of sale—Fee. 54. Such certificate and return shall, by such Auditor, be laid before the Board of County Commissioners, at their first meeting thereafter; and said Board, if satisfied that the requirements of the law have been substantially complied with, shall direct such lands to be sold; which sale shall be conducted as follows:

First. It shall be made by the Auditor and Treasurer.

Second. Four weeks' notice of the same shall be given, by posting notices thereof in three public places of the township

where the land is situated, and at the court house door, and by publication in a newspaper printed in said county, if any—otherwise, in a newspaper of any county in the State situated nearest thereto. The sale shall be made by the Auditor, at public auction, at the door of the court house of the county in which the land is situated, and the Treasurer shall take an account thereof; and each of said officers, for making such sale, shall receive a fee of one dollar, to be paid by the purchaser. (R. S. 1881, § 4335; R. S. 1894, § 5770; R. S. 1897, § 6032.)

1. BOARD MUST ACT. If the law has been complied with the Board may be compelled by writ of mandate to order the sale. The order may be made at a special session. The land can not be sold below the appraised value, of which the purchaser must take notice.

2. PUBLIC SALE. The sale must be made at the door of the court house of the proper county, at public auction. A private sale is illegal.—McPheters *v.* Wright, 110 Ind. 519.

[1875, p. 134. Approved and in force March 9, 1875.]

270. Terms of sale—Timber. 55. One-fourth of the purchase-money shall be paid in hand and the interest for the residue for one year in advance, and the residue in ten years from such sale, with like interest annually in advance; and deferred payments shall be regarded as a part of the congressional township school fund, and reported as such by the Auditor to the Superintendent of Public Instruction: *Provided*, That when one-fourth part or more of the value of the lands so sold, at the time of such sale, shall consist of the timber growing thereon, the terms of sale in such case may be as follows, viz.: At least one-half of the purchase-money cash in hand, and interest for the residue for one year in advance, and the residue in annual payments in not exceeding ten years from such sale, with like interest annually in advance; and in such case the terms of sale shall be set forth in the notice provided for in the preceding section: *And provided further*, That whenever the purchaser of any such land shall be proceeding to cut or remove, or threaten to cut or remove, from such lands, so sold, timber growing or being thereon, to such an extent that the land, after the cutting or removal of such timber, shall not be equal in value to the amount of purchase-money, with interest then remaining unpaid, it shall be the duty of the Trustee of the

civil township in which such land is situated (and he is hereby authorized and empowered) to commence and maintain an action, in the name of such township, in the Circuit Court of the county, to restrain and enjoin the further cutting or removal of such timber. (R. S. 1881, § 4346; R. S. 1894, § 5771; R. S. 1897, § 6033.)

1. County Liable for Interest. The county is chargeable with interest on the entire amount of the price of the land, and the default of a purchaser of the land in paying deferred installments, and its consequent forfeiture of the land to the school fund, does not relieve the county of liability for interest on the full amount.—Board of Commissioners v. State, 120 Ind. 442.

[1865, p. 3. Approved and in force March 6, 1865.]

271. Forfeiture—Re-sale. 56. On failure to pay such annual interest when it becomes due, the contract shall become forfeited, and the land shall immediately revert to the township; and the Auditor and Treasurer shall proceed, forthwith, again to sell the same, in like manner and on the terms above specified. If, on such second sale, such land shall produce more than sufficient to pay the sum owing therefor, with interest and costs and five per cent. damages, the residue shall, when collected, be paid over to the purchaser or his legal representative. (R. S. 1881, § 4347; R. S. 1894, § 5772; R. S. 1897, § 6034.)

1. Effect of Forfeiture—Surplus. A forfeiture under this section does not divert the title of the purchaser to the real estate, but simply authorizes the State to sell the real estate for its own reimbursement, the surplus going to the purchaser.—McPheters *v.* Wright, 124 Ind. 560.

2. Redemption. A purchaser of school lands having made default in the payment of interest on the purchase, the lands were resold. By the law in force at the time of the purchase, a defaulting purchaser had a right to redeem within one year after the sale; by that in force at the time of the sale and at the time of the default a delinquent purchaser could redeem at any time before the sale, but not after. It was decided that the right to redeem was governed by the latter law. —Moor *v.* Seaton, 31 Ind. 11.

272. Forfeiture, how prevented. 57. At any time before the sale, payment of the interest due and all costs, together with two per centum damages on the principal sum and interest due and owing for said land, shall prevent such sale and revive the original contract. (R. S. 1881, § 4348; R. S. 1894, § 5773; R. S. 1897, § 6035.)

273. Forfeiture—Liability for waste. 58. In case of such forfeiture, the original purchaser may be sued for waste or unnecessary injury done to such land. (R. S. 1881, § 4349; R. S. 1894, § 5774; R. S. 1897, § 6036.)

274. Suit for waste. 59. Such suit shall be prosecuted by the Auditor, in the name of the State, for the use of the proper congressional township. (R. S. 1881, § 4350; R. S. 1894, § 5775; R. S. 1897, § 6037.)

275. Private sale. 60. When any land offered for sale at public auction shall remain unsold, the County Auditor may dispose of the same at private sale for the best price that can be had therefor, not being less than the minimum price affixed thereto. (R. S. 1881, § 4351; R. S. 1894, § 5778; R. S. 1897, § 6040.)

1. When Sale Authorized. This section authorizes a private sale only where the land has been offered for sale at public auction and remains unsold.—McPheters *v.* Wright, 110 Ind. 519.

276. Re-appraisement. 61. After the expiration of the term of four years after any appraisement and offer for sale of any lands in this State belonging to any township for school purposes, and such lands remain unsold, it shall be lawful to re-appraise, sell and dispose of said lands in the same manner that they would have been had such lands not been previously offered for sale: *Provided, however*, That such appraised value shall not be below the minimum price now fixed by law. (R. S. 1881, § 4352; R. S. 1894, § 5779; R. S. 1897, § 6041.)

[1883, p. 75. Approved and in force March 3, 1883.]

277. Advertisement of funds. 1. Whenever, in any county of the State of Indiana, the school fund, or any part of the school fund, apportioned to such county to be loaned out, remains unloaned, it shall be the duty of the Auditor of said county to advertise, in the months of January, April, July and October, for three consecutive weeks, in a weekly newspaper published in said county, that such amount of school fund remains unloaned, and that applicants for loans can secure the same by applying at his office and fulfilling the requirements of the law under which he is authorized to loan out the school fund. (R. S. 1894, § 5809; R. S. 1897, § 6063.)

[1883, p. 79. Approved and in force March 3, 1883.]

278. Re-appraisement of forfeited lands. 1. All lands which have become forfeited and have reverted, or may hereafter be forfeited and revert to the various townships in the several counties of this State, for failure to pay the interest or principal of the amount due thereon to the school fund, and which have remained or hereafter remain unsold for the period of three years, by reason of the amount due thereon being in excess of the values of said lands, may be re-appraised and sold for a sum not less than said re-appraised value thereof; and such re-appraisement and sale to be made in the same manner and upon the same terms and conditions as is now prescribed by law for the appraisement and sale of such lands. (R. S. 1894, § 5776; R. S. 1897, § 6038.)

1. To what Land Appliable. This section relates to the sale of congressional township lands, and it has no reference to the right of the county to be reimbursed for interest paid on loans out of the proceeds of a sale under a mortgage after the principal has been paid to the State.—Board *v.* State, 122 Ind. 333.

279. Appropriation by Commissioners. 2. Upon the sale of such lands as provided for in the preceding section of this act, the Board of County Commissioners of the several counties in which said lands are situated may make an appropriation, from the general county funds, a sum equal to the difference between the amount for which said lands shall have been forfeited and the amount for which such lands shall have last sold; said sum appropriated to be placed to the credit of the proper fund and loaned as other school funds are loaned. R. S. 1894, § 5777; R. S. 1897, § 6039.)

1. Mandatory. This section is mandatory, for the reason that the county is liable for all deficits in the funds entrusted to its care.

280. Certificate of purchase. 62. A certified statement of such sale shall be made and signed by the Auditor, and, being first recorded by such Auditor in the records of the Board of County Commissioners, shall be delivered to the purchaser when he makes his first payment, and shall entitle him to a deed when the terms of such purchase shall have been fully complied with. (R. S. 1881, § 4353; R. S. 1894, § 5780; R. S. 1897, § 6042.)

1. Judgment, No Lien. A judgment is no lien on land held by a certificate issued under this section.—Jeffries *v.* Sherburn, 21 Ind. 112.—See Bell *v.* Corbin, 136 Ind. 269.

281. Rights of purchaser. 63. Every purchaser, until forfeiture, shall be entitled to all the rights of possession before existing in such Trustee or township, and to all rights and remedies for rents becoming due or breaches of covenant occurring after his purchase under any lease existing at the time of his purchase, and for all waste committed thereafter. (R. S. 1881, § 4354; R. S. 1894, § 5781; R. S. 1897, § 6043.)

1. ESTOPPEL. When the inhabitants of a township had received a part of the purchase money of school lands, and interest for several years on the balance, and expended the money for the purposes contemplated by the grant, and the purchaser had taken possession and made valuable improvements, it was held that they must be deemed to have acquiesced in the sale, and that they are estopped to deny its validity.—State *v.* Stanley, 14 Ind. 409.

282. Failure to make first payment—Penalty. 64. A purchaser at such sale failing to make the first payment as above required shall pay ten per centum on the sum bid, to be recovered by action before any Court having jurisdiction, to be prosecuted by the County Auditor in the name of the State for the use of the proper township; and the Auditor and Treasurer shall be competent witnesses. (R. S. 1881, § 4355; R. S. 1894, § 5782; R. S. 1897, § 6044.)

1. TENDER OF DEED. In a suit to recover the final installment of purchase money, a deed should be first made and tendered.—Johnson *v.* State, 74 Ind. 588.

283. Assignments. 65. No assignment of a certificate shall be valid unless acknowledged before some officer authorized to take acknowledgments of deeds, or before the County Auditor, who shall, in all such cases, record the same. Assignments of certificates heretofore made before any officer authorized to take acknowledgments of deeds, when recorded, shall be as valid as if acknowledged before the County Auditor. (R. S. 1881, § 4356; R. S. 1894, § 5783; R. S. 1897, § 6045.)

[1863, p. 11. Approved February 27, 1863, and in force October 10, 1863.]

284. Defective assignments—Proceedings. 1. Whenever the certificate of the School Commissioner or Auditor of any county of this State, issued for land sold, has been assigned by any person without a proper acknowledgment before the County Auditor or other proper officer, or assigned by delivery, and such assignor is deceased, any assignee of such certificate,

claiming title to the land described therein, may file his complaint in the proper Circuit Court, making the County Auditor and the heirs of such deceased assignor parties thereto. If it shall be proved to the satisfaction of the Court that the plaintiff, or any party to the cause, is the equitable owner of the land, and the purchase-money has been fully paid to the school fund, the Court shall direct the Auditor to execute a proper conveyance to the plaintiff or other parties entitled thereto, although the certificate has not been properly assigned or the assignment thereof properly acknowledged by the decedent. All other persons claiming any interest in the land may, on their application, be made parties and heard in the case. The Auditor shall execute a conveyance, according to the directions of the Court; and such conveyance shall vest in the grantee the title of said land as fully and to all intents and purposes as if the certificate had been legally assigned and the assignment properly acknowledged. (R. S. 1881, § 4357; R. S. 1894, § 5784; R. S. 1897, § 6046.)

[1865, p. 3. Approved and in force March 6, 1865.]

285. Loan of purchase-money. 66. When the residue of the purchase-money becomes due, the purchaser may retain the same as a loan for a term not exceeding three years, on payment, annually made in advance, of the interest thereon, at the rate then established by law for the loans of such funds; but he shall receive no deed until full payment is made. (R. S. 1881, § 4358; R. S. 1894, § 5785; R. S. 1897, § 6047.)

286. Payments. 67. Purchasers may, at any time before due, pay a part or the whole of such purchase-money. (R. S. 1881, § 4359; R. S. 1894, § 5786; R. S. 1897, § 6048.)

287. Lost certificate. 68. When any such certificate shall be lost before a deed be made, on proof thereof by affidavit of the person interested, or other competent testimony, to be filed with the County Auditor, and after three months' notice of intention to apply for a new certificate, given in some newspaper printed nearest to where the land lies, such Auditor may issue

the same to the person entitled thereto. (R. S. 1881, § 4360; R. S. 1894, § 5787; R. S. 1897, § 6049.)

1. Lost Certificate. If a certificate is lost a new one may be issued to the purchaser, even to a grantee of the purchaser.—Hinkle *v.* Margerum, 50 Ind. 240, 241.

288. Purchase-money, where paid. 69. The purchase-money and interest, and all costs and damages above provided for, shall be paid to the Treasurer of the proper county, and his receipt therefor filed, by the person paying, with the County Auditor, who shall issue his quietus therefor. (R. S. 1881, § 4361; R. S. 1894, § 5788; R. S. 1897, § 6050.)

289. Duty of Auditor. 70. When such payment is in completion of any contract of sale, the amount of such receipt shall be indorsed by the County Auditor on the certificate of purchase. (R. S. 1881, § 4362; R. S. 1894, § 5789; R. S. 1897, § 6051.)

290. Deed. 71. On full payment for such land a deed shall be issued by the County Auditor, and entered upon the record-book of the Board of County Commissioners. (R. S. 1881, § 4363; R. S. 1894, § 5790; R. S. 1897, § 6052.)

1. Entry on Record. The deed, before delivery, must be entered on the record-book of the County Commissioners.—Arnold *v.* Gaff, 58 Ind. 543.

[1877, p. 139. Approved and in force February 8, 1877.]

291. Sale—Legalization. 1. In all cases where school lands have been sold and certificate has either been issued to the purchaser or entered of record in the proper office, or otherwise, so the purchaser entered into possession and paid part of the whole of the purchase-money, or could have entered into occupancy, such sale shall be deemed and held a sale under the law, as much as it would be had a deed been made and delivered and the fee had been passed to the purchaser; and such lands shall be deemed and held as having been sold, so as to make them liable to taxation, within the meaning of the law, as fully and completely as they would have been had a deed been delivered. All appraisements of lands so sold, and all assessments of the same for taxes, and all levies and collections of taxes thereon, heretofore made, are hereby legalized and declared to be lawful and valid, and shall in nowise be subject to question by reason

of such sale not having been consummated by execution and delivery of deed. (R. S. 1881, § 4364; R. S. 1894, § 5791; R. S. 1897, § 6053.)

[1865, p. 3. Approved and in force March 6, 1865.]

292. Title, when complete. 72. Such deed shall be executed and acknowledged, at the cost of the grantee, by the County Auditor, as in other cases; and, thus executed and delivered, shall vest in the grantee, his heirs and assigns, forever, a complete title to the land. (R. S. 1881, § 4365; R. S. 1894, § 5792; R. S. 1897, § 6054.)

293. Sale had without vote. 73. The voters of any congressional township may, in the absence of a vote to sell land, and in lieu thereof, petition the Trustee of the township for such sale. Such petition, if signed by a majority of all the voters of the township, shall be filed with the County Auditor, and the same proceeding shall be had as provided in section fifty-four [§ 269], upon a vote of the inhabitants of the township for such sale. Such petition and certificate shall be recorded in the record book of the Trustee of the township and of the County Auditor of the investment of funds held for the benefit of common schools and congressional townships. (R. S. 1881, § 4366; R. S. 1894, § 5793; R. S. 1897, § 6055.)

1. Withdrawing Signature. See section 253. After a petition has been recorded, persons whose names are signed to it can not withdraw their signature so as to defeat a sale.

294. Compensation on failure of title. 150. When any officer authorized to sell school lands shall have sold any lands without a title thereto, such officer, or his successor in office may convey such other lands of equal value as may be agreed upon by such officer and the purchaser, his heirs or assigns; or, failing to make such agreement, the purchase money, with interest, shall be repaid to the purchaser, his heirs, executors, administrators or assigns; but no such purchase money shall be thus repaid until the proper Prosecuting or District Attorney shall have investigated the facts of the case and certified to the correctness of the claim. (R. S. 1881, § 4367; R. S. 1894, § 5794; R. S. 1897, § 6056.)

1. Sales Legalized. Sales in unauthorized subdivisions prior to March 3, 1855, were legalized.—Acts 1855, p. 144.

[1855, p. 49. Approved March 1, 1855, and in force August 17, 1855.]

295. Lands of surplus revenue fund, how sold. 1. Where the surplus revenue fund belonging to common schools, in any county in this State, or any part of such fund, has by any means become invested or changed into real estate, the Board of Commissioners of such county are hereby authorized to dispose of the same, by sale, in such manner as may seem best for the interest of the common school fund, and to reinvest the proceeds of such sale in the manner directed by law for the investment of other moneys belonging to the common school fund. (R. S. 1881, § 4368; R. S. 1894, § 5795; R. S. 1897, § 6057.)

[1893, p. 41. Approved and in force February 17, 1893.]

296. Interest—Judgment. 1. The principal of all moneys, whether belonging to the common school fund or to the congressional township school fund, received into the county treasury shall be loaned at 6 per cent. per annum, payable annually in advance, and the interest paid out as prescribed by the school law of this State, and not otherwise; and any judgment upon any note or mortgage for any part of said fund shall bear 6 per cent. interest from the date thereof till the same is paid; and no greater rate of interest than is herein specified shall be exacted or received upon any loan heretofore made at the rate of 8 per cent. per annum shall, from and after the taking effect of this act, draw 6 per cent. interest per annum, the same as if negotiated under the provisions of this act. (R. S. 1894, § 5796; R. S. 1897, § 6058.)

1. REPEAL. This act repeals that of March 2, 1889. Acts 1889, p. 81.

2. INTEREST AFTER MATURITY. A school fund mortgage draws the same interest after maturity that it does before.—Stockwell *v.* State, 101 Ind. 1.

[1883, p. 75. Approved and in force March 3, 1883.]

297. Advertisement of funds. 1. Whenever, in any county of the State of Indiana, the school fund, or part of the school fund, apportioned to such county to be loaned out, remains unloaned, it shall be the duty of the Auditor of said county to advertise, in the months of January, April, July and October, for three consecutive weeks, in a weekly newspaper published in said county, that such amount of the school fund remains unloaned, and that applicants for loans can secure the same by

applying at his office and fulfilling the requirements of the law under which he is authorized to loan out the school fund. (R. S. 1894, § 5809; R. S. 1897, § 6063.)

[Acts 1865, p. 3. Approved and in force March 6, 1865.]

298. Auditor's duty. 75. Such loans shall be made by the County Auditor, who shall inform himself of the value of the real estate offered in the mortgage and be satisfied of the validity of the title thereof; and all persons applying for a loan shall produce to said Auditor title-papers, showing to his satisfaction, a good and sufficient title in fee-simple, without incumbrance, [and] not derived from sale for taxes. (R. S. 1881, § 4370; R. S. 1894, § 5797; R. S. 1897, § 6059.)

1. Prior Mortgage. The existence of an incumbrance to the knowledge of the Auditor does not invalidate the mortgage as against the borrower.—Deming *v.* State, 23 Ind. 416.

2. Personal Security. A loan on personal security only, without a mortgage, though a violation of the Auditor's duty, is nevertheless binding upon the borrower and the surety.—Scotten *v.* State, 51 Ind. 52.

3. Loan to Himself Unlawful. A mortgage executed by a County Auditor to secure a loan of a part of the common school fund made to himself is valid or invalid at the option of those having the supervisory control of the fund. The loan is unlawful as against public policy, and is a breach of the Auditor's official bond, but the mortgage may, both to the Auditor and those claiming under him, be resorted to and enforced as a means of reimbursing the fund, looking to the Auditor and his sureties for any deficiency that may remain after the mortgaged land has been exhausted.—State *v.* Levi, 99 Ind. 77. See also Stockwell *v.* State, 101 Ind. 1; State *v.* Greene, 101 Ind. 532, and Ware *v.* State, 74 Ind. 181.

4. Suit to Cancel Mortgage. A suit can not be maintained against the Auditor to cancel a school fund mortgage.—Crooks *v.* Kennett, 111 Ind. 347; Snodgrass *v.* Morris, 123 Ind. 425.

299. Appraisement. 76. The Auditor shall require three disinterested freeholders of the neighborhood to appraise any land offered in mortgage. (R. S. 1881, § 4371; R. S. 1894, § 5798; R. S. 1897, § 6060.)

300. Duty of appraisers. 77. Such appraisers, being first officially sworn, shall examine and appraise such land, and sign and give to the applicant a certificate, setting forth the fair cash value of the land at the time, without taking into consideration perishable improvements. (R. S. 1881, § 4372; R. S. 1894, § 5799; R. S. 1897, § 6061.)

[1885, p. 195. Approved April 11, 1885, and in force July 18, 1885.]

301. Loans outside of county. 78. In making such loans preference shall be given to the inhabitants of the county: *Provided*, That whenever any of such funds shall have remained in the treasury of any county to which the same may belong for a period of three months, without being loaned to any inhabitant of said county, then the Auditor of said county may loan the same to any freeholder of any other county in Indiana, upon his complying with the law regulating such loans. When the land received as security for any such loan is situated in any county of the State other than the one in which the loan is made, and there is default in the payment of interest or principal, the Auditor of the county making the loan shall at once transmit to the Auditor of the county where the land is situated a certified copy of the note and mortgage given for the loan, with a statement of such default in payment, and the Auditor of such latter county shall, upon such certified copy, at once proceed to enforce the collection of such loan either by suit or sale of the land, as is now provided by law; and, after receiving such certified copy by said Auditor, all steps taken, and all proceedings had, with reference to said loan or the land which was mortgaged shall be the same as if the loan had originally been made out of the funds belonging to said county; and all money collected or realized upon such loan shall at once, as soon as collected or realized, be paid over to the Auditor of the county having made the loan. (R. S. 1894, § 5800; R. S. 1897, § 6062.)

1. Old Law. Until this section was enacted a loan could not be made outside of the county, although the mortgage given to secure it was valid.—Skelton *v.* Bliss, 7 Ind. 77.

302. Limit of loan. 79. The amount loaned to any person shall not exceed two thousand dollars. (R. S. 1881, § 4374; R. S. 1894, § 5801; R. S. 1897, § 6064.)

1. Exceeding Limit. Although the amount loaned exceed the amount allowed by this section, yet the loan is valid.—Deming *v.* State, 23 Ind. 416.

[1881, p. 99. Approved and in force April 14, 1881.]

303. Certificate as to liens. 1. An applicant for a loan of a part of the common school fund or of the congressional township school fund shall file with the Auditor of the county

the certificate of the Clerk and Recorder of the county that there is no incumbrance on the land offered as a security for the loan in either of said offices: *Provided*, That where the records, books and papers of the Clerk's office have been destroyed by fire, the Clerk's certificate shall only state the fact and date of such destruction, and that there is no incumbrance on said land appearing from any of the records, books and papers then on file in his office, and that there is no incumbrance on said land in his office of which he has any knowledge. The applicant shall also, in such case, execute to the State of Indiana, for the benefit of the common school fund, a bond with one or more freehold sureties to the approval of the Auditor, conditioned for the payment of so much of the loan as may be lost by reason of any incumbrance or lien upon the land which was evidenced by the records, books or paper in the Clerk's office which have been destroyed. (R. S. 1881, § 4375; R. S. 1894, § 5802; R. S. 1897, § 6065.)

1. EVIDENCE. For the purpose of showing that the law was complied with in making a loan, the certificate of the Clerk and Recorder and the affidavit of the mortgagor are competent evidence to show a compliance with this statute.—Stockwell *v.* State, 101 Ind. 1.

2. PRIOR LIEN. At the time the loan was made there was a prior incumbrance on the lands mortgaged, of which fact the Auditor had notice by the borrower's affidavit of title, but it was held that the mortgage was valid as against the borrower.—Deming *v.* State, 23 Ind. 416.

3. NEGLIGENCE OF AUDITOR—IRREGULARITY OF LOAN. A complaint to enjoin a sale of land by a County Auditor to satisfy a School Fund mortgage, which shows that the plaintiff, after the mortgage was executed, purchased the land under the foreclosure of a secret vendor's lien antedating the mortgage, and alleges that the plaintiff, at the time the mortgage was executed, held a judgment against the mortgagor, but makes no claim of title under that judgment, and alleges further that the Auditor in taking the mortgage failed to require an oath of the mortgagor and a certificate of the Clerk and Recorder that the land was unincumbered, and also failed to have the property appraised, as provided by law, is not sufficient to entitle the plaintiff to an injunction or to avoid the mortgage.—Winstandley *v.* Crim, 117 Ind. 328.

[1865, p. 3. Approved and in force March 6, 1865.]

304. Oath of applicant. 81. Such applicant shall make oath that there is no incumbrance or better claim, that he knows of, and that the abstract of the title presented by him is, as he believes, a true one. (R. S. 1881, § 4376; R. S. 1894, § 5803; R. S. 1897, § 6066.)

1. NO AFFIDAVIT. A failure to make the affidavit does not render the loan void.—Winstandley *v.* Crim, 117 Ind. 328.

2. MARRIED WOMAN. Where a married woman, in executing the usual preliminary papers, states that she is the owner of the land and is also the borrower, she can not thereafter assert that her husband was borrowing the money and she was only his surety.—State *v.* Frazier, 134 Ind. 648; Lloyd *v.* State, 134 Ind. 506; Davee *v.* State, 7 Ind. App. 71; Snodgrass *v.* Morris, 123 Ind. 425. But if her husband is the borrower, and she makes no declaration in the preliminary papers that she is the borrower, her mortgage on her land for the amount borrowed is invalid.—Welch *v.* Fisk, 139 Ind. 637.

305. Time of Loan. 82. No loan shall be made for a longer term than five years. (R. S. 1881, §4377; R. S. 1894, §5804; R. S. 1897, §6067.)

[1885, p. 195. Approved April 11, 1885, and in force July 18, 1885.]

306. Limit of loan. 3. The sum loaned shall not exceed one-half of the appraised value of the premises proposed to be mortgaged, clear of all perishable improvements: *Provided*, That where such premises are situated in a county other than that which such fund may belong, the sum loaned thereon shall not exceed one-fourth of the appraised value of such premises, exclusive of perishable improvements. Such value to be determined by existing laws of the State of Indiana. It is hereby made the duty of the Board of Commissioners of each county in this State, at their first regular session after the taking effect of this act, to appoint in each Commissioner's district of the county three reputable freeholders, any two of whom, without the concurrence of the third, may act as school fund appraisers, whose duty it shall be upon oath to make all the appraisements of lands in their respective districts, required in this act or in the act of which this is amendatory. Said appraisers, or any of them, may be removed and new ones appointed by said Board at any regular or special session, and in case any of such appraisers is at any time disqualified, by reason of kinship or interest, from acting, the appraisement shall be made by the other appraisers, who, in case of a disagreement, shall select a third appraiser. Said appraiser shall receive the same compensation for making each appraisement, and be paid in the same manner as such appraisers are now paid. (R. S. 1894, § 5805; R. S. 1897, § 6068.)

[1865, p. 3. Approved and in force March 6, 1865.]

307. Acknowledgments and oaths. 84. The Auditor shall have the power to administer all oaths and take all acknowledgments required by this act. (R. S. 1881, § 4379; R. S. 1894, § 5806; R. S. 1897, § 6069.)

308. Record of mortgages — Priority. 85. Mortgages taken for such loans shall be considered of record from the date thereof, and shall have priority of all mortgages or conveyances not previously recorded, and all other liens not previously incurred, in the county where the land lies. (R. S. 1881, § 4380; R. S. 1894, § 5807; R. S. 1897, § 6070.)

1. Lien Without Record. A school fund mortgage is a lien upon the land as to subsequent purchasers without being recorded.—West *v.* Wright, 98 Ind. 335; Deming *v.* State, 23 Ind. 416.

2. Parties holding or claiming through the mortgagor in a school fund mortgage are bound to take notice of the mortgage, though not recorded. A school fund mortgage is not void as to the State because the County Auditor has made the loan to himself. Such mortgage draws the same interest after foreclosure as before maturity.—Stockwell *v.* State, 101 Ind. 1.

3. Tax Title Subject to Mortgage. The purchaser and grantee of real estate, under the tax deed, takes his title to such real estate under the provisions of R. S. 1894, § 8623; R. S. 1897, § 9158, and subject to all the claims which the State may have thereon for taxes, or other liens or incumbrances, such as a mortgage executed thereon to the State, as a security for the payment of a loan to the school fund, prior to such tax sale and the execution of such tax deed. This is so, although the taxes for which the real estate was sold, had been assessed and delinquent before the execution of such school fund mortgage.—State *v.* Wasson, 95 Ind. 175. So a sale of lands for taxes which accrued after the execution of a school fund mortgage is subject to the mortgage lien.—Stockwell *v.* State, 101 Ind. 1. Where a mortgage to secure a school fund loan is assumed by the purchasers of the real estate, the mortgagors to whom the loan was made do not, by a subsequent purchase of the real estate sold by the Auditor to satisfy the mortgage take the property divested of liens for taxes assessed by the city in which the property is situated.—City of Logansport *v.* McConnell, 121 Ind. 416.

4. Notice of Mortgage—Purchaser at Tax Sale. Land on which the owner has placed a school fund mortgage is as much liable to taxation as any other land; and a person buying it at tax sale within the year for redemption from a sale on foreclosure of mortgage can not recover the amount paid for taxes. At most the mortgage is only a first lien to city taxes. The purchaser is bound to take notice of the school mortgage and decree of foreclosure. He must be held to purchase with full knowledge of mortgage, the foreclosure, and to have purchased subject to the lien.—McWhinney *v.* City of Logansport, 132 Ind. 9.

309. Auditor's duty. 86. The Auditor shall cause such mortgages to be recorded immediately, retaining the cost of

recording out of the money borrowed. (R. S. 1881, § 4381; R. S. 1894, § 5808; R. S. 1897, § 6071.)

1. Acknowledgments. If the mortgage be recorded, not being acknowledged or proved as our general laws require to admit mortgages to record in the Recorder's office, such record is no notice to subsequent *bona fide* purchasers. But the act of 1843 (now § 308) requires that such mortgages shall be deemed recorded from their date; and this is notice.—Deming *v.* State, 23 Ind. 416; Mann *v.* State, 116 Ind. 383.

2. Lien Without Record. A school fund mortgage is a lien upon the land as to subsequent purchasers, without being recorded.—West *v.* Wright, 98 Ind. 335.

3. Cancellation of Mortgage. An action to cancel a school fund mortgage will not lie against a County Auditor; the State is the party in interest.—Crooks *v.* Kennett, 111 Ind. 347; Snodgrass *v.* Morris, 123 Ind. 425.

310. Fees. 108. The following fees only shall be charged in cases of mortgage for loans: To each appraiser, fifty cents; for recording mortgage, one dollar; for drawing mortgage, one dollar; for making borrower's affidavit, ten cents; for Clerk's certificate, fifty cents; for Recorder's certificate and examining title, each one dollar; which shall be paid by the borrower. (R. S. 1881, § 4382; R. S. 1894, § 5810; R. S. 1897, § 6072.)

311. Interest unpaid—Auditor's duty. 87. On failure to pay any installment of interest when the same becomes due, the principal sum shall forthwith become due and payable, and the Auditor may proceed to collect the same by suit on the note, or by sale of the mortgaged premises. He may also, by suit, recover the possession of the mortgaged premises before sale thereof; and he shall, on the fourth Monday in March, annually, offer for sale all mortgaged land on which payments of interest are due on the first day of January and unpaid on the day of sale. (R. S. 1881, § 4383; R. S. 1894, § 5811; R. S. 1897, § 6073.)

[1885, p. 195. Approved April 11, 1885, and in force July 18, 1885.]

312. Collection on default. 4. It shall be the duty of the Auditor of each county, in case default shall be or has been made in the payment of principal or interest of any school fund loan, to at once proceed to enforce the collection of such principal or interest, as the case may be; and any Auditor who shall fail or refuse to comply with the requirements of this section shall be deemed guilty of a misdemeanor, and upon conviction

shall be fined in any sum not exceeding one thousand dollars. (R. S. 1894, § 5812; R. S. 1897, § 6074.)

1. Statute Mandatory. In selling lands, the Auditor must strictly follow the requirements of the statutes upon the subject. Where sale is made to make a greater sum than is due, the sale is void; and where the borrower has made a payment of interest, and failed to file the Treasurer's receipt with the Auditor, it will not excuse the Auditor for selling to make a sum greater than is really due.—Key *v.* Ostrander, 29 Ind. 1; Arnold *v.* Gaff, 58 Ind. 543. The law in force at the time of sale, providing the method, notice and other elements of remedy, governs the sale.—Webb *v.* Moore, 25 Ind. 4; Jones *v.* Hopkins, 26 Ind. 450; Moore *v.* Seaton, 31 Ind. 11.

2. Tax and Other State Liens. The purchaser at a tax sale takes the land subject to a school mortgage or any other lien held by the State. This is so, although the taxes for which the real estate was sold, had been assessed and delinquent before the execution of such school fund mortgage.—State *v.* Wasson, 95 Ind. 175. So a sale of lands for taxes which accrued after the execution of a school fund mortgage is subject to the mortgage lien.—Stockwell *v.* State, 101 Ind. 1. Where a mortgage to secure a school fund loan is assumed by the purchasers of the real estate the mortgagors to whom the loan was made do not, by a subsequent purchase of the real estate sold by the Auditor to satisfy the mortgage take the property divested of liens for taxes assessed by the city in which the property is situated.—City of Logansport *v.* McConnell, 121 Ind. 416.

3. Can Not Release Without Payment. The Auditor of a county has no authority to release a school mortgage unless the money is paid, and where a party is entitled by his contract to an unincumbered title, he is not compelled to accept a conveyance of land thus encumbered, though the Auditor has released the mortgage of record.—Conley *v.* Dibber, 91 Ind. 413.

4. When Auditor May Proceed. The Auditor may proceed, immediately upon default in the payment of the principal or interest, to collect the entire mortgage due, and he has no discretion in offering for sale, on the fourth Monday in March, all such lands in default on the first day of January.

5. Foreclosure. A suit by the County Auditor to foreclose a mortgage may be maintained instead of resorting to statutory proceedings.—Deming *v.* State, 23 Ind. 416; Ferris *v.* Cravens, 65 Ind. 262; Stockwell *v.* State, 101 Ind. 1; Kendall *v.* Green, 101 Ind. 532.

313. Fund to be specified. 88. The mortgage may be, in substance, as follows; and the Auditor shall specify therein whether the same belongs to the common school fund or to the congressional township fund, and, if the latter, the particular township or townships whose funds are thus loaned. (R. S. 1881, § 4384; R. S. 1894, § 5813; R. S. 1897, § 6075.)

1. Omissions to Specify. The omission to state the particular fund does not render the mortgage void.—Benefiel *v.* Aughe, 93 Ind. 401, 407; Ellis *v.* State, 2 Ind. 262.

314. Form of mortgage. 89. I, A. B., of the county of ——, in the State of Indiana, do mortgage to the State of Indiana, for the use of [here describe the fund out of which the loan was made] all [here describe the land], for the payment of —— dollars, with interest at the rate of eight per cent. per annum, payable annually in advance, according to the conditions of the note hereto annexed. (R. S. 1881, §4385; R. S. 1894, §——; R. S. 1897, §6076.)

1. CONSTRUCTION. For cases on school mortgages, see Burk *v.* Axt, 85 Ind. 512; Nolan *v.* State, 115 Ind. 529.

2. DESCRIPTION. A description of land in a school fund mortgage as "the northeast part" of a specified tract, "containing ninety acres," is insufficient, and an Auditor's sale made thereunder is invalid.—Burk *v.* Axt, 85 Ind. 512. If the mortgage does not contain a proper description of the land, such description may be corrected on a decree to foreclose the mortgage.—Noland *v.* State, 115 Ind. 529.

3. PRESUMPTION. A deed or mortgage made in the form prescribed by the law of this State, and purporting to have been acknowledged in this State between parties residing in the State, and containing nothing to indicate a contrary intention, will be presumed by the courts to be of land in this State. Where both the county and State are omitted from the description of land embraced in a mortgage, but it appears on the face of the mortgage that it was executed by parties residing in a certain county for the purpose of securing a loan of school funds borrowed by the mortgagor, through the Auditor of that county, it will be presumed, without more, that the land is there situated.—Mann *v.* State, 116 Ind. 383. *Quære:* Would this rule of presumption prevail now, since Auditors may lend outside of their counties?

4. CANCELLING MORTGAGE. In an action to set aside and cancel a school fund mortgage, the County Auditor is not a proper defendant, and a judgment against such officer in such actions will not bind the State, it not being a party, and it is very doubtful if the State can even be thus sued.—Crooks *v.* Kennett, 111 Ind. 347; see Snodgrass *v.* Morris, 123 Ind. 425.

5. WIFE. A wife may borrow money and mortgage her own land to discharge valid liens thereon, or for a purpose that enures to its benefit or protection.—Noland *v.* State, 115 Ind. 529.

6. LOAN TO MARRIED WOMEN—ESTOPPEL. If a married woman, to obtain a loan, complies with all the statutory requirements in relation thereto and executes a mortgage upon her separate real estate, she is estopped from questioning the validity of the mortgage; and the fact that the Auditor may have had knowledge that he was obtaining the loan as security for another, can not affect the validity of the mortgage when he acted within the letter of the statute, and the mortgage has been voluntarily executed.—Davee *v.* Board, 7 Ind. App. 71. The Auditor must pay her the money, and if he pay another he will be personally liable; but in such an instance the mortgage will be valid.—Lloyd *v.* State, 134 Ind. 506. But if she gives a mortgage for a loan made to her husband or any other person, the mortgage is invalid.—State *v.* Frazier, 134 Ind. 648.

315. Form of note. 90. The note accompanying the same may be in substance as follows, to wit: I, A. B., promise to pay to the State of Indiana, for the use of [here recite the particular fund], on or before ———, the sum of ——— dollars, with interest thereon at the rate of eight per cent. per annum in advance, commencing on the ——— day of ———, 18—; and do agree that, in case of failure to pay any installment of interest when the same shall become due, the principal sum shall become due and payable, together with all arrears of interest; and on failure to pay such principal or interest when due, two per cent. damages shall be collected, with costs, and the premises mortgaged may be sold by the County Auditor for the payment of such principal sum, interest, damages and costs. (R. S. 1881, § 4386; R. S. 1894, § 5815; R. S. 1897, § 6077.)

1. NOTE NOT SIGNED. A mortgage executed to secure a note attached to it is binding, though the note is not signed; and there is no error in allowing the note to be read in evidence, it being a part of the mortgage.—McFadden *v.* State, 82 Ind. 558.

316. Warrant to borrower. 91. On making a loan of any fund, the Auditor shall draw his warrant in favor of the borrower upon the County Treasurer, who shall charge it to the proper fund. (R. S. 1881, § 4387; R. S. 1894, § 5816; R. S. 1897, § 6078.)

317. Payments—Quietus. 92. All loans refunded and all interest shall be paid to the County Treasurer, and his receipt shall be filed with the County Auditor, who shall give the payer a quietus therefor, and make proper entries. (R. S. 1881, § 4388; R. S. 1894, § 5817; R. S. 1897, § 6079.)

1. NOTE. The Auditor is bound to take notice of a payment to the Treasurer, whether or not receipt has been filed with him.—Key *v.* Ostrander, 29 Ind. 1.

2. PAYMENT TO TREASURER AND NOT TO AUDITOR. Payment should be made to the County Treasurer and not to the County Auditor.—Cole *v.* Miller, 60 Ind. 463.

318. Indorsements and satisfaction. 93. Whenever the amount due on any mortgage shall be paid, and the Treasurer's receipt therefor filed, the Auditor shall indorse on the note and mortgage that the same has been fully satisfied, and surrender the same to the person entitled thereto; and, on production of the same thus indorsed, the Recorder shall enter satisfaction

upon the record. (R. S. 1881, § 4389; R. S. 1894, § 5818; R. S. 1897, § 6080.)

1. ENTRY OF SATISFACTION. The County Recorder can enter satisfaction of a school fund mortgage before foreclosure only upon indorsement by the County Auditor that the same has been fully paid.—Stockwell *v.* State, 101 Ind. 1.

2. RELEASE WITHOUT PAYMENT. A release of a mortgage by the County Auditor without payment is invalid.—Conley *v.* Dibber, 91 Ind. 413; see Slaughter *v.* State, 132 Ind. 465.

3. IMPROPERLY SATISFIED. If a mortgage be improperly satisfied it may still be enforced. State *v.* Greene, 101 Ind. 532, but a purchaser in good faith will be protected; Slaughter *v.* State, 132 Ind. 465.

319. Suit for deficiency. 94. In all cases where the mortgaged premisss shall fail to sell for a sum sufficient to satisfy the principal and interest of the loan made, and the damages accrued by reason of such failure, and costs, the County Auditor shall bring suit on the notes executed by the mortgagor; and whenever judgment shall be rendered thereon, no appraisement of property shall be allowed on execution issued on such judgment. (R. S. 1881, § 4390; R. S. 1894, § 5819; R. S. 1897, § 6081.)

1. THE RELATOR. The County Auditor is the proper relator in a suit to recover school funds loaned.—Scotten *v.* State, 51 Ind. 52; Lopp *v.* Woodward, 1 Ind. App. 105.

2. WHEN SUIT FOR DEFICIENCY MAY BE BROUGHT. A County Auditor who bids in, at public auction, land mortgaged to the school fund, can not proceed on the note executed by the mortgagor until he has made the subsequent sale required by section 322, and fails to realize enough to satisfy the amount due.—Clark *v.* State, 109 Ind. 388.

3. JUDGMENT. The property may be ordered sold, in the judgment, without appraisement.—Stockwell *v.* State, 101 Ind. 1.

320. Notice of sales. 95. Before sale of mortgaged premises, the Auditor shall advertise the same in some newspaper printed in the county where the land lies, if any there be (otherwise, in a paper in the State nearest thereto), for three weeks successively, and, also, by notice set up at the court house door and at three public places in the township where the land lies. (R. S. 1881, § 4391; R. S. 1894, § 5820; R. S. 1897, § 6082.)

1. LENGTH OF NOTICE. The Legislature may change the requisite length of notice even after the mortgage has been given.—Jones *v.* Hopkins, 26 Ind. 450.

2. NO COMPENSATION. The Auditor is not entitled to compensation for posting notices of sale.—The Board *v.* Leslie, 63 Ind. 492.

3. Sale Without Notice. A sale without notice is not such new matter as will entitle the mortgagor to a new filing of the amount owed by him.—Peyton *v.* Kruger, 77 Ind. 486. A failure to give notice will render the sale void.—Brown *v.* Ogg, 85 Ind. 234.

321. Manner of Sale—Surplus. 96. At such sale (which shall be held at the court house door), the Auditor shall sell so much of the mortgaged premises, to the highest bidder, for cash, as will pay the amount due for principal, interest, damages and costs. When less than the whole tract mortgaged shall be sold, the quantity sold shall be taken in a square form, as nearly as possible, off the northwesterly corner of said tract; and when less than the whole of any in-lot or out-lot of any town or city shall be sold, the part sold shall be laid out and taken off, so that it shall extend from the main or principal street or alley on which the said lot fronts, to the rear thereof, to divide the same by a line as nearly parallel with the boundaries of said lot as practicable, and if less than the whole is sold, the Auditor, in his notice of sale, shall indicate off of which side or end of said lot the part to be sold shall be taken; and if more than one tract of land is included in the mortgaged premises, the Auditor shall elect which tract or tracts shall be sold, saving to the mortgagor, if practicable, the tract on which his house is located. If a tract of land so mortgaged, and liable to be sold to satisfy the mortgage, can not be divided without materially diminishing the value of such tract; or if any in-lot or out-lot be indivisible, by reason of extensive buildings or other improvements thereon, the Auditor may sell the whole thereof, and, after paying the amount due for principal, interest, damages and costs, out of the purchase-money, shall pay the balance, if any, to the mortgagor; and if the Auditor sell any part of a tract of land, out-lot, or in-lot for more than the amount of principal, interest, damages and costs, the excess, if any, shall be paid to the mortgagor. (R. S. 1881, § 4392; R. S. 1894, § 5821; R. S. 1897, § 6083.)

1. Division Immaterial. The Auditor can sell in no other way than that provided by law.—Webb *v.* Moore, 25 Ind. 4. But in a suit to set aside a sale made by the Auditor, where the mortgage debt, penalty and costs aggregate one hundred and fifty-two dollars and twenty cents, though the land was worth four thousand dollars, and could have been divided without materially diminishing its value, it was held to be immaterial that he did not, at the sale, offer any part in the form of a square, or otherwise, off of the northwest corner thereof.—Arnold *v.* Gaff, 58 Ind. 543.

2. Statute Must Be Pursued. The County Auditor, in making a sale of land in satisfaction of a School Fund Mortgage, has no power to sell in any other mode than that prescribed by the statute, and the burden is upon one claiming title under such a sale to show that the statutory requirements have been strictly pursued.—Haynes *v.* Cox, 118 Ind. 184.

3. Portion Sold. Where the Auditor, in selling less than the whole tract mortgaged, does not take the quantity out of the northwesterly corner of the tract, as required by the statute, but, on the contrary, takes it from another and entirely distinct portion thereof, he exceeds his power and the sale is invalid.—Haynes *v.* Cox, 118 Ind. 184.

4. Statute Must Be Strictly Pursued. In a sale of real estate the statute must be strictly pursued or the sale will be void.—Williamson *v.* Doe, 7 Blackf. 12; Benefield *v.* Aughe, 93 Ind. 401; Ferris *v.* Cravens, 65 Ind. 262.

5. Sale for More than Due. A sale for a sum greater than is due at the time of the sale is void.—Betson *v.* State, 47 Ind. 54; Key *v.* Ostrander, 29 Ind. 1; Vail *v.* McKernan, 21 Ind. 421; Board of Com. *v.* State, 122 Ind. 333; Brown *v.* Ogg, 85 Ind. 234.

6. Redemption. The purchaser takes an absolute title, and junior incumbrancers have no right to redeem from the sale.—Schnantz *v.* Schellhaus, 37 Ind. 85.

7. Sale in Parcels. The County Auditor need not offer the mortgaged premises in parcels, where they are described in the mortgage as a single tract.—Shannon *v.* Hay, 106 Ind. 589.

8. Appraisement. Upon the foreclosure of a School Fund mortgage, the court may order the land sold without appraisement.—Stockwell *v.* State, 101 Ind. 1.

9. Quieting Title. One whose land has been sold to satisfy a School Fund mortgage executed by him can not maintain an action to quiet title against the purchaser, although the sale was void, without first paying or tendering to the latter the amount paid by him.—Shannon *v.* Hay, 106 Ind. 589.

10. Rate of Interest. A School Fund mortgage draws the same interest after as before maturity.—Stockwell *v.* State, 101 Ind. 1. By act of 1893 the rate is 6 per cent.

11. When Auditor Must Bid. It is the duty of the Auditor to offer the mortgaged premises in the manner provided by the statute; and if, after offering it for sale in that manner, no one bids the amount due, he must bid the property in for the use of the fund secured by the mortgage.—Haynes *v.* Cox, 118 Ind. 184.

12. Subrogation. The purchaser of land sold by an Auditor under a School Fund mortgage, the sale having been set aside as invalid, may be subrogated to the rights of the State in the mortgage; and the fact that there was a mistaken description, if the mistake can be corrected, does not affect the right of subrogation on the part of the purchaser.—Willson *v.* Brown, 82 Ind. 471.

13. Conveyance—Description Made Good by Reference. A defective description in a deed or mortgage is made good by a reference to another deed which contains a true description.—Willson *v.* Brown, 82 Ind. 471.

14. Merger of Mortgage. When the mortgage has been foreclosed, the mortgage is merged in the foreclosure, and the Auditor can not sell under it.—Ferris *v.* Cravens, 65 Ind. 262.

322. Auditor's bid. 97. In case of no bid for the amount due, the Auditor shall bid in the same on account of the fund, and, as soon thereafter as may be, shall sell the same—having first caused it to be appraised by three disinterested freeholders of the neighborhood—upon the following terms, viz.: One-third cash in hand, and the balance in four equal installments, due in one, two, three and four years, respectively, from the day of sale, bearing interest at six per cent. per annum, payable annually in advance; but no such sale shall be for a less sum than the appraised value thereof. (R. S. 1881, § 4393; R. S. 1894, § 5822; R. S. 1897, § 6084.)

1. Statute Mandatory. The Auditor has no power to sell for cash, nor on a credit of less than five years, nor without first having the land appraised, nor for a less sum than the appraised value.—Ferris *v.* Cravens, 65 Ind. 262.

2. Duty of Auditor. It is the duty of the Auditor to offer the mortgaged premises in the manner prescribed by the statute; and, if, after offering it for sale in that manner, no one bids the amount due, he must bid the property in for the use of the fund secured by the mortgage.—Haynes *v.* Cox, 118 Ind. 184.

3. Reimbursing County. Where the mortgagor fails to pay the interest for a number of years, and during those years the county pays it out of its general fund, and afterwards the mortgage is foreclosed, and the land is bid in by the Auditor on account of the school fund, and subsequently the land is sold and conveyed to a third party, the school fund is only entitled to the principal of said loan and the interest thereon, until after the county treasury is reimbursed because of the interest it has paid to said fund on account of said loan.—Board *v.* State, 122 Ind. 333.

4. Surplus. This section is construed with section 4394. Whenever the land is sold, the county takes out the amount of principal of the mortgage for which it was bought in, the amount of interest, damages and costs, and the surplus goes to the original mortgagor or his grantee.—Board *v.* State, 122 Ind. 333.

5. Section 271. Section 271 has no reference to a sale under this section.—Board *v.* State, 122 Ind. 333.

[1865, p. 3. Approved and in force March 6, 1865.]

323. Sale of lands bid in. 98. Lands heretofore bought in on account of the fund, which have been appraised, shall be sold in like manner; and if, upon sale of any such land, a sum is realized which is more than sufficient to pay the principal, interest, damages and costs, the overplus shall be paid to the original mortgagor, his heirs or assigns, when collected. (R. S. 1881, § 4394; R. S. 1894, § 5823; R. S. 1897, § 6085.)

1. Suit on Note. A suit can not be brought on the note by the County Auditor, where he has bid in the property mortgaged to secure such note, until

he has made the subsequent sale required by this section, and failed to realize enough to satisfy the amount due.—Clark *v.* State, 109 Ind. 388.

2. Taxes. The lien of taxes which accrued on lands mortgaged to the school fund subsequent to the mortgage is merged in the fee, where the land is bid in by the county, and taxes can not accrue on the land subsequently, until a purchase certificate is issued on a sale thereof.—See Hamilton *v.* State, 1 Ind. 128; Groom *v.* State, 24 Ind. 255; City of Logansport *v.* McConnell, 121 Ind. 416.

[1883, p. 79. Approved and in force March 3, 1883.]

324. Re-appraisement of forfeited lands. 1. All lands which have become forfeited and have reverted, or may hereafter be forfeited and revert to the various townships in the several counties of this State, for failure to pay the interest or principal of the amount due thereon to the school fund, and which have remained, or hereafter remain, unsold for the period of three years, by reason of the amount due thereon being in excess of the values of said lands, may be re-appraised and sold for a sum not less than said re-appraised value thereof; such re-appraisement and sale to be made in the same manner and upon the same terms and conditions as is now prescribed by law for the appraisement and sale of such lands. (R. S. 1894, § 5776; R. S. 1897, § 6038.)

325. Appropriation by Commissioners. 2. Upon the sale of such lands, as provided for in the preceding section of this act, the Board of County Commissioners of the several counties in which said lands are situated may make an appropriation, from the general county funds, a sum equal to the difference between the amount for which said lands shall have been forfeited and the amount for which such lands shall have last sold; said sum appropriated to be placed to the credit of the proper fund, and loaned as other school funds are loaned. (R. S. 1894, § 5777; R. S. 1897, § 6039.)

[1865, p. 3. Approved and in force March 6, 1865.]

326. Deed by Auditor. 99. Upon full payment being made for such lands, the deed therefor shall be executed by the County Auditor, and shall be entered in the record of the Board of County Commissioners before delivery. (R. S. 1881, § 4395; R. S. 1894, § 5824; R. S. 1897, § 6087.)

1. Record of Deed. A recording of the deed in the Commissioners' record is a condition precedent to its delivery, and a necessary step in the sale.—Arnold *v.* Gaff, 58 Ind. 543.

2. THE DEED AS EVIDENCE. It is the deed alone that vests the title in the purchaser, and if the deed does not state that the proper steps have been taken to perfect a sale, it is no evidence that those steps have been taken. Williamson *v.* Doe, 7. Blackf. 12.

3. TENDER OF DEED. A suit for the purchase money can not be made without tender of a deed for the property, recorded as required above, not absolute but conditional upon payment therefor.—Johnson *v.* State, 74 Ind. 588.

4. PAYMENT. The amount bid is paid to the Treasurer, and not to the Auditor.—Cole *v.* Miller, 60 Ind. 463.

5. TAXES. The title of the purchaser vests in the purchaser freed from all assessment and taxes made or levied between the date of the mortgage and the date of the deed.—Hamilton *v.* State, 1 Ind. 128; Groom *v.* State, 24 Ind. 255.

6. SUBROGATION. If the sale prove invalid, and is set aside, the purchaser may be subrogated to the rights of the State in the mortgage.—Willson *v.* Brown, 82 Ind. 471.

327. Statement of sales. 100. At the public sale at the court house door provided for in this act, the County Treasurer shall also attend, and make a statement of such sales, which shall be signed by the Auditor and Treasurer, and after being recorded in the Auditor's office shall be filed in the Treasurer's office; and such record, or a copy thereof, authenticated by the Auditor's or Treasurer's certificate, shall be received as evidence of the matters contained therein. (R. S. 1881, §4396; R. S. 1894, §5825; R. S. 1897, §6088.)

1. STATEMENT SIGNED. This statement must be signed by both Auditor and Treasurer, or the sale will be void.—Arnold *v.* Gaff, 58 Ind. 543; Benefiel *v.* Aughe, 93 Ind. 401.

328. Title in State without deed. 101. When any land is laid [bid] off by the Auditor at such sale, no deed need be made therefor to the State; but the statement of such sale, and the record thereof, shall vest the title in the State, for the use of the proper fund. (R. S. 1881, §4397; R. S. 1894, §5826; R. S. 1897, §6089.)

329. Annual report. 103. County Auditors and County Treasurers shall annually report, in writing, to the Boards of County Commissioners of the respective counties, at the June sessions of said Boards relative to the school fund held in trust by said counties, distinguishing in said reports, between the congressional township and common school funds; indicating the amounts thereof; the additions to them within the current year then ending; the sources from whence such additions are

derived; the condition of them as to their safety, giving the amount thereof safely invested, unsafely invested and uninvested, and loss, at the date of said reports; giving also the amount of interest collected upon said funds within the year then ending, and the amount then due and unpaid. (R. S. 1881, §4398; R. S. 1894, §5827; R. S. 1897, §6090.)

1. Evidence. A provision in a statute that this report shall be conclusive evidence of the facts stated in it, is void.—Board v. State, 120 Ind. 282.

330. Duty of Boards. 104. The Boards of County Commissioners shall, annually, at their June sessions, in the presence of the Auditors and Treasurers, examine said reports, the accounts, and proceedings of said officers in relation to said funds, and the revenue derived from them. They shall compare with said reports, the cash, the notes, mortgages, records, and books of said officers, with a view to ascertain the amount of said funds and their safety; and to do whatever may be necessary to secure their preservation and the prompt payment of the annual interest thereon as the same becomes due; and make up to said funds losses which have accrued, or may accrue. (R. S. 1881, §4399; R. S. 1894, §5828; R. S. 1897, §6091.)

1. Suit. An action may be brought in the name of the State on relation of the Board of County Commissioners to recover Congressional School Funds.—Groves v. State, 9 Ind. 200; Butler Rogers v. Gibson, 15 Ind. 218.

331. Board's report. 105. Each Board of County Commissioners, at said session, shall make out a report, in writing, of the result of such examination, showing—

First. The amounts of said funds at the close of last year.

Second. The amount added from the sale of land within the year.

Third. The number of acres of unsold congressional township school lands, and the approximate value thereof.

Fourth. The amount added from fines and forfeitures.

Fifth. The amount added by the Commissioners of the Sinking Fund.

Sixth. The amount added from all other sources.

Seventh. The total amount of the funds.

Eighth. The amount refunded within the year.

Ninth. The amount reloaned within the year.

Tenth. The amount safely invested.
Eleventh. The amount unsafely invested.
Twelfth. The amount uninvested.
Thirteenth. The amount of fund lost since 1842.
Fourteenth. The amount of interest collected within the year.
Fifteenth. The amount of interest delinquent.

And in such report, said Board shall distinguish between the Congressional Township Fund and the Common School Fund; and in its account of the interest or revenue derived from said funds, it shall observe the same distinction. (R. S. 1881, § 4400; R. S. 1894, § 5829; R. S. 1897, § 6092.)

332. Disposition of report. 106. Such report shall be entered on the records of said Board; and copies thereof, signed by the members of the Board, the Auditor, and Treasurer, shall be transmitted to the Auditor of State and the Superintendent of Public Instruction. (R. S. 1881, § 4401; R. S. 1894, § 5830; R. S. 1897, § 6093.)

333. Apportionment of loans. 152. Where the whole of the school funds of a county have been loaned the Auditor shall apportion to each congressional township a sufficient number of mortgages to cover the principal of its Congressional Township Fund; and where a part of the school funds only are loaned the Auditor shall so apply a proportional amount; and the cash on hand, when loaned, shall be for the benefit of the congressional townships, respectively, to the amount of the entire principal of its Congressional Township Fund; and in all loans made after the taking effect of this act the note and mortgage shall specify the particular fund borrowed. (R. S. 1881, § 4402; R. S. 1894, § 5831; R. S. 1897, § 6094.)

[1879 S., p. 102. Approved and in force March 29, 1879.]

334. Miscellaneous School Fund account. 1. It shall be the duty of the Auditor in each county to open an account with the Congressional Township School Fund, to be styled the "Miscellaneous School Fund Account." He shall transfer to said account, from each township account, all sums on hand at any time when a loan is solicited (provided the aggregate sums will equal the amount sought to be borrowed), and may lend

such combined sums in one loan; which loan shall be numbered in consecutive order, and the securities shall each and all be indorsed with the number as "Miscellaneous Loan No. —," as the number may be; and he shall enter in the Miscellaneous Account, on the debit side, separately, the sums taken from the account of the several townships, so as to show the corresponding number of the loan, and credit the several township accounts with the same sum and the like number of loan. Thence on, as interest accrues and is paid in on such loan, he shall debit the several township accounts with the *pro rata* portion of such interest accruing to each; and when such loan is paid he shall distribute back to the township accounts the several sums originally transferred from each, and debit the Miscellaneous Account accordingly, and balance and close said account as to said loan. In all the entries throughout he shall keep each entry identified by the proper number belonging to that loan, and so of each combined miscellaneous loan, as contemplated in this act. (R. S. 1881, § 4403; R. S. 1894, § 5832; R. S. 1897, § 6095.)

335. Distribution and report. 2. In all cases where distribution is made of the school funds under the law now in force it shall include all money on hand, or which, according to law, should be on hand, not exceeding the interest on loans for one year, which shall be distributed in full, and no portion shall be omitted or retained; and the report made by the Auditor shall show fully the amount actually on hand, as required and contemplated by law, and show the distribution of the same in full. (R. S. 1881, § 4404; R. S. 1897, § 5833; R. S. 1897, § 6096.)

336. Penalty Against Auditor. 3. If any Auditor fail or refuse to distribute and report such fund in full, as required by this act, he shall be liable to an action on his official bond. The Superintendent of Public Instruction shall direct that action be brought upon the official bond of such defaulting Auditor, and the Prosecuting Attorney of the proper county shall bring such action. On finding against such Auditor, judgment shall be entered for the sum so omitted by him to be distributed, with damages of twenty per centum thereon, which shall be for the use and benefit of the fund so omitted to be distributed. (R. S. 1881, § 4405; R. S. 1894, § 5834; R. S. 1897, § 6097.)

CHAPTER XIX.

STATE NORMAL SCHOOL.

SEC.
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[1865 S., p. 140. Approved and in force December 20, 1865.]

337. Established. 1. There shall be established and maintained, as hereinafter provided, a State Normal School, the object of which shall be the preparation of teachers for teaching in the common schools of Indiana. (R. S. 1881, § 4542; R. S. 1894, § 6034; R. S. 1897, § 6316.

338. Trustees—Corporate name. 2. In order to the establishment and maintenance of such a school, the Governor shall appoint, subject to the approval of the Senate, four competent persons, who shall, in themselves and in their successors, constitute a perpetual body corporate, with power to sue and be sued, and to hold in trust all funds and property which may be provided for said Normal School, and who shall be known and designated as the "Board of Trustees of the Indiana State Normal School." The Superintendent of Public Instruction shall be, *ex officio*, a member of this Board. (R. S. 1881, § 4543; R. S. 1894, § 6035; R. S. 1897, § 6317.)

339. Term of office—Vacancies. 3. Two members of this Board shall retire, as may be determined, by lot or otherwise, in two years after their appointment, and the remaining two in four years; whereupon the Governor, subject to the approval of the Senate, shall appoint, as aforesaid, their successors for a period of four years. All vacancies occurring in said Board from death, or resignation, shall be filled by appointments made

by the Governor. (R. S. 1881, §4544; R. S. 1894, §6036; R. S. 1897, §6318.)

340. Organization—Officers. 4. Said Board of Trustees shall meet on the second Tuesday in January, 1866, at the office of the Superintendent of Public Instruction, and shall organize, by electing one of its number president, and one secretary, each for a term of two years; and, at this or at a subsequent meeting, it shall elect some suitable person, outside of its number, as treasurer, who shall, before entering on duty, give bond in such sum as it may prescribe. (R. S. 1881, §4545; R. S. 1894, §6037; R. S. 1897, §6319.)

341. Donations. 5. Said Board shall, at its first meeting, open books to receive, from different parts of the State, proposals for donations of grounds and buildings, or funds for the procuring of grounds and erecting of buildings, for said Normal School. Also, it may, if deemed needful, at this or a subsequent meeting, appoint one of its number, or other competent person, to visit the different parts of the State and explain the nature and object of said Normal School, and to receive proposals of donations of buildings and grounds, or of funds for the same. (R. S. 1881, §4546; R. S. 1894, §6038; R. S. 1897, §6320.)

342. Location. 6. Said Board shall locate said school at such place as shall obligate itself for the largest donation: *Provided, first*, That said donation shall not be less in cash value than fifty thousand dollars; *second*, that such place shall possess reasonable facilities for the success of said school. (R. S. 1881, §4547; R. S. 1894, §6039; R. S. 1897, §6321.)

1. Appropriation for Buildings. An act of 1867 (p. 177) appropriated fifty thousand dollars out of the common school library fund and State treasury, in aid of the erection of the buildings, with a condition precedent that no part thereof should be paid until the city of Terre Haute has vested in the Board of Trustees of the Normal School the title to the land donated by her as a site for the school, by a good and sufficient deed in fee-simple, and had also bound herself, by an agreement filed with the Auditor of State, to *forever* maintain one-half of the necessary repairs incident to keeping the buildings and grounds in proper order.

343. Contract for building. 7. Said board shall, immediately after the selection of place of location, proceed to let a contract, or contracts, for the erection of a building, to the

lowest responsible bidder: *Provided*, That no member of the board be a contractor for building, or for furnishing any material therefor. (R. S. 1881, § 4548; R. S. 1894, § 6040; R. S. 1897, § 6322.)

344. Model school. 8. Said board shall organize, in connection with the Normal School, in the same building with the Normal School, or in a separate building, as it shall decide, a Model School, wherein such pupils of the Normal School as shall be of sufficient advancement shall be trained in the practice of organizing, teaching and managing schools. (R. S. 1881, § 4549; R. S. 1894, § 6041; R. S. 1897, § 6523.)

345. Duty of Trustees. 9. Said Board shall prescribe the course of study for the Normal School; shall elect the instructors and fix their salaries; and shall determine the conditions, subject to limitations hereinafter specified, on which pupils shall be admitted to the privileges of the school. (R. S. 1881, § 4550; R. S. 1894, § 6042; R. S. 1897, § 6324.)

346. Conditions of admission. 10. The following conditions shall be requisite to admission to the privileges of instruction in the Normal School:

First. Sixteen years of age, if females, and eighteen, if males.

Second. Good health.

Third. Satisfactory evidence of undoubted moral character.

Fourth. A written pledge on the part of the applicant, filed with the principal, that said applicant will, so far as may be practicable, teach in the common schools of Indiana a period equal to twice the time spent as a pupil in the Normal School; together with such other conditions as the Board may, from time to time, impose. (R. S. 1881, § 4551; R. S. 1894, § 6043; R. S. 1897, § 6325.)

1. Students Must Submit to Rules. A student is required to submit to any proper rule necessary for the good government of the institution.—State *v.* White, 82 Ind. 278.

2. Qualifications for Admission. The faculty can not make membership of a Greek-letter fraternity, or other college secret society, a disqualification for admission.—State *v.* White, 82 Ind. 278.

3. Race or Color. Students can not be excluded on account of race or color.—Cory *v.* Carter, 48 Ind. 327.

347. Tuition free. 11. Tuition in the Normal School shall be free to all residents of Indiana who fulfill the four conditions set forth in the preceding section and such other conditions as the Board may require. (R. S. 1881, § 4552; R. S. 1894, § 6044; R. S. 1897, § 6326.)

348. Principle of management. 12. A high standard of Christian morality shall be observed in the management of the school, and, as far as practicable, inculcated in the minds of the pupils; yet no religious sectarian tenets shall be taught. (R. S. 1881, § 4553; R. S. 1894, § 6045; R. S. 1897, § 6327.)

349. Report. 13. Said Board of Trustees shall, biennially, make a report to the Legislature, setting forth the financial and scholastic condition of the school; also make such suggestions as, in their judgment, will tend to the improvement of the same; and in the years in which there is no session of the Legislature, it shall make a report of the scholastic condition of the school to the Governor, on or before the first Monday in January. (R. S. 1881, § 4554; R. S. 1894, § 6046; R. S. 1897, § 6328.)

[1873, p. 199. Approved and in force March 5, 1873.]

350. Board of visitors. 14. The State Board of Education shall appoint, annually, in the month of June, or at its first meeting thereafter, a committee of three, who shall constitute a Board of Visitors, and shall, in a body or by one of its number, visit said school once during each term, and witness the exercises and otherwise inspect the condition of the school: and, by the close of the Normal school year, they shall make a report to the Board of Trustees. The members of said Board of Visitors shall be allowed five dollars for each day's service rendered, and also traveling expenses, to be paid out of the State treasury. (R. S. 1881, § 4555; R. S. 1894, § 6047; R. S. 1897, § 6329.)

[1873, p. 199. Approved and in force March 5, 1873.]

351. Certificates—Diplomas. 2. The Board of Trustees is authorized to grant, from time to time, certificates of proficiency to such teachers as shall have completed any of the pre-

scribed cources of study, and whose moral character and disciplinary relations to the school shall be satisfactory. At the expiration of two years after graduation, satisfactory evidence of professional ability to instruct and manage a school having been received, they shall be entitled to diplomas appropriate to such professional degrees as the Trustees shall confer upon them; which diplomas shall be considered sufficient evidence of qualification to teach in any of the schools of this State. (R. S. 1881, § 4557; R. S. 1894, § 6049; R. S. 1897, § 6331.)

[1865, p. 140. Approved and in force December 20, 1865.]

352. Pay of Trustees. 16. The members of the Board of Trustees shall each be allowed five dollars for each day's service rendered, also traveling expenses, to be paid out of the State treasury. (R. S. 1881, § 4559; R. S. 1894, § 6051; R. S. 1897, § 6333.)

353. Pay of treasurer and agent. 17. Said board shall pay its treasurer, and its agent, if such be appointed, as provided for in this act, such sums for their services as shall be reasonable and just. (R. S. 1881, § 4560; R. S. 1894, § 6052; R. S. 1897, § 6334.)

CHAPTER XX.

INDIANA UNIVERSITY.

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[1 R. S., 1852, p. 504. Approved June 17, 1852, and in force May 6, 1853.]

354. Recognized. 1. The institution established by an act entitled "An act to establish a college in the State of Indiana," approved January 28, 1828, is hereby recognized as the University of the State. (R. S. 1881, § 4561; R. S. 1894, § 6053; R. S. 1897, § 6335.)

The State University is not a public corporation, but a private, or at least a *quasi*-public one, and its endowment fund is not embraced by the phrase, "public funds," as used in the interest law of 1879.—State *v.* Carr, 111 Ind. 335.

[1883, p. 82. Approved and in force March 3, 1883.]

355. Tax for endowment fund. 1. There shall be assessed and collected, as State revenues are assessed and collected, in

the year of eighteen hundred and eighty-three, and in each of the next succeeding twelve years, the sum of one-half of one cent on each one hundred dollars' worth of taxable property in this State; which money, when collected and paid into the State Treasury in each of the years named in this act, shall be placed to the credit of a fund to be known as the permanent endowment fund of the Indiana University. (R. S. 1894, § 6161; R. S. 1897, § 6449.)

356. Application of fund. 2. Whenever, after the first day of May, eighteen hundred and eighty-four, there shall have been paid into the State Treasury a sum of said permanent endowment fund sufficient to pay off any of the interest-bearing indebtedness of the State, it shall be the duty of the Treasurer of State to pay off and cancel such indebtedness, and it shall be the duty of said Treasurer of State to continue to pay off and cancel said interest-bearing indebtedness which may be due, or which, by the terms of the contract creating such indebtedness, may be paid off, whenever there is a sufficient sum of said permanent endowment fund in the State Treasury to pay off the same out of said permanent endowment fund. (R. S. 1894, § 6162; R. S. 1897, § 6450.)

357. Bond of State. 3. It shall be the duty of the Treasurer of State, immediately after paying off any of the interest-bearing indebtedness of the State, as provided for in section 2 of this act, to make and issue to the trustees of said university and to their successors in office a non-negotiable bond of the State in an amount equal to the sum drawn from said permanent endowment fund and used in such payment. Said non-negotiable bond shall be signed by the Governor and Treasurer of State and attested by the Secretary of State and the seal of the State, and be made payable in fifty years after date, at the option of the State, and said bond shall bear five per cent. interest from date until paid, which interest shall be paid semi-annually on the first days of May and November of each year, and the same shall be applied to the current and extraordinary expenses of said university and be paid to the trustees thereof, under the same rules and regulations as is now required by law in the payment of the revenues of said university. The non-

negotiable bonds provided for in this act, when executed, shall remain in the custody of the Treasurer of State. (R. S. 1894, § 6163; R. S. 1897, 6451.)

358. Loans by State Auditor. 4. That so much of said permanent endowment fund as shall not at any time be absorbed by the non-negotiable bonds of the State, as contemplated in this act, shall be loaned by the Auditor of State at six per centum interest, payable annually in advance, in real estate security; and in making loans and disbursing interest collected the Treasurer of State and the Auditor of State shall be governed by the law now in force regulating the manner of making loans of the university funds and paying out interest collected, except as otherwise provided in this act. (R. S. 1894, § 6164; R. S. 1897, § 6452.)

359. Mortgages taken by State Auditor. 5. It shall be the duty of the Auditor of State to make a complete record of every mortgage and note executed on account of any loan from said permanent endowment fund in a book to be kept in his office for that purpose; and on payment of any loan to said fund said Auditor shall enter a record of satisfaction in full on the margin of the record of the mortgage in his office and sign the same with his name; and he shall also, in like manner, enter satisfaction in full on the face of the mortgage; which mortgage, when presented by the mortgagor, or any person holding title under him, to the Recorder of the county wherein the land mortgaged is situated, shall authorize the Recorder of said county to copy such entry on the record in his office. (R. S. 1894, § 6165; R. S. 1897, § 6453.)

360. State may borrow fund. 6. If at any time hereafter the State shall need the loan of any part, or of all, of said permanent endowment fund, the State shall be a preferred borrower of so much of said fund as shall not be loaned at the time. But it shall be the duty of the Treasurer of State to cause to be executed, as an evidence of any such loan, a non-negotiable bond of the State for the amount so borrowed, in like manner as is provided in section 3 of this act: *Provided*, If at any time hereafter the said Indiana University shall be

consolidated with any other educational institution or institutions of the State, or shall be removed from its present location for any cause whatever, the fund raised under the provisions of this act shall be held and used for the benefit of such institution, as consolidated or changed, notwithstanding such change or consolidation whenever so removed or consolidated: *Provided, further*, That, after said date, no further appropriation shall be made to said university. (R. S. 1894, § 6166; R. S. 1897, § 6454.)

[1855, p. 201. Approved and in force March 3, 1855.]

361. Trustees—Corporate name—Officers—Powers. 2. The Board of Trustees of the State University shall be eight in number, of whom not more than one shall reside in the same county, excepting the county of Monroe, from which two may be selected. They, and their successors, shall be a body politic, with the style of "The Trustees of Indiana University;" in that name to sue and be sued; to elect one of their number president; to elect a treasurer, secretary, and such other officers as they may deem necessary; to prescribe the duties and fix the compensation of such officers; to possess all the real and personal property of such university for its benefit; to take and hold, in their corporate name, any real or personal property for the benefit of such institution; to expend the income of the university for its benefit; to declare vacant the seat of any trustee who shall absent himself for two successive meetings of the Board, or be guilty of any gross immorality, or breach of the by-laws of the institution; to elect a president, such professors and other officers, for such university, as shall be necessary, and prescribe their duties and salaries; to prescribe the course of study and discipline, and price of tuition in such university; and to make all by-laws necessary to carry into effect the powers hereby conferred. (R. S. 1881, § 4562; R. S. 1894, § 6054; R. S. 1897, § 6336.)

362. The first Trustees. 2. The following persons, and their successors, shall constitute said Board: Joseph S. Jencks, of Vigo County; Joel B. McFarland, of Tippecanoe County; George Evans, of Henry County; William M. French, of Clark County; Ransom W. Aiken, of Monroe County; Johnson

McCollough, of Monroe County; James R. M. Bryant, of Warren County; John I. Morrison, of Washington County; three of whom shall serve for two years, two for three years, and three for four years. (R. S. 1881, §4563; R. S. 1894, §6055; R. S. 1897, §6337.)

363. The first meeting. 3. The first meeting of said Board shall be held at the town of Bloomington on Monday, the second day of April, 1855, when they shall determine, by lot, their several terms of service. (R. S. 1881, §4564; R. S. 1894, §6056; R. S. 1897, §6338.)

364. Vacancies. 4. Vacancies in said Board, whether occasioned by death, resignation, removal from the State, expiration of terms of service, or otherwise, shall be filled by the State Board of Education. (R. S. 1881, §4565; R. S. 1894, §6057; R. S. 1897, §6339.)

365. Pay of Trustees. 5. The Trustees of said University shall receive, when employed in the actual service of the University, the same pay as members of the General Assembly. (R. S. 1881, §4566; R. S. 1894, §6065; R. S. 1897, §6347.)

[1891, p. 65. Approved and in force March 3, 1891.]

366. Trustees of Indiana University. 1. The Trustees of Indiana University shall hereafter be elected for such terms of service, and in such manner, as is herein provided, and the terms of service of the Trustees now in office, and of those hereafter elected, shall expire on the first day of July of the year in which such terms are to end. (R. S. 1894, §6058; R. S. 1897, §6340.)

367. Trustees' terms expiring 1891, successors. 2. Successors to three Trustees whose terms of service expire in the year eighteen hundred and ninety-one (1891) shall be elected by the Alumni of the University at the College Commencement of the year 1891; one of the Trustees so selected shall serve for one year, one for two years, and one for three years. At the first meeting of the Board of Trustees after July 1, 1891, the several terms of service of such three Trustees shall be determined by lot. At the annual commencement of the year in which their terms expire, successors to such three Trustees shall

be elected by the Alumni of the University, each to serve for three years. When vacancies in the Board of Trustees arise, from the death, resignation, removal from the State, expiration of term of service, or otherwise, of any of the three Trustees to be elected in 1891, or any of their successors, such vacancies shall be filled by the Alumni. (R. S. 1894, § 6059; R. S. 1897, § 6341.)

368. Trustees' terms expiring 1893, successors. 3. Successors to the two trustees, whose terms of service expire in 1893, shall be elected by the State Board of Education, and one of such two successors shall be elected for a term of two years, and the other for a term of three years. Successors to the three trustees, whose terms expire in 1894, shall be elected by the State Board of Education, one for a term of two years, and the other two trustees for terms of three years. Successors to the five trustees herein provided to be elected by the State Board of Education shall be elected by said State Board of Education, each trustee so elected to serve for three years: *Provided*, That trustees elected by the Alumni, or the State Board of Education, to fill vacancies caused otherwise than by expiration of terms of service, shall be elected for such unexpired terms only. When vacancies in the Board of Trustees arise from the death, resignation, removal from the State, expiration of term of service, or otherwise, of any of the five trustees, or their successors, herein provided to be elected by the State Board of Education, such vacancies shall be filled by said State Board of Education. (R. S. 1894, § 6060; R. S. 1897, § 6342.)

369. Registry of Alumni. 4. A registry of the name and address of each alumnus of Indiana University residing in the State of Indiana shall be kept by the Librarian of said University, who shall correct such addresses when notified by the Alumni so to do. The Alumni of the University shall be those persons who have been awarded and on whom have been conferred any of the following degrees: Bachelor of Arts (A. B.), Bachelor of Letters (B. L.), Bachelor of Science (B. S.), Bachelor of Philosophy (B. Ph.), Bachelor of Laws (L. L. B.), Master of Arts (A. M.), Master of Science (M. S.), Doctor of Philosophy (Ph. D.) R. S. 1894, § 6061; R. S. 1897, § 6343.)

370. Nomination of Trustees. 5. Any ten or more Alumni may file with the Librarian of the University on or before the first day of April in each year a written nomination for the trustee or trustees to be elected by the Alumni at the next college commencement. Forthwith after such first day of April a list of all such candidates shall be mailed by said Librarian to each alumnus at his address. (R. S. 1894, § 6162; R. S. 1897, § 6344.)

371. Annual meeting of Alumni. 6. The annual meeting of the Alumni for the election of trustees shall be held at the university on the Tuesday before the annual commencement day of said university, at the hour of nine o'clock A. M., at which meeting a trustee shall be elected to serve for three years from the first day of July of such year, and any trustee or trustees which the Alumni may be entitled to elect to complete any unexpired term or terms. (R. S. 1894, § 6163; R. S. 1897, § 6345.)

372. Method of voting by alumni. 7. Each Alumnus resident in the State of Indiana may send to said Librarian, over his signature, at any time before the meeting of the Alumni for the election of such trustee or trustees, the vote for such trustee or trustees which he would be entitled to cast if personally present at such meeting, which vote such Librarian shall deliver to such meeting to be opened and counted at said election, together with the votes of those who are personally present; but no person shall have more than one vote. The person or persons having the highest number of votes upon the first ballot shall be declared the trustee or trustees according as there may be one or more than one trustee to be elected: *Provided*, The votes received by said person, or by each of said persons, or at least fifty per cent. of all the votes cast. Otherwise the Alumni personally present at such meeting shall, from the two having the highest pluralities, elect a trustee, unless their pluralities shall aggregate less than fifty per cent. of the votes cast, in which case there shall be included in the number of those to be voted for, so many of those coming after such two highest in order of pluralities as will bring the aggregate of such pluralities of those to be voted for to fifty per cent. of the votes cast. (R. S. 1894, § 6064; R. S. 1897, § 6346.)

[1 R S. 1852, p. 504. Approved June 17, 1852, and in force May 6, 1853.]

373. Annual meeting. 3. Said Trustees shall annually meet at the town of Bloomington at least three days preceding the annual commencement of the University. (R. S. 1881, § 4567; R. S. 1894, § 6065; R. S. 1897, § 6348.)

374. Quorum—Temporary appointments. 4. Five of such trustees shall constitute a quorum; and, in case an emergency is declared by the faculty, after there shall have been a called session at which the other members failed to attend, the trustees residing in the county of Monroe may fill vacancies in the faculty of the University and the Board of Trustees; and, in case there should not be three trustees in attendance upon such emergency, then those that are in attendance, together with such members of the faculty as may be in attendance, shall fill such vacancies; but appointments thus made shall expire at the next meeting of the board. (R. S. 1881, § 4568; R. S. 1894, § 6067; R. S. 1897, § 6349.)

375. Seminary township. 5. The trustees of said university shall receive the proceeds of the sales and rents of the three reserved sections in the seminary township in Monroe County, and the same shall be paid to the treasurer of said trustees, on their order. (R. S. 1881, § 4569; R. S. 1894, § 6068; R. S. 1897, § 6350.)

376. Interest on loans. 6. The interest arising from loans of the State University fund, as received at the State treasury, shall be paid on the warrants of the Auditor of State; such warrants to be granted on allowances made to the persons entitled thereto by the Board of Trustees, and duly certified by their secretary. (R. S. 1881, § 4570; R. S. 1894, § 6069; R. S. 1897, § 6751.)

377. Faculty—Powers. 7. The president, professors and instructors shall be styled "The Faculty" of said university and shall have power—

First. To enforce the regulations adopted by the trustees for the government of the students; to which end they may reward and censure, and may suspend those who continue refractory, until a determination of the Board of Trustees can be had thereon.

Second. To confer, with the consent of the trustees, such literary degrees as are usually conferred in other universities, and, in testimony thereof, to give suitable diplomas, under the seal of the university and signature of the faculty. (R. S. 1881, § 4571; R. S. 1894, § 6070; R. S. 1897, § 6350.)

378. No religious qualification. 8. No religious qualification shall be required for any student, trustee, president, professor or other officer of such university, or as a condition for admission to any privilege of the same. (R. S. 1881, § 4572; R. S. 1894, § 6071; R. S. 1897, § 6353.)

1. Students Must Submit to Rules. A student is required to submit to any proper rule necessary for the good government of the institution.—State *v.* White, 82 Ind. 278.

2. Qualifications for Admission. The faculty can not make membership of a Greek-letter fraternity or other college secret society a disqualification for admission.—State *v.* White, 82 Ind. 278.

3. Race or Color. Students can not be expelled on account of race or color. —Cory *v.* Carter, 48 Ind. 327.

379. No sectarian tenets. 9. No sectarian tenets shall be inculcated by any professor at such university. (R. S. 1881, § 4573; R. S. 1894, § 6072; R. S. 1897, § 6354.)

380. County students. 10. The trustees shall provide for the tuition, free of charge, of two students from each county in this State, to be selected by the Board of County Commissioners. (R. S. 1881, § 4574; R. S. 1894, § 6073; R. S. 1897, § 6355.)

1. Each county may send two students, free of tuition fees, to be instructed in the Law Department, as well as any other department.—McDonald *v.* Hagins, 7 Blackf. 525.

381. Notice to counties. 11. The secretary of the board shall notify the County Auditor of each county of the State whenever there shall not be in attendance at the university the number of students which such county is entitled to send free of tuition; of which such Auditor shall notify the Board of Commissioners of such county at its next meeting. (R. S. 1881, § 4575; R. S. 1894, § 6074; R. S. 1897, § 6356.)

382. Treasurer's bond. 12. The treasurer of the university shall give bond in a penalty, and with surety to be approved by such board, payable to the State, conditioned for the faithful

discharge of his duties; which bond shall be filed with the Auditor of State. (R. S. 1881, § 4576; R. S. 1894, § 6075; R. S. 1897, § 6357.)

383. Board of Visitors. 13. The Governor, Lieutenant-Governor, Speaker of the House of Representatives, Judges of the Supreme Court, and Superintendent of Common Schools [State Superintendent of Public Instruction], shall constitute a Board of Visitors of the university, and any three thereof a quorum. (R. S. 1881, § 4577; R. S. 1894, § 6076; R. S. 1897, § 6358.)

384. Visitors not attending, to be reported. 14. In case the members of such Board of Visitors fail to attend the annual commencement exercises of the university, the president of the Board of Trustees shall report such of them as are absent to the next General Assembly, in its annual report. (R. S. 1881, § 4578; R. S. 1894, § 6077; R. S. 1897, § 6359.)

385. Duties of Visitors. 15. Such Board of Visitors shall examine the property, the course of study and discipline, and the state of the finances of the university, and recommend such amendments as it may deem proper, the books and the accounts of the institution being open to its inspection; and it shall make report of its examination to the Governor, to be by him laid before the next General Assembly. (R. S. 1881, § 4579; R. S. 1894, § 6078; R. S. 1897, § 6360.)

386. Duties of Secretary. 16. The secretary of the Board of Trustees shall keep a true record of all the proceedings of said Board, and certify copies thereof. He shall also keep an account of the students in the university according to their classes, stating their respective ages and places of residence, and a list of all graduates. (R. S. 1881, § 4580; R. S. 1894, § 6079; R. S. 1897, § 6361.)

387. Duties of Treasurer. 17. The treasurer of said university shall—

First. Keep true accounts of all money received into the treasury of said university, and of the expenditures thereof.

Second. Pay out the same on the order of the Board of Trustees, certified by its secretary.

Third. Collect the tuition fees due the same.

Fourth. Make semi-annual settlements with the Board of Trustees.

Fifth. Submit a full statement of the finances of the university, and his receipts and payments, at each meeting of the Board of Trustees.

Sixth. Submit his books and papers to the inspection of the Trustees and Visitors. (R. S. 1881, § 4581; R. S. 1894, § 6080; R. S. 1897, § 6362.)

388. Report to State Superintendent. 18. The Board of Trustees, its secretary and treasurer, shall report to the Superintendent of Common Schools [State Superintendent of Public Instruction], all matters relating to the university, when by him required. (R. S. 1881, § 4582; R. S. 1894, § 6081; R. S. 1897, § 6363.)

389. Lectures by faculty. 19. One member of the faculty, to be designated by a majority thereof, of which the secretary of the board shall be informed, shall, by himself or competent substitute, deliver a public lecture on the principles and organization of the university, its educational facilities (being careful not to disparage the claims of other institutions of learning in the State), in at least fifteen different counties of the State, of which he shall give due notice; and in a vacation of less duration than one month a member of the faculty, to be designated as aforesaid, shall deliver such lecture in at least three different counties; a brief statement of which lectures shall, by the persons delivering them, be reported to the Board of Trustees, annually, to be by them incorporated in the annual report to the General Assembly; but no two such lectures shall be delivered in the same county until all the counties of the State have been lectured in. (R. S. 1881, § 4583; R. S. 1894, § 6082; R. S. 1897, § 6364.)

390. Geological examinations and specimens. 20. Such lecturers shall make such geological examinations and collect such mineralogical specimens as they may be able to make and procure; a report whereof they shall make to the Board of Trustees, to be by it incorporated in its annual report to the General Assembly; and such specimens, together with those

they may procure by voluntary donations, they shall deposit in a suitable room in the university buildings, to be fitted up for that purpose. (R. S. 1881, § 4584; R. S. 1894, § 6083; R. S. 1897, § 6365.)

391. Printing annual report. 21. The Governor of the State shall order the printing, annually, of five thousand copies of the annual report of the Board of Trustees, twenty-five hundred of which shall be for the use of the members of the General Assembly and twenty-five hundred for the faculty. (R. S. 1881, § 4585; R. S. 1894, § 6984; R. S. 1897, § 6366.)

1. How Printed. This report and the catalogues are printed by the State Commissioners of Public Printing. Acts 1885, p. 217, section 9.

392. Contents of report. 22. Such report shall contain what is now included in the annual catalogue, with such other matters as may be deemed useful to the cause of education, connected with the university. (R. S. 1881, § 4586; R. S. 1894, § 6085; R. S. 1897, § 6367.)

393. Notice of sessions. 23. The Board of Trustees, through its president, shall give at least one month's notice of the commencement of each session of the university in at least one newspaper in the cities of Indianapolis, Louisville, in the State of Kentucky, and in New Orleans, in the State of Louisiana. (R. S. 1881, § 4587; R. S. 1894, § 6086; R. S. 1897, § 6368.)

394. Buildings and repairs. 24. The Board of Trustees shall, annually, appoint a committee of its body to examine the university buildings and grounds adjacent, who shall report the kind and cost of repairs, if any are needed; and one of the members of the faculty shall be appointed to take care of such buildings and grounds. (R. S. 1881, § 4588; R. S. 1894, § 6087; R. S. 1897, § 6369.)

395. Normal Department. 25. Such Trustees shall establish a normal department for instruction in the theory and practice of teaching, free of charge to such young persons, male and female, residents of the State, as may desire to qualify themselves as teachers of common schools, within the State, under such regulations as such Board of Trustees may make in regard to admitting to, kind, and time of delivery of lectures

in such department, and the granting of diplomas therein; and such regulations shall be incorporated in the annual report of the Trustees to the General Assembly. (R. S. 1881, § 4589; R. S. 1894, § 6088; R. S. 1897, § 6370.)

396. Agricultural department. 26. Such Trustees shall also establish an agricultural department in such university, under proper regulations, which shall likewise be set forth in their annual report. (R. S. 1881, § 4590; R. S. 1894, § 6089; R. S. 1897, § 6371.)

[1857, p. 130. Approved March 7, 1857, and in force August 24, 1857.]

397. Scholarships transferable. 1. All scholarships in the State University, issued for or founded upon subscription moneys paid by individuals toward the construction of the university buildings, or any of them, or the right to use said scholarships for any session or sessions of the college year in said institution, may be transferred or sold by the holders thereof for a valuable consideration. (R. S. 1881, § 4591; R. S. 1894, § 6090; R. S. 1897, § 6372.)

[1861 S., p. 89. Approved and in force May 31, 1861.]

398. Perpetual scholarships. 1. The contingent fee on perpetual scholarships, issued by the Trustees of the State University, shall not be more than one dollar per session: *Provided*, That the Trustees are hereby authorized to purchase said scholarships whenever, in their opinion, it is for the best interests of the university, at not more than ninety cents on the dollar, by giving notice in some newspaper published in the town of Bloomington, that they are ready to purchase said scholarships; and, after the date of such notice, no person shall be entitled to any benefits under the provisions of said scholarships, except to sell the same, as is provided in this act. (R. S. 1881, § 4592; R. S. 1894, § 6091; R. S. 1897, § 6373.)

[1861 S., p. 88. Approved May 11, 1861, and in force September 7, 1861.]

399. Library. 2. The State Librarian is directed to transfer from the State Library to the Library of the Indiana University a complete set of journals of both Houses of the Legislature, a copy of all laws enacted since the organization of the

State, and of all reports from the several departments of State, and of those received from other States, and from the general government, together with all other books and documents of which there are duplicates now in the State Library, or shall be hereafter received: *Provided*, That such books and documents can be spared without injury to the State Library, and that such transfer be made without expense to the State. (R. S. 1881, § 4593; R. S. 1894, § 6092; R. S. 1897, § 6374.

400. State Geologist. 3. The State Geologist, while he holds his office, shall be regarded as a member of the faculty of the university; and he is hereby directed, in his reconnoisances, to collect duplicate specimens of mineralogy and geology, and to deposit one set of the same in the cabinet of the State University. (R. S. 1881, § 4594; R. S. 1894, § 6093; R. S. 1894, § 6375.

[1 R. S. 1852, p. 504, Approved June 17, 1852, and in force May 6, 1853.]

401. Fund, how derived—Loans. 28. The University fund shall consist of the lands in Monroe and Gibson Counties, and the proceeds of sales thereof, and all donations for the use of such university, where the same is expressly mentioned in the grant, or where in such grant the term "University" only is used; the principal of which fund, when paid into the State Treasury, shall be loaned, and the annual interest thereon applied to the current expenses of the university, upon warrants drawn on the Treasurer of State by the Auditor of State, on the requisition of the Board of Trustees, signed by the President and attested by the Secretary thereof. (R. S. 1881, § 4595; R. S. 1894, § 6094; R. S. 1897, § 6376.

402. Auditor of State to loan—Duty. 29. It shall be the duty of the Auditor of State to loan out such fund upon real estate security. He shall duly inform himself of the value of all real estate offered in pledge, and shall be judge of the validity of the title thereof; and any person applying for a loan shall produce to said auditor the title papers to such real estate, showing title in fee simple, without incumbrance, and not derived through any executor's or administrator's sale, or sale on

execution. (R. S. 1881, § 4596; R. S. 1894, § 6095; R. S. 1897, § 6385.)

1. REPEALED. From section 402 to section 424, inclusive, has been repealed by the Act of 1897, section 466. The repealed sections are inserted as matter of information.

403. Form of mortgage. 30. The mortgage to be taken may be in the following form, in substance: (R. S. 1881, § 4597; R. S. 1894, § 6096; R. S. 1897, § 6386.)

I, A. B., of the county of ———, in the State of Indiana, do assign and transfer to the State of Indiana all [here describe the land], *which I declare to be mortgaged for the payment of ——— dollars, with interest at the rate of seven per cent. per annum, payable in advance, according to the conditions of the note hereunto annexed.*

404. Form of note. 31. The note accompanying the same may be, in substance, as follows: (R. S. 1881, § 4598; R. S. 1894, § 6097; R. S. 1897, § 6387.)

I, A. B., promise to pay to the State of Indiana, on or before the —— day of ———, the sum of ———, with interest thereon at the rate of seven per cent. per annum, in advance, commencing on the ——— day of ———, 18—, and do agree that, in case of ailure to pay any installment of said interest, the said principal shall become due and collectible, together with all arrears of interest; and on any such failure to pay principal or interest when due, five per centum damages on the whole sum due shall be collected with costs, and the premises mortgaged may be forthwith sold by the Auditor of Public Accounts [Auditor of State], *for the payment of such principal sum, interest, damages and costs.*

405. Loans—Security. 32. No greater sum than five hundred dollars shall be loaned to any one person out of such fund, nor shall the loan be for a longer period than five years; and the sum loaned shall not exceed one-half of the appraised value of the premises to be mortgaged, clear of all perishable improvements. The Auditor may reduce the amount to be loaned on any such valuation, when, for any cause, he may have reason to believe the same was not in proportion to the prices of similar property selling in the vicinity, such valuation to be made from the valuation of the same property in the assessment of the State revenue. (R. S. 1881, § 4599; R. S. 1894, § 6098; R. S. 1897, § 6788.)

406. Interest. 33. The rate of interest required shall be seven per cent. in advance, payable annually. On failure to pay any installment of interest when due, the principal shall forth-

with become due; and the note and mortgage may be collected. (R. S. 1881, § 4600; R. S. 1894, § 6099; R. S. 1897, § 6389.)

1. This section was not repealed by the general interest law of 1879, fixing the rate at 8 per cent.—State *v.* Carr, 111 Ind. 335.

407. Priority of mortgage. 34. Such mortgages shall be considered as of record from the date thereof; and shall have priority of all mortgages or conveyances not previously recorded, and of all other liens not previously incurred, in the county where the land lies. (R. S. 1881, § 4601; R. S. 1894, § 6100; R. S. 1897, § 6390.)

408. Recording of mortgage. 35. It shall be the duty of the Auditor to have such mortgages recorded with due diligence, the expense whereof shall be borne by the mortgagor, and may be retained out of the money borrowed. (R. S. 1881, § 4602; R. S. 1894, § 6101; R. S. 1897, § 6391.)

409. Certificate as to liens. 36. The person applying for a loan shall file with the Auditor the certificate of the Clerk and Recorder of the county in which the land lies, showing that there is no conveyance of or incumbrance on said land, in either of their offices. (R. S. 1881, § 4603; R. S. 1894, § 6102; R. S. 1897, § 6392.)

410. Abstract of title. 37. Such person shall also, before he receives the money to be loaned, make oath to the truth of an abstract of the title to his said land, and that there is no incumbrance, or better claim, as he believes, upon said land. (R. S. 1881, § 4604; R. S. 1894, § 6103; R. S. 1897, § 6393.)

411. Auditor's duty. 38. On making any loan of such fund, the Auditor shall draw his warrant on the Treasurer in favor of the borrower; and the Treasurer shall pay the same and charge it to the proper fund. (R. S. 1881, § 4605; R. S. 1894, § 6104; R. S. 1897, § 6394.)

412. Payment. 39. All loans refunded and all interest shall be paid into the State Treasury; and the Treasurer's receipt shall be filed with the Auditor of State, who shall give the payer a quietus for the amount thereof and make the proper entries upon his books. (R. S. 1881, § 4606; R. S. 1894, § 6105; R. S. 1897, § 6395.)

413. Satisfaction. 40. Whenever the amount due on any mortgage shall be fully paid and the Treasurer's receipt filed therefor, the Auditor shall indorse on the note and mortgage that the same has been fully satisfied, and surrender them to the person entitled thereto; and on the production of the same, with such indorsement thereon, the Recorder of the proper county shall enter satisfaction upon the record thereof. (R. S. 1881, § 4607; R. S. 1894, § 6106; R. S. 1897, § 6396.)

414. Loans, how collected. 41. When the interest or principal of any such loan shall become due and remain unpaid the Auditor shall proceed to collect the same by a suit on the note, or by the sale of the mortgaged premises, or both, as to him may seem most advisable. He may, also, by proper action, obtain possession of the mortgaged premises. (R. S. 1881, § 4608; R. S. 1894, § 6107; R. S. 1897, § 6397.)

415. Judgment. 42. In case of suit on such note, and judgment thereon, no stay of execution or appraisement of property shall be allowed. (R. S. 1881, § 4609; R. S. 1894, § 6108; R. S. 1897, § 6398.)

416. Notice of sale. 43. On failure to pay any interest or principal, when due on any such mortgage, the Auditor shall advertise the mortgaged property for sale in one or more of the newspapers printed in this State, for sixty days—such sale to take place at the courthouse door in Indianapolis. (R. S. 1881, § 4610; R. S. 1894, § 6109; R. S. 1897, § 6399.)

1. A failure to give notice, or to not give it the required length of time, renders the sale void.—Brown *v.* Ogg, 85 Ind. 234. Abbreviations may be used in the description.—Bansemer *v.* Mace, 18 Ind. 27.

417. Sale. 44. At the time appointed for such sale the Auditor and Treasurer of State shall attend, and the Auditor shall make sale of so much of the mortgaged premises to the highest bidder, for cash, as will pay the amount due for principal, interest, damages and cost of advertising and selling the same; and such sales may be in parcels, so that the whole amount required be realized. (R. S. 1881, § 4611; R. S. 1894, § 6110; R. S. 1897, § 6400.)

1. A sale for more than is due is void. Brown *v.* Ogg, 85 Ind. 234. The Auditor may act by deputy.—Bansemer *v.* Mace, 18 Ind. 27.

2. It is not necessary to offer the mortgaged tract in parcels.—Bansemer *v.* Mace, 18 Ind. 27

418. When Auditor to buy—Re-sale. 45. In case no one will bid the full amount due as aforesaid, the Auditor shall bid in the same, on account of the proper fund; and as soon thereafter as may be, he shall sell the same to the highest bidder for cash, or on a credit of five years, interest being payable annually in advance. (R. S. 1881, § 4612; R. S. 1894, § 6111; R. S. 1897, § 6401.)

419. Limit of bid—Overplus. 46. The sale authorized in the preceding section shall not be for less than the amount chargeable on such land; but if for more, the overplus shall be paid to the mortgagor, his heirs or assigns. (R. S. 1881, § 4613; R. S. 1894, § 6112; R. S. 1897, § 6402.)

420. Statement of sale. 47. The Treasurer shall attend and make a statement of such sales, which shall be signed by the Auditor and Treasurer, and, after being duly recorded in the Auditor's office, shall be filed in the Treasurer's office; and such record, or a copy thereof, authenticated by the Auditor's or Treasurer's certificate, shall be received as evidence of the matters therein contained. (R. S. 1881, § 4614; R. S. 1894, § 6113; R. S. 1897, § 6403.)

421. Title in State, without deed. 48. When any land is bid in by the State at such sale, no deed need be made therefor to the State; but the statement of such sale, and the record thereof made, as in the preceding section required, shall vest the title in the State, for the use of the fund. (R. S. 1881, § 4615; R. S. 1894, § 6114; R. S. 1897, § 6404.)

422. Sale for cash—Certificate. 49. In case of a sale of any such land to any person for cash, on the production of the Treasurer's receipt for the purchase money, the Auditor shall give to the purchaser a certificate, which shall entitle him to a deed for said land, to be executed by the Governor of this State and recorded in the office of the Secretary of State. (R. S. 1881, § 4616; R. S. 1894, § 6115; R. S. 1897, § 6405.)

423. Sale on credit. 50. In like manner, when any tract bid in by the State or sold on a credit, on the execution and delivery of a note and mortgage for the proper amount, as in other cases required, the purchaser shall be entitled to a deed

for the same, to be made as prescribed in the preceding section; and the transaction shall be entered, and appear upon the Auditor's and Treasurer's books as a payment of the sum bid, and a re-loan of the same to the purchaser, and the proper receipts and warrants shall pass therefor. (R. S. 1881, § 4617; R. S. 1894, § 6116; R. S. 1897, § 6406.)

424. Fees and damages. 51. For the services of the Auditor and Treasurer in conducting such sales, they shall be entitled to receive five per cent. damages, chargeable on such sales. (R. S. 1881, § 4618; R. S. 1894, § 6117; R. S. 1897, § 6407.)

425. Accounts—Reports. 52. The Auditor and Treasurer shall keep fair and regular entries of the sums received and paid out on account of said fund, and shall include the same in their annual reports. (R. S. 1881, § 4619; R. S. 1894, § 6118; R. S. 1897, § 6408.)

426. Accounts with borrowers. 53. In addition thereto, the Auditor shall keep fair and regular accounts with the borrowers of said fund, and shall report the names of borrowers with his annual report. (R. S. 1881, § 4620; R. S. 1894, § 6119; R. S. 1897, § 6409.)

427. Interest, when loaned. 54. Should any interest remain on hand, not wanted for the use of the university, the same may be loaned as other funds. (R. S. 1881, § 4621; R. S. 1894, § 6120; R. S. 1897, § 6410.)

428. Unsold lands. 55. The care and disposition of the lands belonging to and for the use of said university, remaining unsold or unpaid for, shall be vested in the present commissioners of the reserved townships in the counties in which such lands may lie, who shall sell such as remain unsold, and such as are forfeited for non-payment, on such terms and under such regulations as the Board of Trustees of such university may provide; except that, in every instance, the interest on the purchase-money must be paid in advance. No purchaser, his heirs or assigns, shall have the right to cut down or destroy timber standing upon such land, other than for the erection of fences and buildings thereon, or for firewood to be used on the prem-

ises, and in fairly improving it for cultivation. (R. S. 1881, § 4622; R. S. 1894, § 6121; R. S. 1897, § 6411.)

429. Certificates of payment—Patent. 56. On the first payment for any such land being made, the proper commissioner shall execute to the purchaser a certificate therefor; and, on final payment, the original certificate shall be surrendered to the commissioner, and by him filed away, and he shall give to the purchaser two final certificates, stating the whole amount of principal and the whole amount of interest paid, one of which certificates shall be forwarded to the Auditor of State; and on presentation of the other to the Auditor of State, if in all things correct, he shall countersign the same, which shall entitle the owner to a patent, to be issued by the Governor for the land so paid for. (R. S. 1881, § 4623; R. S. 1894, § 6122; R. S. 1897, § 6412.)

430. Leases. 57. Such commissioners may, from time to time, lease any such unsold improved land, for a term not exceeding one year, until the same can be sold; and such leases shall be guarded against trespass and waste by proper covenants. (R. S. 1881, § 4624; R. S. 1894, § 6123; R. S. 1897, § 6413.)

431. Commissioners' report. 58. Such commissioners shall make an annual report to the Board of Trustees of the lands remaining unsold, such as are forfeited, such as are not fully paid for, the amount due, and money collected from sale, as interest or principal; which report shall be subscribed and sworn to by such commissioners, respectively, and be incorporated in the annual report of such board to the General Assembly. (R. S. 1881, § 4625; R. S. 1894, § 6124; R. S. 1897, § 6414.)

432. Commissioners' duty. 59. Money collected by such commissioners shall be paid over to the treasurer of the board, who shall execute to such commissioners two receipts therefor, each specifying the persons from whom such money was collected, and the amount thereof, whether for interest or principal; one of which receipts shall be immediately forwarded to the Auditor of State, to be by him used in his settlement with such treasurer. (R. S. 1881, § 4626; R. S. 1894, § 6125; R. S. 1897, § 6415.)

433. Pay of Commissioners. 60. Such board shall regulate the compensation of such commissioners. (R. S. 1881, § 4627; R. S. 1894, § 6126; R. S. 1897, § 6416.)

434. Patents, and recording. 61. Patents for land sold shall be made by the Governor, and recorded in the office of the Secretary of State. (R. S. 1881, § 4628; R. S. 1894, § 6127; R. S. 1897, § 6417.)

[1855, p. 201. Approved and in force March 3, 1855.]

435. Pay for managing fund. 7. The Auditor of State and the Treasurer of State, for the management of the University fund, shall be, jointly, entitled to receive five per centum upon the interest paid in on such fund; and it shall not be lawful for them, or either of them, to make any other charges against the same. (R. S. 1881, § 4629; R. S, 1894, § 6128; R. S. 1897, § 6418.)

436. Extension of payments. 8. The time for the final payments to be made by the holders of original certificates for the purchase of lands reserved and granted to the State University of Indiana, in the case of all such certificates as have heretofore been issued and are now outstanding, shall be extended for the further term of three years from the time when the same may, respectively, fall due. (R. S. 1881, § 4630; R. S. 1894, § 6129; R. S. 1897, § 6419.)

437. Forfeiture, how prevented. 9. Any and all holders of such certificates, as aforesaid, who have forfeited such lands by the non-payment of interest on the purchase-money, shall be exempted and released from such forfeiture by paying, to the commissioners of such lands, on or before the first day of August, in the year 1855, all interest due on the same, together with the interest upon the amount due at the time of such forfeiture up to the time of said payment; and upon such payment being made, in the manner, and within the time herein specified, the holder of such certificate shall have the same rights under it as if such forfeiture had never occurred. (R. S. 1881, § 4631; R. S. 1894, § 6130; R. S. 1897, § 6420.)

438. Forfeited lands. 10. If any portion of said lands now forfeited shall not have been redeemed on said first day of

August next, as provided in the preceding section, it shall be the duty of the commissioners of such reserved lands to sell the same for the best price they can obtain, not less than the original purchase price, allowing the purchaser a credit on the same as now provided by law. If any of such lands shall hereafter be forfeited, it shall be the duty of such commissioners, if the same be not redeemed within six months from the time of such forfeiture, to sell the same on the terms in this section above provided. For their services in effecting such sales, the commissioners shall be entitled to retain, out of the first money received from the purchasers, five per cent. upon the amount of the purchase price of such lands. (R. S. 1881, § 4632; R. S. 1894, § 6131; R. S. 1897, § 6421.)

[1859, p. 234. Approved and in force March 2, 1859.]

439. Appraisement of lands. 1. The Board of Trustees of the Indiana University shall cause to be appraised the land granted by the United States to the State of Indiana for the use of the said university. (R. S. 1881, § 4633; R. S. 1894, § 6132; R. S. 1897, § 6422.)

440. Where filed and recorded. 2. It shall be the duty of the said trustees, when the said appraisement shall have been made, to record the same upon their books, and to file a copy of the same in the office of the Auditor of State, to be, by said Auditor, recorded in his office; and, also, to file copies of such appraisements of the lands in the respective counties in the office of the auditor of the county where the lands are situate, to be by said County Auditor recorded. (R. S. 1881, § 4634; R. S. 1894, § 6133; R. S. 1897, § 6423.)

441. Duty of County Auditors. 3. The Auditor of each of the said counties shall, upon said appraisements being filed as aforesaid, and when required so to do by the said Board of Trustees, offer for sale so much of the said lands as may be within their respective counties at public auction, in the manner hereinafter mentioned. R. S. 1881, § 4635; R. S. 1894, § 6134; R. S. 1897, § 6424.)

442. Notice of sale. 4. Notice of the time, place, and conditions of such sale shall be given by publication, for four

weeks successively in a newspaper published in such county, if any there be; if not, in a newspaper in this State published nearest thereto, and also by posting up written or printed notices thereof in three of the most public places in the township in which the lands are situated, and a like notice at the court house door at the county seat. (R. S. 1881, § 4636; R. S. 1894, § 6135; R. S. 1897, § 6425.)

443. Sale. 5. The place of sale for said lands shall be at the court house in each county of this State in which the said lands may be situated; and it shall be the duty of the County Auditor to attend at the court house of his county at the time mentioned in the notice of the sale of said lands, and offer for sale at public auction, in legal subdivisions, and as near as practicable in half-quarter sections, all the lands lying within his county; and, for that purpose, he shall continue the sale from day to day, until all of the said lands shall have been offered for sale. (R. S. 1881, § 4637; R. S. 1894, § 6136; R. S. 1897, § 6426.)

444. Terms of sale. 6. The said lands shall be offered for sale at the time and place mentioned in such publication, and struck off to the highest bidder by said County Auditor and County Treasurer, for a price not less than the appraised value thereof—one-fourth of the purchase money to be paid in hand, and the remaining three-fourths at the expiration of ten years from the date of such sale, with interest annually in advance, at the rate of seven per cent. per annum, upon the residue or deferred payment. (R. S. 1881, § 4638; R. S. 1894, § 6137; R. S. 1897, § 6427.)

445. Private entry. 7. When any of said lands, offered at public sale as aforesaid, shall remain unsold, they shall be subject to private entry with the County Auditor and County Treasurer of each county, upon the same terms and conditions as lands sold at public auction, for a sum not less than the appraised value thereof, by any person applying to enter the same. (R. S. 1881, § 4639; R. S. 1894, § 6138; R. S. 1897, § 6428.)

446. Certificate of purchase. 8. When any sale shall be effected, either at public or private sale as aforesaid, the County Auditor shall give to the purchaser thereof a certificate, signed by him officially, bearing date on the day of sale, stating therein

the name of the purchaser, the tract or tracts of land purchased by him, the number of acres contained in said tract or tracts, the price per acre, and the whole sum for which the same was sold, the amount of principal paid, and the amount of interest paid in advance. (R. S. 1884, § 4640; R. S. 1894, § 6139; R. S. 1897, § 6429.)

447. Certificate to be registered. 9. Said certificate shall be registered by the County Auditor in a book provided for that purpose, by entering in said book a correct copy thereof. (R. S. 1881, § 4641; R. S. 1894, § 6140; R. S. 1897, § 6430.)

448. Certificate assignable. 10. Said certificates of entry shall be evidence of title to the land therein mentioned in the persons in whose names they shall issue, or their assigns, and shall be assignable, provided such assignments be acknowledged before the Auditor of the county wherein the land is situated (who is hereby authorized to take such acknowledgments), and recorded by said Auditor in a book to be kept by him for that purpose; for which service the said Auditor shall be entitled to receive a fee of fifty cents, to be paid by the assignor of such certificate. (R. S. 1881, § 4642; R. S. 1894, § 6141; R. S. 1897, § 6431.)

449. Forfeiture. 11. On failure of any purchaser to pay any installment of interest on said deferred payment of purchase money when the same becomes due, the contract shall become forfeited and the land shall immediately revert to the State for the use of said university, and the County Auditor shall forthwith proceed to sell the same in the manner and on the terms hereinbefore specified for said public sales. (R. S. 1881, § 4643; R. S. 1894, § 6142; R. S. 1897, § 6432.)

450. Surplus. 12. If, on such subsequent sale, such lands shall produce more than is sufficient to pay the sum owing therefor, with interest and costs and five per cent. damages upon the amount due on such lands, the surplus shall, when collected, be paid over to the purchaser so forfeiting or his legal representative. (R. S. 1881, § 4644; R. S. 1894, § 6143; R. S. 1897, § 6433.)

451. Forfeiture, how prevented. 13. At any time before such subsequent sale, payment of the sum due, with interest for

the delay, and all costs, together with two per cent. damages upon the amount due on such lands, shall prevent such sale and revive the original contract. (R. S. 1881, § 4645; R. S. 1894, § 6144; R. S. 1897, § 6434.)

452. Land, how redeemed. 14. The former owner of any lands sold as delinquent, his heirs, executors or administrators, may, at any time within one year after such resale, redeem the same by paying to the purchaser, his heirs or assigns, or to the County Treasurer, for him or them, the amount of purchase money paid by such purchaser, together with all subsequent payments, either of principal or interest, which such purchaser, or those claiming under him, may have made thereon, with interest at the rate of ten per cent. per annum. (R. S. 1881, § 4646; R. S. 1894, § 6145; R. S. 1897, § 6435.)

453. Security. 15. The Board of Trustees may require security from the purchaser at any of said sales, sufficient to prevent any waste being committed upon the lands by the removal of timber therefrom, or otherwise. (R. S. 1881, § 4647; R. S. 1894, § 6146; R. S. 1897, § 6436.)

454. Suit for waste. 16. In case of any forfeiture as aforesaid, the purchaser so forfeiting shall be liable and may be sued for unnecessary injury or waste done to such land, and damages to double the amount of such injury or waste recovered therefor—such suit to be begun and prosecuted by the Auditor of the county where the land lies, in the name of the State of Indiana, for the use of the said university. (R. S. 1881, § 4648; R. S. 1894, § 6147; R. S. 1897, § 6437.)

455. Patent, on full payment. 17. On full payment being made for any such land the County Auditor shall issue to the purchaser, or his assignee, a final certificate therefor; which, upon presentation to the Auditor of State, shall entitle the owner thereof to a patent for the land described therein, to be issued by the Governor and recorded in the office of the Secretary of State. (R. S. 1881, § 4649; R. S. 1894, § 6148; R. S. 1897, § 6438.)

1. By an act of 1889 the trustees were authorized to sell certain lands in Ringgold County, Iowa, owned by the university, and to execute a deed therefor.—Acts 1889, p. 255.

456. Auditor's report. 18. The County Auditor shall make, on the first Monday of each month, a report of his sales of said lands to the secretary of the Board of Trustees and to the Auditor of State, showing the date of sale, the description of the lands sold from time to time, the number of acres, the price per acre, the total amount each tract sold for, the amount of principal paid and the amount of interest paid, and of all forfeitures, re-sales and redemptions thereof. (R. S. 1881, § 4650; R. S. 1894, § 6149; R. S. 1897, § 6439.)

457. Treasurer's report. 19. The County Treasurer shall make a report, on the first Monday of each month, to the treasurer of the Board of Trustees of the university and to the Treasurer of State, of all moneys received by him, whether principal or interest, on account of such lands; and the said Board of Trustees shall require the books of their secretary and treasurer to be so kept as to exhibit the true condition of the accounts of all such purchases and sales of the said lands. (R. S. 1881, § 4651; R. S. 1894, § 6150; R. S. 1897, § 6440.)

458. To pay money to State Treasurer. 20. The County Treasurer shall, on the first Monday of each month, pay over to the Treasurer of State all sums received on account of the principal of the purchase money of said lands, and shall pay to the treasurer of the Board of Trustees of the university all sums received on account of the interest upon the purchase money of the said lands. (R. S. 1881, § 4652; R. S. 1894, § 6151; R. S. 1897, § 6441.)

459. Pay of Auditor and Treasurer. 21. The several County Auditors and Treasurers shall receive for their services the same compensation which may, from time to time, be allowed by law for similar services in relation to the sale of common school lands, which shall be in full for all their services required by this act. (R. S. 1881, § 4653; R. S. 1894, § 6152; R. S. 1897, § 6442.)

460. Loans. 22. The Auditor of State shall loan out the said principal of the moneys received from the several County Treasurers on account of said sales, in the same manner, and requiring the same security, as other portions of the university

fund is now or may hereafter be required by law to be loaned out, and shall pay over to the treasurer of the Board of Trustees the interest derived from said principal, as a part of the income of the university. The said Auditor of State shall, in his annual report to the Legislature, report the names of the borrowers of the whole of the university fund, the amount borrowed by each, and the total amount on loan at the date thereof, and the amount of the supended debt, if any, and in whose name forfeited. (R. S. 1881, § 4654; R. S. 1894, § 6153; R. S. 1897, § 6443.)

461. Disposition of proceeds. 23. Of the first proceeds of said sum, the said Board of Trustees shall be entitled to receive an amount equal to the amount of interest belonging to the university and loaned out as principal by the Auditor of State, as shown by the report of that officer to the General Assembly at the session of 1851–2; which shall be paid to the treasurer of the Board of Trustees of the university, and be applied, under the order of the Board of Trustees, to the discharge of the debts growing out of the rebuilding of the university, and to the purchase of a suitable library, philosophical apparatus therefor, or proper furniture, in place of those destroyed by the burning of the university. (R. S. 1881, § 4655; R. S. 1894, § 6154; R. S. 1897, § 6444.)

462. Report of sales. 24. The Board of Trustees shall, in their annual report, include a full statement of the amount of the sales of such lands, and the application of the funds received therefor, as reported to them, from time to time. (R. S. 1881, § 4656; R. S. 1894, § 6155; R. S. 1897, § 6445.)

463. One Trustee to attend sales. 25. One member of the Board of Trustees, to be designated by the board, shall attend to the public sales of the said lands, to prevent combinations injurious to the interests of the university; and he shall have power to withdraw the said lands, or any portion thereof, from sale, when, in his judgment, the interests of the university would be thereby promoted, and shall have the power and right to designate and determine in what subdivisions any of the said lands may be sold, at the time of said public sale, for the best

interests of the said university. (R. S. 1881, § 4657; R. S. 1894, § 6156; R. S. 1897, § 6446.)

464. No member to deal in the lands. 26. No member of the Board of Trustees of the university shall, either directly or indirectly, become the purchaser of any such lands at any sale made by the County Auditor, or by private entry with the Auditor, after any forfeiture of purchase; and any sale made to any member of the said board, contrary to the provisions of this section, shall be absolutely void, and the purchase-money, and interest which may have been paid thereon, shall be forfeited to the university fund. (R. S. 1881, § 4658; R. S. 1894, § 6157; R. S. 1897, § 6447.)

465. Trustees to get information. 27. The commissioners of the university lands in Gibson and Monroe counties, and the several County Auditors and Treasurers of the counties in which any of the university lands are situated shall furnish such information in relation to the lands and other property of the university, as may, from time to time, be required of them by the said Board of Trustees, and shall report, annually, the amount of unpaid purchase-money due on the lands sold for the use of the said university, in each of their counties. (R. S. 1881, § 4659; R. S. 1894, § 6158; R. S. 1897, § 6448.)

[1897, p. 117. Approved March 2, 1897. In force April 14, 1897.]

466. State Treasurer collects loan. 1. The Treasurer of State shall proceed at once to collect all outstanding loans belonging to the permanent endowment fund of the State University, located at Bloomington, which may be due, and shall collect all other loans belonging to said fund, as fast as they become due, which money, together with all other moneys that come into the hands of said Treasurer, belonging to said fund, shall be immediately apportioned by the Auditor of State *pro rata* among the several counties in this State, according to population, as ascertained by the enumeration taken and made in the year 1895, for legislative apportionment, and that the Treasurer of State, immediately thereafter, pay the same to the several County Treasurers, according to said apportionment made by the said Auditor of State, and take their receipts

therefor; and semi-annually, on the first day of May and November of each year, the said Auditor of State shall apportion the amount collected during the preceding six months, and the Treasurer of State shall pay the same to the respective County Treasurers as above provided.

467. County Auditors loan. 2. The said moneys so distributed and paid to said counties, as provided by section one (1) of this act, shall be loaned by the Auditors of the respective counties in the same manner and on the same terms and conditions and under the same restrictions, subject to the same limitations, and said loans shall be again collected from the borrower, as the Common School funds are now loaned and collected. And the said several counties shall be liable in the same manner and to the same extent, for the principal and interest of said fund, and for the payment of the same, as they are now liable for the payment of the interest and principal of the Common School funds.

468. Auditor of State can not loan. 3. The Auditor of State is hereby prohibited from making any further loans from said fund, and all money in his hands belonging thereto shall be by the Auditor of State apportioned, and by the Treasurer of State paid to the several counties, where apportionment is made as provided in section one (1) of this act.

469. Counties pay interest. 4. The several counties of this State shall pay the interest on said fund to the Treasurer of State at the same time and in the same manner as interest is now paid on the School Fund, and said Treasurer of State shall at once pay the same to the Trustees of the Indiana University, and take proper receipts therefor.

1. DONATION. An act of 1897 permits donations by any county, city, town or township to any State university situated within it, not exceeding $25,000 for the county or city, and $10,000 for the township or town. Bonds of the county, township, city or town may be issued for that purpose, and a tax levied to pay them.—Acts 1897, p. 42.

2. SALE OF OLD UNIVERSITY SITE. By an act of 1897 the Trustees of Indiana University were empowered to sell certain land in the city of Bloomington, or plat and sell it, once the site of the University buildings, known as "Seminary Square."—Acts 1897, p. 88.

CHAPTER XXI.

PURDUE UNIVERSITY.

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[1865, p. 106. Approved and in force March 6, 1865.]

470. Agricultural college scrip. 1. The State of Indiana accepts and claims the benefits of the provisions of the acts of Congress, approved July 2, 1862, and April 14, 1864, and assents to all the conditions and provisions in said acts contained. R. S. 1881, § 4662; R. S. 1894, § 6167; R. S. 1897, § 6455.)

1. CONGRESSIONAL LEGISLATION. The acts of Congress referred to in this section will be found in the acts of 1865 (p. 106), set out at length in the preamble.

471. The first Trustees, and original name. 2. The Governor of this State, for the time being, and Alfred Pollard of Gibson, Smith Vawter of Jennings, Henry Taylor of Tippecanoe, and Lewis Burk of Wayne, and their successors, are created a body corporate, under the name of "The Trustees of the Indiana Agricultural College." (R. S. 1881, § 4663; R. S. 1894, § 6168; R. S. 1897, § 6456.)

472. Sale and investment of scrip. 5. Said trustees shall, by the hand of their treasurer, claim and receive from the Secretary of the Interior the land scrip to which this State is entitled by the provisions of said acts of Congress; and, under their direction, said treasurer shall sell the same, in such manner and at such times as shall be most advantageous

to the State, and shall invest the proceeds thereof, and any interest that may accrue thereon, in the stocks of the United States, or of this State, yielding not less than five per centum per annum, upon the par value of the stocks; and said principal and interest shall continue to be so invested, until further provision shall be made by the General Assembly of this State for fulfilling the requirements of said acts of Congress. (R. S. 1881, § 4664; R. S. 1894, § 6169; R. S. 1897, § 6457.)

[1869 S., p. 24. Approved and in force May 6, 1869.]

473. Donations accepted. 1. The donation offered by John Purdue, as set forth and communicated to the present General Assembly in the message of the Governor, on the sixteenth day of April, 1869, and the donations offered by the county of Tippecanoe, the trustees of the Battle-Ground Institute, and the trustees of the Battle-Ground Institute of the Methodist Episcopal Church, as set forth and communicated to the General Assembly, at its last session, in the message of the Governor, of the twenty-seventh day of January, 1869, are hereby accepted by the State of Indiana. (R. S. 1881, § 4665; R. S. 1894, § 6170; R. S. 1897, § 6458.)

1. The appropriation made by Tippecanoe County in 1869 was rendered valid by this section. Marks *v.* Trustees, etc., 37 Ind. 155.

474. Location. 2. The college contemplated and provided by the act of Congress, approved July 2, 1862, entitled "An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts," is hereby located in Tippecanoe County, at such point as may be determined before the first day of January, 1870, by a majority vote of the trustees of the Indiana Agricultural College; and the faith of the State is hereby pledged that the location so made shall be permanent. (R. S. 1881, § 4666; R. S. 1894, § 6171; R. S. 1897, § 6459.)

475. Purdue University—Permanent name. 3. In consideration of said donation by John Purdue, amounting to one hundred and fifty thousand dollars, and of the further donation of one hundred acres of land appurtenant to the institution,

and on condition that the same be made effectual, the said institution, from and after the date of its location as aforesaid, shall have the name and style of "Purdue University;" and the faith of the State is hereby pledged that said name and style shall be the permanent designation of said institution, without addition thereto or modification thereof. (R. S. 1881, § 4667; R. S. 1894, § 6172; R. S. 1897, § 6460.)

476. Corporate name—Powers and duties of Trustees. 4. From and after the date of the location made as aforesaid, the corporate name of the Trustees of the Indiana Agricultural College shall be "The Trustees of Purdue University"; and they shall take in charge, have, hold, possess, and manage, all and singular, the property and moneys comprehended in said donations, as also the fund derived from the sale of the land scrip donated under said acts of Congress, and the increase thereof, and all moneys or other property which may hereafter at any time be donated to and for the use of said institution. They shall also have power to organize said University in conformity with the purposes set forth in said acts of Congress, holding their meetings at such times and places as they may agree on, a majority of their number constituting a quorum. They shall provide a seal; have power to elect all professors and teachers, removable at their pleasure; fix and regulate compensations; do all acts necessary and expedient to put and keep said university in operation; and make all by-laws, rules, and regulations required or proper to conduct and manage the same. (R. S. 1881, § 4668; R. S. 1894, § 6173; R. S. 1897, § 6461.)

1. Students Must Submit to Rules. A student is required to submit to any proper rule necessary for the good government of the institution.—State *v.* White, 82 Ind. 278.

2. Qualifications for Admission. The faculty can not make membership of a Greek-letter fraternity or other college secret society a disqualification for admission.—State *v.* White, 82 Ind. 278.

3. Race or Color. Students can not be expelled on account of race or color.—Corey *v.* Carter, 48 Ind. 327.

[1893, p. 36. Approved and in force February 17, 1893.]

477. Dedication of street. 1. The Trustees of Purdue University are hereby empowered to dedicate for a public street, adjoining the town of West Lafayette, Indiana, a strip of land

thirty feet in width, and described as follows: beginning at the southeast corner of the lands owned by said university, and running thence north along the east side of said university lands to the State road, a distance of about thirteen hundred and fifty feet. R. S. 1894, § 6183; R. S. 1897, § 6472.)

478. Power to dedicate. 2. That the Trustees of Purdue University are hereby empowered to dedicate for public streets such strips of lands extending through or along the grounds owned by said university as they may deem for the best interest of said university. (R. S. 1894, § 6184; R. S. 1897, § 6473.)

[1869, S., p. 24. Approved and in force May 6, 1869.]

479. Privileges of John Purdue. 5. In further consideration of his said donation, John Purdue shall, from and after the taking effect of this act, be added as a member of said trustees of the Indiana Agricultural College, and he shall also be a member of said trustees of Purdue University. Should he, at any time, cease to be such member, he shall be continued as an advisory member of said trustees; and he shall, during his lifetime, have visitorial power, for the purpose of inspecting the property, real and personal, of said university, recommending to the trustees such measures as he may deem necessary for the good of the university, and investigating the financial concerns of the corporation. And he is authorized to make report of his examination, inspection, and inquiries, to the General Assembly, at any session thereof. (R. S. 1881, § 4669; R. S. 1894, § 6174; R. S. 1897, § 6462.)

480. Amendment or repeal. 6. This act shall be subject to future amendment or repeal, except so far as it provides for the acceptance of donations, the location of the college, the name and style thereof, and the rights and privileges conferred upon John Purdue. (R. S. 1881, § 4670; R. S. 1894, § 6175; R. S. 1897, § 6463.)

[1875, p. 120. Approved March 9, 1875, and in force August 24, 1875.]

481. Appointment of Trustees. 1. Upon the taking effect of this act, it shall be the duty of the Governor of this State to appoint six trustees for the Purdue University, two of whom

shall be nominated by the State Board of Agriculture, one by the State Board of Horticulture, and three selected by the Governor himself—each of said trustees to be appointed from a different congressional district from the others, except that two may be appointed from the same congressional district in which said university is situate. (R. S. 1881, § 4671; R. S. 1894, § 6176; R. S. 1897, § 6464.)

482. Term of office. 2. The persons so appointed shall constitute the Board of Trustees of said university, and shall hold their offices as follows: Two members of the first board shall hold their offices for one year and until their successors are appointed; two for two years, and two for three years; and at the expiration of the term of office of any of the members of the first or any subsequent board, their successors shall be appointed in like manner, and with like nomination, as provided in this act, to hold their offices for the term of three years, and until their successors are appointed. (R. S. 1881, § 4672; R. S. 1894, § 6177; R. S. 1897, § 6465.)

483. Vacancies, how filled. 3. If, from any cause, a vacancy occur in said board, the same shall be filled, by appointment, to fill the unexpired term, the person appointed to fill such vacancy being nominated and appointed, or appointed, in the same manner as his predecessor had been at the commencement of such term. (R. S. 1881, § 4673; R. S. 1894, § 6178; R. S. 1897, § 6466.)

[1891, p. 34. Approved and in force February 26, 1891.]

484. Officers—Treasurers' bond and duties. 4. Said trustees shall, at their first meeting after their appointment, and every two years thereafter, choose a president of said board; and they shall, at such meeting, and every two years thereafter, and whenever a vacancy occurs, elect, by ballot, a secretary and treasurer, neither of whom shall be a member of the board whose compensation shall be fixed by the trustees. The said treasurer shall give such bond to the State of Indiana in any sum not less than fifty thousand dollars for the faithful execution of his trust, with sufficient sureties as said trustees may require; and he shall receive, take charge of, and, under the direction of said trustees, manage all [the] stocks and funds

belonging to said university. (R. S. 1881, § 4674; R. S. 1894; § 6179; R. S. 1897, 6467.)

[1877, S. p. 60. Approved and in force March 12, 1877.]

485. County students. 1. The Board of Commissioners of each county in this State may appoint, in such manner as it may choose, two students, or scholars, to Purdue University, who shall be entitled to enter, remain, and receive instruction in the same, upon the same conditions, qualifications and regulations prescribed for other applicants for admission to, or scholars in, said university: *Provided, however*, That every student admitted to said university by appointment, by virtue of this act, shall in nowise be chargeable for room, light, heat, water, tuition, janitor or matriculation fees; and said student shall be entitled, in the order of admittance, to any room in the university then vacant and designed for the habitation or occupancy of a student; and such student so admitted shall have prior right to any such room, subject to the rules of the university, over any student not appointed and admitted as aforesaid, (R. S. 1884, § 4675; R. S. 1894, § 6180; R. S. 1897, § 6468.)

486. Students. 2. No more than two students at the same time from any one county shall be entitled to admittance to said university, under the provisions of this act. But the Board of Commissioners of each county may, from time to time, appoint as aforesaid, to any vacancy in its appointments. (R. S. 1881, § 4676; R. S. 1894, § 6181; R. S. 1897, § 6469.)

[1881 S., p. 585. Approved and in force April 14, 1881.]

487. Investment of fund. 1. The trustees of Purdue University, by their treasurer, are hereby authorized, on or after the first day of April, 1881, to surrender to the Treasurer of State the bond executed to said university by the State of Indiana, bearing date April 1, 1878, and payable, in the sum of two hundred thousand dollars, on April 1, 1881; and a like bond executed by the State to said university, dated April 1, 1879, and payable, in the sum of one hundred and twenty-five thousand dollars, on April 1, 1884; and also to pay, out of the proceeds of the United States five per cent. bonds now held by said university (which said trustees are hereby empowered to

sell), the sum of fifteen thousand dollars to said Treasurer of State; who, thereupon, is hereby directed to issue and deliver to said treasurer of Purdue University a non-negotiable bond of the State of Indiana, to be signed by the Governor and State Treasurer, and attested by the Secretary of State and the State seal (the same to be dated April 1, 1881, and payable, twenty years after its date, to the trustees of Purdue University and their successors, with interest at the rate of five per cent. per annum, payable quarterly after date of the bond), all for the use of Purdue University—said bonds surrendered, and fifteen thousand dollars paid, constituting the endowment fund of said university derived from the gift of the United States. (R. S. 1881, § 4677; R. S. 1894, § 6182; R. S. 1897, § 6470.)

[1889, p. 351. Approved and in force March 9, 1889.]

488. Gift to establish Institute of Technology. 1. Whenever any individual or individuals shall give, donate or bequeath a sum of money or other valuable property for the purpose of establishing an Institute of Technology or other special schools in connection with Purdue University in and on the grounds of said university, the trustees of said university are hereby authorized and empowered to accept such donation, gift or bequest for and on behalf of the State of Indiana for such institute on such terms as may be agreed upon by and between such trustees and said donor or donors or devisior [devisor]; and the said trustees are hereby authorized to establish, maintain and operate such an institution in connection with Purdue University: *Provided*, That such Institute of Technology shall be freely open to students upon the same terms upon which Purdue University is open to students. *And, provided*, That nothing in this act shall enable or authorize said trustees to make any contract with said donor or donors by which any debts shall be created beyond or above current legislative appropriations to the university. *And, provided further*, That the terms upon which such donations are received and accepted shall not be effective unless the same are endorsed and approved by the Governor of the State of Indiana. (R. S. 1894, § 6185; R. S. 1897, § 6471.)

[1889, p. 273. Approved March 9, 1889, and in force May 10, 1889.]

489. Farmers' Institutes. 1. It is hereby made the duty of the Committee of Experimental Agriculture and Horticulture of the Board of Trustees, together with the faculty of the School of Agriculture of Purdue University, to appoint, before November 1st of each year, suitable persons to hold in the several counties of this State, between the 1st day of November and the 1st day of April of each year, county institutes for the purpose of giving to farmers and others interested therein instruction in agriculture, horticulture, agricultural chemistry and economic entomology. (R. S. 1894, § 2809; R. S. 1897, § 2859.)

490. Time and place of holding Institutes. 2. Such institutes shall be held at such times and places as said committee and faculty may determine, and under such rules, regulations and methods of instruction as they may prescribe: *Provided, however*, That such institutes shall be so conducted as to give those attending the results of the latest investigations in theoretical and practical agriculture and horticulture. (R. S. 1894, § 2810; R. S. 1897, § 2860.)

491. Appropriation. 3. For the purpose of carrying out the provisions of this act, paying the salaries of instructors and other necessary expenses, the sum of five thousand dollars is hereby appropriated, to be expended under the direction of the said committee of said Board of Trustees, and they shall annually report such expenditures and the purposes thereof to the Governor. (R. S. 1894, § 2811; R. S. 1897, § 2861.)

1. This appropriation is repealed after the July apportionment of 1896.

[1891, p. 483. Approved and in force March 7, 1891.]

492. Acceptance of United States grant. 1. Whereas, an act of Congress, approved August 30, 1891, entitled an act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of Congress, approved July 2, 1862, provides, among other things, that the grants of moneys, authorized by this act, are made subject to the legislative assent of the several States and Territories to the purpose of said grants: *Provided,*

That the payments of such installments of the appropriation herein made, as shall become due to any State before the adjournment of the regular session of the Legislature meeting next after the passage of this act, shall be made upon the assent of the Governor thereof, duly certified to the Secretary of the Treasury; therefore,

Be it resolved by the State of Indiana, That the legislative assent be, and the same is hereby, given to the purpose of said grant, and Purdue University is hereby designated as the agricultural college entitled to the said grant.

CHAPTER XXII.

TAX FOR INDIANA AND PURDUE UNIVERSITIES AND STATE NORMAL SCHOOL.

SEC.
493. Amount of tax—Division.
494. Repeal of General appropriation—Permanent fund not affected.

[1895, p. 171. Approved and in force March 8, 1895.]

493. Amount of Tax—Division. 1. There shall be assessed and levied upon the taxable property of the State of Indiana, in the year one thousand, eight hundred and ninety-five (1895), and in each year thereafter, for the use and benefit of the Indiana University, Purdue University, and the Indiana State Normal School, to be apportioned and distributed as hereinafter in this act provided, a tax of one-sixth ($\frac{1}{6}$) of one mill on every dollar of taxable property in Indiana, to be levied, assessed, collected and paid into the treasury of the State of Indiana in like manner as other State taxes are levied, assessed, collected and paid. And so much of the proceeds of said levy as may be in the State Treasury on the first day of July and the first day of January of each year, shall be immediately thereafter paid over to the Boards of Trustees of the respective institutions for which the tax was levied, to be distributed and apportioned among them severally upon the basis as follows, viz.: To the said Trustees of Indiana University upon the basis of one-fifteenth (1-15) of one mill; to the Trustees of

Purdue University upon the basis of one-twentieth (1-20) of one mill, and to the Trustees of the Indiana State Normal School upon the basis of one-twentieth (1-20) of one mill on every dollar of taxable property in Indiana, and the Auditor of State of the State of Indiana is hereby directed to draw a proper warrant therefor. (R. S. 1897, § 6474.)

494. Repeal of General Appropriation—Permanent fund not affected. 2. All moneys due said institutions respectively, in accordance with any State law heretofore enacted, or that may hereafter be enacted, making annual appropriations thereto for maintenance, shall be paid to the respective institutions for the fiscal year 1895–6 and not thereafter. It being the intent that the moneys appropriated by the first section of this act shall from and after the date of the first payment thereof be paid in lieu of the moneys described in this section: *Provided*, That nothing in this act shall affect in any way any permanent fund that may belong to or may have been appropriated for either the Indiana University or Purdue University, named in this act, and that the proceeds of this tax accruing to Indiana University shall be used for maintenance. *And provided further*, That no part of the school revenue for the State shall be deducted or set apart to the Normal School fund after the July apportionment for the year one thousand eight hundred and ninety-six (1896). (R. S. 1897, § 6475.)

1. The effect of the two preceding sections is to repeal section 4556 after the July apportionment of 1896; and to repeal, after the fiscal year 1895–6, the appropriation of two thousand dollars provided in section 4558.

2. These sections do not repeal sections 4661a and 4661f, providing for an endowment fund for the State University; but it does repeal, after the fiscal year 1895–6, sections 4660 and 4661, making annual appropriation for the University.

3. The appropriation of five thousand dollars provided for by section 4677d is repealed after the July apportionment of 1896.

CHAPTER XXIII.

STATE LIBRARY.

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[1895, p. 234. Approved March 11, 1895. In force June 28, 1895.]

495. Management. 1. The management and control of the State Library shall be vested in the State Board of Education, which shall constitute, for library purposes, the State Library Board. (R. S. 1897, § 8085.)

496. Election of Librarian. 2. The State Library Board shall before the first day of April in the year of 1897, elect a State Librarian, whose term of office shall begin April 1, 1897, and who shall serve until his successor is elected by the said State Library Board. (R. S. 1897, § 8086.)

497. Term of office. 3. The term of office of the State Librarian shall be two years, and he shall appoint his assistants by and with the advice and consent of the State Library Board. (R. S. 1897, § 8087.)

498. Bond of Librarian. 4. The Librarian shall, before entering on his duties, give bond and security, to the acceptance of the Secretary of State, in the penal sum of two thousand dollars; which bond shall be filed in the office of the Secretary of State. (R. S. 1897, § 8088.)

499. Library—When to be open. 5. The library shall be kept open every day (Sunday, Fourth of July and other legal holidays excepted) during the session of the Legislature from

nine o'clock until six, and, during the recess, from nine o'clock until four. (R. S. 1897, § 8089.)

500. Removal of books forbidden. 6. The State Librarian shall not permit any book, magazine, or work of any kind, to be taken from the library rooms, except temporarily, by the Judges of the Supreme Court of the State of Indiana, of the United States Court, officers of the State, members and officers of the General Assembly, when required in the discharge of their official duties. But in no case shall any such book, magazine or work, be taken outside of the Capitol building. (R. S. 1897, § 8090.)

501. Who may use library. 7. Said library shall be for the use of the members and officers of the Legislature, all State officers, judges of the courts of the United States and of this State, attorneys, editors, clergymen, physicians, professors, and teachers in literary or scientific institutions, Superintendent of Public Instruction, members of the State Board of Agriculture, officers of benevolent institutions, Clerk of the Supreme Court, County Clerks, Treasurers and Recorders, and all other persons who have been at any time entitled, by law, to the use of such library, and such strangers as the Librarian may be willing to intrust with books at his own risk, when any of them shall be at the seat of government. (R. S. 1897, § 8091.)

502. Use not transferable—Penalty 8. It shall not be lawful for any one having the use of the library to cause or permit another not having such use to draw books, except for the use of the persons first mentioned. Any person so offending shall be liable to a penalty of five dollars for each offense. (R. S. 1897, § 8092.)

503. Catalogue. 9. The Librarian shall keep proper books, in which he shall make entry of all books taken out, designating the names of the individuals taking the same; also, of books returned, and of all fines and penalties assessed and collected under the provisions of this act. He shall also keep a complete catalogue of the library, and shall, from time to time, add thereto all books purchased, and erase therefrom all books lost or destroyed. (R. S. 1897, § 8093)

504. Fines. 10. The Librarian shall collect all fines and forfeitures accruing to the State Library, by suit or otherwise, and pay the same to the Treasurer of State, taking his receipt, and filing the same in the office of the Auditor of State, who shall charge the same to account of Treasurer of State, for the use of library. (R. S. 1897, § 8094.)

505. Purchasing Board—Appropriation. 11. The State Library Board shall be, and is hereby, constituted the Purchasing Board of the State Library. The State Librarian shall act as secretary of said Board and preserve minutes of their meetings and their official actions. Any three members of said Board shall constitute a quorum for the transaction of business. It shall be the duty of said Purchasing Board to decide what books, maps, charts and other instruments of knowledge shall be purchased for said library; to supervise and direct the expenditure of all appropriations for the purchase and binding of books, and to report biennially to the Legislature the condition and wants of the library. It shall not be lawful for the Librarian to make any purchase of books, maps, charts or any other instruments of knowledge, except on the direction of said Purchasing Board. There is hereby appropriated, to be paid out of the general fund of the State Treasury, the sum of one thousand dollars annually, to be expended during the year beginning April 1, 1895, for the purchase and binding of books for the State Library. (R. S. 1897, § 8095.)

506. Laws and law books. 12. All laws and law books and all legislative journals and documents shall be kept separate from the rest of the library. (R. S. 1897, § 8096.)

507. Collection and binding of documents. 13. The Librarian shall collect annually and preserve duplicate copies of the messages of the President of the United States and of the Governors of the States; report of heads of departments of the general and State governments, of the committee of ways and means of the several States, and of the committees of Congress on general subjects; also copies of the reports and proceedings of public societies for the promotion of agriculture, the mechanic arts, history and literature, all of which may be bound. (R. S. 1897, § 8097.)

508. Preservation of laws and journals. 14. The Librarian shall select from the journals and laws belonging to the State twenty copies of the journals of the House for each year, ten copies of the journals of the Senate, ten copies of the documentary journals, thirty copies of the general laws and fifteen copies of the local laws for each year, and keep the same for use in the library; and shall carefully preserve, in books or otherwise, all remaining copies of the same. (R. S. 1897, § 8098.)

509. Legislative papers. 15. The Librarian shall have charge of the legislative papers, which shall be delivered to him at the close of each session, by the Secretary of the Senate and the Clerk of the House, and shall keep in good order all bills introduced in either branch of the General Assembly, all petitions, memorials and remonstrances, each in its appropriate files, keeping the files of each house separately. (R. S. 1897, § 8099.)

510. Exchanges. 16. The Librarian may exchange, for the benefit of the State Library, any duplicate, imperfect, damaged or other work not wanted for use in the library. The librarian may also, with the consent of the State Library Board, sell such works for the benefit of the State Library. The Librarian shall keep an accurate account of all exchanges and sales, stating what books have been parted with and what received, what sold and for what price, and report the same to the Legislature at each session. He shall be charged and account for all books received in exchange and all moneys received for sales. (R. S. 1897, § 8100.)

511. Embezzlement. 17. If the Librarian shall appropriate to his own use or dispose of any of the books in the law or any other department of the State Library, or the proceeds of any exchanges or sales of books, or knowingly make any false reports thereof, contrary to the provisions of this act or the act to which it is an amendment, he shall be deemed guilty of a misdemeanor and fined not less than five nor more than one thousand dollars, and shall forfeit and be deprived of his office. (R. S. 1897, § 8101.)

512. Missing books. 18. It shall be the duty of the librarian, in his annual report, to report the names of those who have obtained books from the library during the current year and have not returned them, and also the titles of the works not returned. (R. S. 1897, § 8102.)

513. Salaries. 19. The salary of the State Librarian shall be fifteen hundred dollars per year. He shall appoint two assistants; the salary of the first assistant shall be eleven hundred dollars per year, and the salary of the second assistant shall be nine hundred dollars per year, and one janitor, whose salary shall not exceed six hundred dollars. (R. S. 1897, § 8103.)

514. Report. 20. The Librarian shall report, at each session of the Legislature, the condition of the library, and a statement, by items, of expenditures made under this act. (R. S. 1897, § 8104.)

515. Removal of Librarian or assistants. 21. The State Library Board shall have the power to remove, for cause, at any time, the State Librarian or any assistant employed in the library or any assistant employed in the Librarian's office. (R. S. 1897, § 8105.)

516. Removing books—Misdemeanor. 22. Any person guilty of a violation of the provisions of the preceding sections shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined in the sum of twenty-five dollars. (R. S. 1897, § 8106.)

517. Injury to books—Penalty. 23. Any person injuring a book shall be liable for three-fold damage; and if the book injured or lost be one volume of a set he shall be liable for the whole set, but on paying for the same he may take the broken set. (R. S. 1897, § 8107.)

APPENDIX.

CONSTITUTION OF THE STATE OF INDIANA.

1851.

HISTORICAL SKETCH.

By an act of Congress, dated April 19, 1816, the inhabitants of the Territory of Indiana were authorized to form for themselves a Constitution and State Government, which State, when formed, should be admitted into the Union upon the same footing with the original States.

Under this act, the members of the convention were elected on the second Monday of May, 1816, met in convention, at Corydon, on the second Monday of June, 1816, and proceeded at once to form the Constitution, by the authority of Congress, without an ordinance of the Territory.

The Constitution was completed on the twenty-ninth of June, 1816, unanimously adopted by the members of the convention—forty-three in number, and signed by all except one member from Clark County and one member from Warrick County. The Constitution went into effect upon its adoption by the members of the convention which formed it. The first session of the General Assembly, held by its authority, met at Corydon on the first Monday of November, 1816. The Constitution of 1816 remained in force, without amendment, until the first day of November, 1851.

An act was passed January 15, 1849, "to provide for taking the sense of the qualified voters of the State on the calling of a convention to alter, amend, or revise the Constitution of this State." At an election held under authority of this act a large majority of all the votes cast was in favor of holding the convention.

On the 18th day of January, 1850, the Legislature passed an act to provide for a convention of the people of the State of Indiana, "to revise, amend, or alter the Constitution of said State." By the authority of this act delegates were elected. They assembled in convention at the Capitol, in the city of Indianapolis, on the first Monday in October, 1850, and completed their labors on the 10th day of February, 1851. This Constitution was ratified by the votes of the people.

The first amendment to this Constitution was ratified February 18, 1873, and related to the Wabash and Erie Canal. Other amendments were made March 14, 1881.

PREAMBLE.

To the end that justice be established, public order maintained, and liberty perpetuated: We, the people of the State of Indiana, grateful to Almighty God for the free exercise of the right to choose our own form of government, do ordain this Constitution.

ARTICLE I.

BILL OF RIGHTS.

SECTION 1. We declare that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that all power is inherent in the people; and that all free governments are, and of right ought to be, founded on their authority, and instituted for their peace, safety, and well being. For the advancement of these ends, the people have at all times an indefeasible right to alter and reform their government.

SEC. 2. All men shall be secured in their natural right to worship Almighty God according to the dictates of their own consciences.

SEC. 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

SEC. 4. No preference shall be given, by law, to any creed, religious society or mode of worship; and no man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent.

SEC. 5. No religious test shall be required as a qualification for any office of trust or profit.

SEC. 6. No money shall be drawn from the treasury for the benefit of any religious or theological institution.

SEC. 7. No person shall be rendered incompetent as a witness, in consequence of his opinion on matters of religion.

SEC. 8. The mode of administering an oath or affirmation shall be such as may be most consistent with, and binding upon, the conscience of the person to whom such oath or affirmation may be administered.

SEC. 9. No law shall be passed restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever; but for the abuse of that right every person shall be responsible.

SEC. 10. In all prosecutions for libel, the truth of the matters alleged to be libelous may be given in justification.

SEC. 11. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable search or seizure shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

SEC. 12. All courts shall be open; and every man, for injury done to him, in his person, property or reputation, shall have

remedy by due course of law. Justice shall be administered freely and without purchase; completely, and without denial; speedily, and without delay.

SEC. 13. In all criminal prosecutions the accused shall have the right to a public trial, by an impartial jury in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor.

SEC. 14. No person shall be put in jeopardy twice for the same offense. No person, in any criminal prosecution, shall be compelled to testify against himself.

SEC. 15. No person arrested, or confined in jail, shall be treated with unnecessary rigor.

SEC. 16. Excessive bail shall not be required. Excessive fines shall not be imposed. Cruel and unusual punishment shall not be inflicted. All penalties shall be proportioned to the nature of the offense.

SEC. 17. Offenses, other than murder or treason, shall be bailable by sufficient sureties. Murder or treason shall not be bailable when the proof is evident, or the presumption strong.

SEC. 18. The penal code shall be founded on the principles of reformation, and not of vindictive justice.

SEC. 19. In all criminal cases whatever, the jury shall have the right to determine the law and the facts.

SEC. 20. In all civil cases the right of trial by jury shall remain inviolate.

SEC. 21. No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation; nor, except in case of the State, without such compensation first assessed and tendered.

SEC. 22. The privilege of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale

for the payment of any debt or liability hereafter contracted; and there shall be no imprisonment for debt, except in case of fraud.

SEC. 23. The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

SEC. 24. No *ex post facto* law, or law impairing the obligation of contract, shall ever be passed.

SEC. 25. No law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution.

SEC. 26. The operation of the laws shall never be suspended, except by the authority of the General Assembly.

SEC. 27. The privileges of the writ of *habeas corpus* shall not be suspended, except in case of rebellion or invasion, and then only if the public safety demand it.

SEC. 28. Treason against the State shall consist only in levying war against it, and giving aid and comfort to its enemies.

SEC. 29. No person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or upon his confession in open court.

SEC. 30. No conviction shall work corruption of blood or forfeiture of estate.

SEC. 31. No law shall restrain any of the inhabitants of the State from assembling together, in a peaceable manner, to consult for their common good; nor from instructing their representatives; nor from applying to the General Assembly for redress of grievances.

SEC. 32. The people shall have a right to bear arms for the defense of themselves and the State.

SEC. 33. The military shall be kept in strict subordination to the civil power.

SEC. 34. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war but in a manner to be prescribed by law.

SEC. 35. The General Assembly shall not grant any title of nobility, nor confer hereditary distinctions.

SEC. 36. Emigration from the State shall not be prohibited.

SEC. 37. There shall be neither slavery nor involuntary servitude, within the State, otherwise than for the punishment of crime, whereof the party shall have been duly convicted. No indenture of any negro or mulatto, made or executed out of the bounds of the State, shall be valid within the State.

ARTICLE II.

SUFFRAGE AND ELECTION.

SECTION 1. All elections shall be free and equal.

SEC. 2. In all elections not otherwise provided for by this Constitution, every male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election; and every male of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law.

SEC. 3. No soldier, seaman or marine, in the army or navy of the United States, or their allies, shall be deemed to have acquired a residence in this State in consequence of having been stationed within the same; nor shall any such soldier, seaman or marine, have the right to vote.

SEC. 4. No person shall be deemed to have lost his residence in the State by reason of his absence either on business of the State or of the United States.

SEC. 5. [Stricken out by constitutional amendment of March 24, 1881.]

SEC. 6. Every person shall be disqualified from holding office during the term for which he may have been elected, who shall have given or offered a bribe, threat or reward to procure his election.

SEC. 7. Every person who shall give or accept a challenge to fight a duel, or who shall knowingly carry to another person such challenge, or who shall agree to go out of the State to fight a duel, shall be ineligible to any office of trust or profit.

SEC. 8. The General Assembly shall have power to deprive of the right of suffrage, and to render ineligible any person convicted of an infamous crime.

SEC. 9. No person holding a lucrative office or appointment, under the United States, or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted: *Provided*, That offices in the militia, to which there is attached no annual salary, and the office of Deputy Postmaster, where the compensation does not exceed ninety dollars per annum, shall not be deemed lucrative; *And provided, also*, That counties containing less than one thousand polls may confer the office of Clerk, Recorder and Auditor, or any two of said offices, upon the same person.

SEC. 10. No person who may hereafter be a collector or holder of public moneys, shall be eligible to any office of trust or profit until he shall have accounted for and paid over, according to law, all sums for which he may be liable.

SEC. 11. In all cases in which it is provided that an office shall not be filled by the same person more than a certain number of years continuously, an appointment *pro tempore* shall not be reckoned a part of that term.

SEC. 12. In all cases, except treason, felony and breach of the peace, electors shall be free from arrest in going to elections, during their attendance there, and in returning from the same.

SEC. 13. All elections by the people shall be by ballot; and all elections by the General Assembly, or by either branch thereof, shall be *viva voce*.

SEC. 14. All general elections shall be held on the first Tuesday after the first Monday in November; but township elections may be held at such time as may be provided by law: *Provided*, That the General Assembly may provide by law for the election of all judges of courts of general or appellate jurisdiction, by an election to be held for such officers only, at which time no other officer shall be voted for; and shall also provide for the registration of all persons entitled to vote.

ARTICLE III.

DISTRIBUTION OF POWERS.

SECTION 1. The powers of the Government are divided into three separate departments: the Legislative, the Executive (including the Administrative), and the Judicial; and no person charged with official duties under one of these departments shall exercise any of the functions of another except as in this Constitution expressly provided.

ARTICLE IV.

LEGISLATIVE.

SECTION 1. The Legislative authority of the State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives. The style of every law shall be, "Be it enacted by the General Assembly of the State of Indiana;" and no law shall be enacted except by bill.

SEC. 2. The Senate shall not exceed fifty, nor the House of Representatives one hundred members; and they shall be

chosen by the electors of the respective counties or districts into which the State may, from time to time, be divided.

SEC. 3. Senators shall be elected for the term of four years, and Representatives for the term of two years, from the day next after their general election: *Provided, however*, That the Senators elect, at the second meeting of the General Assembly under this Constitution, shall be divided, by lot, into two equal classes, as nearly as may be; and the seats of Senators of the first class shall be vacated at the expiration of two years, and those of the second class at the expiration of four years; so that one-half, as nearly as possible, shall be chosen biennially forever thereafter. And in case of increase in the number of Senators, they shall be so annexed by lot, to the one or the other of the two classes, as to keep them as nearly equal as practicable.

SEC. 4. The General Assembly shall, at its second session after the adoption of this Constitution, and every sixth year thereafter, cause an enumeration to be made of all the male inhabitants over the age of twenty-one years.

SEC. 5. The number of Senators and Representatives shall, at the session next following each period of making such enumeration, be fixed by law, and apportioned among the several counties, according to the number of male inhabitants, above twenty-one years of age, in each: *Provided*, That the first and second elections of members of the General Assembly, under this Constitution, shall be according to the apportionment last made by the General Assembly before the adoption of this Constitution.

SEC. 6. A Senatorial or Representative district, where more than one county shall constitute a district, shall be composed of contiguous counties; and no county, for Senatorial apportionment, shall ever be divided.

SEC. 7. No person shall be a Senator or a Representative, who, at the time of his election, is not a citizen of the United States; nor any one who has not been, for two years next preceding his election, an inhabitant of this State, and for one year next preceding his election, an inhabitant of the county or

district whence he may be chosen. Senators shall be at least twenty-five, and Representatives at least twenty-one years of age.

Sec. 8. Senators and Representatives, in all cases except treason, felony, and breach of the peace, shall be privileged from arrest during the session of the General Assembly, and in going to and returning from the same; and shall not be subject to any civil process during the session of the General Assembly, nor during the fifteen days next before the commencement thereof. For any speech or debate in either House, a member shall not be questioned in any other place.

Sec. 9. The sessions of the General Assembly shall be held biennially, at the capital of the State, commencing on the Thursday next after the first Monday of January, in the year one thousand eight hundred and fifty-three, and on the same day of every second year thereafter, unless a different day or place shall have been appointed by law. But if, in the opinion of the Governor, the public welfare shall require it, he may, at any time, by proclamation, call a special session.

Sec. 10. Each House, when assembled, shall choose its own officers (the President of the Senate excepted), judge the elections, qualifications and returns of its own members, determine its rules of proceeding, and sit upon its own adjournment. But neither House shall, without the consent of the other, adjourn for more than three days, nor to any place other than that in which it may be sitting.

Sec. 11. Two-thirds of each House shall constitute a quorum to do business; but a smaller number may meet, adjourn from day to day, and compel the attendance of absent members. A quorum being in attendance, if either House fail to effect an organization within the first five days thereafter, the members of the House so failing shall be entitled to no compensation from the end of the said five days, until an organization shall have been effected.

Sec. 12. Each House shall keep a journal of its proceedings, and publish the same. The yeas and nays, on any question, shall, at the request of any two members, be entered, together

with the names of the members demanding the same, on the journal: *Provided*, That on a motion to adjourn, it shall require one-tenth of the members present to order the yeas and nays.

SEC. 13. The doors of each House, and of Committees of the Whole, shall be kept open, except in such cases as, in the opinion of either House, may require secrecy.

SEC. 14. Either House may punish its members for disorderly behavior, and may, with the concurrence of two-thirds, expel a member; but not a second time for the same cause.

SEC. 15. Either House, during its session, may punish, by imprisonment, any person not a member, who shall have been guilty of disrespect to the House, by disorderly or contemptuous behavior in its presence; but such imprisonment shall not, at any time, exceed twenty-four hours.

SEC. 16. Each House shall have all powers necessary for a branch of the legislative department of a free and independent State.

SEC. 17. Bills may originate in either House, but may be amended or rejected in the other, except that bills for raising revenue shall originate in the House of Representatives.

SEC. 18. Every bill shall be read by sections, on three several days in each House; unless, in case of emergency, two-thirds of the House where such bill may be depending shall, by a vote of yeas and nays, deem it expedient to dispense with this rule; but the reading of a bill by sections, on its final passage, shall in no case be dispensed with: and the vote on the passage of every bill or joint resolution shall be taken by yeas and nays.

SEC. 19. Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

SEC. 20. Every act and joint resolution shall be plainly worded, avoiding, as far as practicable, the use of technical terms.

SEC. 21. No act shall ever be revised or amended by mere reference to its title; but the act revised, or section amended, shall be set forth and published at full length.

SEC. 22. The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of justices of the peace and of constables;

For the punishment of crimes and misdemeanors;

Regulating the practice in courts of justice;

Providing for changing the venue in civil and criminal cases;

Granting divorces;

Changing the names of persons;

For laying out, opening and working on, highways, and for the election or appointment of supervisors;

Vacating roads, town plats, streets, alleys and public squares;

Summoning and impanneling grand and petit juries, and providing for their compensation;

Regulating county and township business;

Regulating the election of county and township officers, and their compensation;

For the assessment and collection of taxes for State, county, township or road purposes;

Providing for supporting common schools, and for the preservation of school funds;

In relation to fees or salaries; except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required;

In relation to interest on money;

Providing for opening and conducting elections of State, county or township officers, and designating the places of voting;

Providing for the sale of real estate belonging to minors, or other persons laboring under legal disabilities, by executors, administrators, guardians or trustees.

SEC. 23. In all the cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State.

SEC. 24. Provisions may be made by general law, for bringing suits against the State, as to all liabilities originating after the adoption of this Constitution; but no special act authorizing such suit to be brought, or making compensation to any person claiming damages against the State, shall ever be passed.

SEC. 25. A majority of all the members elected to each House shall be necessary to pass every bill or joint resolution; and all bills and joint resolutions so passed shall be signed by the presiding officers of the respective houses.

SEC. 26. Any member of either House shall have the right to protest, and to have his protest, with his reasons for dissent, entered on the journal.

SEC. 27. Every statute shall be a public law, unless otherwise declared in the statute itself.

SEC. 28. No act shall take effect until the same shall have been published and circulated in the several counties of this State, by authority, except in case of emergency; which emergency shall be declared in the preamble or in the body of the law.

SEC. 29. The members of the General Assembly shall receive for their services a compensation, to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly, except the first under this Constitution, shall extend beyond the term of sixty-one days, nor any special session beyond the term of forty days.

SEC. 30. No Senator or Representative shall, during the term for which he may have been elected, be eligible to any office,

the election to which is vested in the General Assembly, nor shall he be appointed to any civil office of profit, which shall have been created, or the emoluments of which shall have been increased, during such term; but this latter provision shall not be construed to apply to any office elective by the people.

ARTICLE V.

EXECUTIVE.

SECTION 1. The executive powers of the State shall be vested in a Governor. He shall hold his office during four years, and shall not be eligible more than four years in any period of eight years.

SEC. 2. There shall be a Lieutenant-Governor, who shall hold his office during four years.

SEC. 3. The Governor and Lieutenant-Governor shall be elected at the times and places of choosing members of the General Assembly.

SEC. 4. In voting for Governor and Lieutenant-Governor the electors shall designate for whom they vote as Governor, and for whom as Lieutenant-Governor. The returns of every election for Governor and Lieutenant-Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of both Houses of the General Assembly.

SEC. 5. The persons, respectively, having the highest number of votes for Governor and Lieutenant-Governor, shall be elected; but in case two or more persons shall have an equal and the highest number of votes for either office, the General Assembly shall, by joint vote, forthwith proceed to elect one of the said persons Governor or Lieutenant-Governor, as the case may be.

SEC. 6. Contested elections for Governor or Lieutenant-Governor shall be determined by the General Assembly, in such manner as may be prescribed by law.

SEC. 7. No person shall be eligible to the office of Governor or Lieutenant-Governor, who shall not have been five years a citizen of the United States, and also a resident of the State of Indiana during the five years next preceding his election; nor shall any person be eligible to either of the said offices who shall not have attained the age of thirty years.

SEC. 8. No member of Congress, or person holding any office under the United States, or under this State, shall fill the office of Governor or Lieutenant-Governor.

SEC. 9. The official term of the Governor or Lieutenant-Governor shall commence on the second Monday of January, in the year one thousand, eight hundred and fifty-three; and on the same day every fourth year thereafter.

SEC. 10. In case of the removal of the Governor from office, or of his death, resignation or inability to discharge the duties of the office, the same shall devolve on the Lieutenant-Governor; and the General Assembly shall, by law, provide for the case of removal from office, death, resignation, or inability, both of the Governor and Lieutenant-Governor, declaring what officer then shall act as Governor; and such officer shall act accordingly until the disability be removed or a Governor be elected.

SEC. 11. Whenever the Lieutenant-Governor shall act as Governor, or shall be unable to attend as President of the Senate, the Senate shall elect one of its own members as President for the occasion.

SEC. 12. The Governor shall be commander-in-chief of the military and naval forces, and may call out such forces to execute the laws, or to suppress insurrection, or to repel invasion.

SEC. 13. He shall, from time to time, give to the General Assembly information touching the condition of the State, and recommend such measures as he shall judge to be expedient.

SEC. 14. Every bill which shall have passed the General Assembly shall be presented to the Governor; if he approve, he shall sign it, but if not, he shall return it, with his objections, to the House in which it shall have originated, which House shall enter the objections at large upon its journals and proceed to

reconsider the bill. If, after such reconsideration, a majority of all the members elected to that House shall agree to pass the bill, it shall be sent, with the Governor's objections, to the other House, by which it shall likewise be reconsidered, and if approved by a majority of all the members elected to that House, it shall be a law. If any bill shall not be returned by the Governor within three days, Sundays excepted, after it shall have been presented to him, it shall be a law without his signature, unless the general adjournment shall prevent its return, in which case it shall be a law unless the Governor, within five days next after such adjournment, shall file such bill, with his objections thereto, in the office of the Secretary of State, who shall lay the same before the General Assembly at its next session in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor within two days next previous to the final adjournment of the General Assembly.

SEC. 15. The Governor shall transact all necessary business with the officers of Government, and may require any information in writing from the officers of the administrative department, upon any subject relating to the duties of their respective offices.

SEC. 16. He shall take care that the laws be faithfully executed.

SEC. 17. He shall have the power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the General Assembly at its next meeting, when the General Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law, and shall report to the General Assembly, at its next meeting, each case of reprieve, commutation, or pardon granted, and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted: *Provided, however*, That the General Assembly may,

by law, constitute a council, to be composed of officers of State, without whose advice and consent the Governor shall not have power to grant pardons, in any case, except such as may, by law, be left to his sole power.

SEC. 18. When, during a recess of the General Assembly, a vacancy shall happen in any office, the appointment to which is vested in the General Assembly, or when, at any time, a vacancy shall have occurred in any other State office, or in the office of Judge of any court, the Governor shall fill such vacancy by appointment, which shall expire when a successor shall have been elected and qualified.

SEC. 19. He shall issue writs of election to fill such vacancies as may have occurred in the General Assembly.

SEC. 20. Should the seat of Government become dangerous from disease or a common enemy, he may convene the General Assembly at any other place.

SEC. 21. The Lieutenant-Governor shall, by virtue of his office, be President of the Senate; have a right, when in Committee of the Whole, to join in debate, and to vote on all subjects, and, whenever the Senate shall be equally divided, he shall give the casting vote.

SEC. 22. The Governor shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the term for which he shall have been elected.

SEC. 23. The Lieutenant-Governor, while he shall act as President of the Senate, shall receive for his services the same compensation as the Speaker of the House of Representatives; and any person acting as Governor shall receive the compensation attached to the office of Governor.

SEC. 24. Neither the Governor nor Lieutenant-Governor shall be eligible to any other office during the term for which he shall have been elected.

ARTICLE VI.

ADMINISTRATIVE.

SECTION 1. There shall be elected by the voters of the State, a Secretary, an Auditor, and a Treasurer of State, who shall severally hold their offices for two years. They shall perform such duties as may be enjoined by law; and no person shall be eligible to either of said offices more than four years in any period of six years.

SEC. 2. There shall be elected in each county, by the voters thereof, at the time of holding general elections, a Clerk of the Circuit Court, Auditor, Recorder, Treasurer, Sheriff, Coroner and Surveyor. The Clerk, Auditor and Recorder shall continue in office four years; and no person shall be eligible to the office of Clerk, Recorder or Auditor more than eight years in any period of twelve years. The Treasurer, Sheriff, Coroner and Surveyor, shall continue in office two years; and no person shall be eligible to the office of Treasurer or Sheriff more than four years in any period of six years.

SEC. 3. Such other county and township officers as may be necessary, shall be elected or appointed, in such manner as may be prescribed by law.

SEC. 4. No person shall be elected or appointed as a county officer, who shall not be an elector of the county; nor any one who shall not have been an inhabitant thereof during one year next preceding his appointment, if the county shall have been so long organized; but if the county shall not have been so long organized, then within the limits of the county or counties out of which the same shall have been taken.

SEC. 5. The Governor, and the Secretary, Auditor and Treasurer of State, shall, severally, reside and keep the public records, books and papers, in any manner relating to the respective offices, at the seat of government.

SEC. 6. All county, township and town officers shall reside within their respective counties, townships and towns, and shall

keep their respective offices at such places therein, and perform such duties as may be directed by law.

SEC. 7. All State officers shall, for crime, incapacity or negligence, be liable to be removed from office, either by impeachment by the House of Representatives, to be tried by the Senate, or by a joint resolution of the General Assembly; two-thirds of the members elected to each branch voting, in either case, therefor.

SEC. 8. All State, county, township and town officers may be impeached, or removed from office in such manner as may be prescribed by law.

SEC. 9. Vacancies in county, township and town offices shall be filled in such manner as may be prescribed by law.

SEC. 10. The General Assembly may confer upon the Boards doing county business in the several counties, powers of a local administrative character.

ARTICLE VII.

JUDICIAL.

SECTION 1. The Judicial power of the State shall be vested in a Supreme Court, in Circuit Courts, and in such other courts as the General Assembly may establish.

SEC. 2. The Supreme Court shall consist of not less than three, nor more than five Judges; a majority of whom shall form a quorum. They shall hold their offices for six years, if they so long behave well.

SEC. 3. The State shall be divided into as many districts as there are Judges of the Supreme Court, and such districts shall be formed of contiguous territory, as nearly equal in population as, without dividing a county, the same can be made. One of said Judges shall be elected from each district, and reside therein; but said Judge shall be elected by the electors of the State at large.

SEC. 4. The Supreme Court shall have jurisdiction, co-extensive with the limits of the State, in appeals and writs of error, under such regulations and restrictions as may be prescribed by law. It shall also have such original jurisdiction as the General Assembly may confer.

SEC. 5. The Supreme Court shall, upon the decision of every case, give a statement in writing of each question arising in the record of such case, and the decision of the Court thereon.

SEC. 6. The General Assembly shall provide by law, for the speedy publication of the decisions of the Supreme Court, made under this Constitution, but no Judge shall be allowed to report such decision.

SEC. 7. There shall be elected by the voters of the State, a Clerk of the Supreme Court, who shall hold his office four years, and whose duties shall be prescribed by law.

SEC. 8. The Circuit Courts shall each consist of one Judge, and shall have such civil and criminal jurisdiction as may be prescribed by law.

SEC. 9. The State shall, from time to time, be divided into Judicial Circuits, and a Judge for each circuit shall be elected by the voters thereof. He shall reside within the circuit, and shall hold his office for the term of six years, if he so long behave well.

SEC. 10. The General Assembly may provide, by law, that the Judge of one circuit may hold the courts of another circuit, in cases of necessity or convenience; and in case of temporary inability of any Judge, from sickness or other cause, to hold the courts in his circuit, provisions may be made, by law, for holding such courts.

SEC. 11. There shall be elected, in each Judicial Circuit, by the voters thereof, a Prosecuting Attorney, who shall hold his office for two years.

SEC. 12. Any Judge or Prosecuting Attorney, who shall have been convicted of corruption or other high crime, may, on information in the name of the State, be removed from office by

the Supreme Court, or in such other manner as may be prescribed by law.

SEC. 13. The Judges of the Supreme Court and Circuit Courts shall, at stated times, receive a compensation, which shall not be diminished during their continuance in office.

SEC. 14. A competent number of Justices of the Peace shall be elected by the voters in each township in the several counties. They shall continue in office four years, and their powers and duties shall be prescribed by law.

SEC. 15. All judicial officers shall be conservators of the peace in their respective jurisdictions.

SEC. 16. No person elected to any judicial office shall, during the term for which he shall have been elected, be eligible to any office of trust or profit under the State, other than a judicial office.

SEC. 17. The General Assembly may modify or abolish the Grand Jury system.

SEC. 18. All criminal prosecutions shall be carried on in the name, and by the authority of the State; and the style of all processes shall be, "The State of Indiana."

SEC. 19. Tribunals of conciliation may be established, with such powers and duties as shall be prescribed by law; or the powers and duties of the same may be conferred upon other courts of justice; but such tribunals or other courts, when sitting as such, shall have no power to render judgment to be obligatory on the parties unless they voluntarily submit their matters of difference and agree to abide the judgment of such tribunal or court.

SEC. 20. The General Assembly, at its first session after the adoption of this Constitution, shall provide for the appointment of three commissioners whose duty it shall be to revive, simplify and abridge the rules, practice, pleadings and forms of the courts of justice. And they shall provide for abolishing the distinct forms of action at law now in use; and that justice shall be administered in a uniform mode of pleading, without

distinction between law and equity. And the General Assembly may, also, make it the duty of said commissioners to reduce into a systematic code the general statute law of the State; and said commissioners shall report the result of their labors to the General Assembly, with such recommendations and suggestions, as to the abridgment and amendment, as to said commissioners may seem necessary or proper. Provision shall be made by law for filling vacancies, regulating the tenure of office and the compensation of said commissioners.

Sec. 21. Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice.

ARTICLE VIII.

EDUCATION.

Section 1. Knowledge and learning generally diffused throughout a community, being essential to the preservation of a free government, it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific and agricultural improvement, and to provide by law for a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all.

Sec 2. The common school fund shall consist of the congressional township fund, and the lands belonging thereto;

The surplus revenue fund;

The saline fund, and the lands belonging thereto;

The bank tax fund, and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana;

The fund to be derived from the sale of county seminaries, and the moneys and property heretofore held for such seminaries; from the fines assessed for breaches of the penal laws of the State; and from all forfeitures which may accrue;

All lands and other estate which shall escheat to the State for want of heirs or kindred entitled to the inheritance;

All lands that have been or may hereafter be granted to the State, where no special purpose is expressed in the grant, and

the proceeds of the sales thereof; including the proceeds of the sales of the Swamp Lands granted to the State of Indiana by the act of Congress, of the 28th of September, 1850, after deducting the expense of selecting and draining the same;

Taxes on the property of corporations that may be assessed by the General Assembly for Common School purposes.

SEC. 3. The principal of the Common School Fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of Common Schools, and to no other purpose whatever.

SEC. 4. The General Assembly shall invest, in some safe and profitable manner, all such portions of the Common School Fund as have not heretofore been entrusted to the several counties; and shall make provisions, by law, for the distribution, among the several counties, of the interest thereof.

SEC. 5. If any county shall fail to demand its proportion of such interest for Common School purposes, the same shall be reinvested for the benefit of such county.

SEC. 6. The several counties shall be held liable for the preservation of so much of the said fund as may be entrusted to them, and for the payment of the annual interest thereon.

SEC. 7. All trust funds held by the State shall remain inviolate, and be faithfully and exclusively applied to the purposes for which the trust was created.

SEC. 8. The General Assembly shall provide for the election, by the voters of the State, of a State Superintendent of Public Instruction, who shall hold his office for two years, and whose duties and compensation shall be prescribed by law.

ARTICLE IX.

STATE INSTITUTIONS.

SECTION 1. It shall be the duty of the General Assembly to provide by law for the support of Institutions for the Education of the Deaf and Dumb, and of the Blind; and, also, for the treatment of the Insane.

SEC. 2. The General Assembly shall provide Houses of Refuge for the correction and reformation of juvenile offenders.

SEC. 3. The County Boards shall have power to provide farms as an asylum for those persons who, by reason of age, infirmity, or other misfortune, have claims upon the sympathies and aid of society.

ARTICLE X.

FINANCE.

SECTION 1. The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious or charitable purposes, as may be specially exempted by law.

SEC. 2. All the revenues derived from the sale of any of the public works belonging to the State, and from the net annual income thereof, and any surplus that may, at any time, remain in the Treasury derived from taxation for general State purposes, after the payment of the ordinary expenses of the government, and of the interest on bonds of the State, other than bank bonds, shall be annually applied, under the direction of the General Assembly, to the payment of the principal of the public debt.

SEC. 3. No money shall be drawn from the Treasury but in pursuance of appropriations made by law.

SEC. 4. An accurate statement of the receipts and expenditures of the public money shall be published with the laws of each regular session of the General Assembly.

SEC. 5. No law shall authorize any debt to be contracted, on behalf of the State, except in the following cases: To meet casual deficits in the revenue; to pay the interest on the State debt; to repel invasion, suppress insurrection, or, if hostilities be threatened, provide for public defense.

SEC. 6. No county shall subscribe for stock in any incorporated company, unless the same be paid for at the time of such

subscription; nor shall any county loan its credit to any incorporated company, nor borrow money for the purpose of taking stock in any such company; nor shall the General Assembly ever, on behalf of the State, assume the debts of any county, city, town or township, nor of any corporation whatever.

SEC. 7. No law or resolution shall ever be passed by the General Assembly of the State of Indiana that shall recognize any liability of this State to pay or redeem any certificate of stock issued in pursuance of an act entitled "An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville," passed January 19, 1846, and an act supplemental to said act, passed January 29, 1847, which by the provisions of the said acts, or either of them, shall be payable exclusively from the proceeds of the canal lands, and the tolls and revenues of the canal in said acts mentioned; and no such certificates of stocks shall ever be paid by this State.

[NOTE.—Agreed to by a majority of the members elected to each of the two houses of the General Assembly, Regular Session of 1871, and referred to the General Assembly to be chosen at the next general election. Agreed to by a majority of the members elected to each house of the General Assembly, Special Session of 1872. Submitted to the electors of the State by an act approved January 28, 1873. Ratified by a majority of the electors, at an election held on the 18th day of February, 1873. Declared a part of the Constitution by proclamation of Thomas A. Hendricks, Governor, dated March 7, 1873.]

ARTICLE XI.

CORPORATIONS.

SECTION 1. The General Assembly shall not have power to establish, or incorporate any bank or banking company, or moneyed institution, for the purpose of issuing bills of credit, or bills payable to order or bearer, except under the conditions prescribed in this Constitution.

SEC. 2. No bank shall be established otherwise than under a general banking law, except as provided in the fourth section of this article.

SEC. 3. If the General Assembly shall enact a general banking law, such law shall provide for the registry and countersigning, by an officer of State, of all paper credit designed to be circulated as money; and ample collateral security, readily convertible into specie, for the redemption of the same in gold or silver, shall be required; which collateral security shall be under the control of the proper officer or officers of the State.

SEC. 4. The General Assembly may also charter a bank with branches, without collateral security, as required in the preceding section.

SEC. 5. If the General Assembly shall establish a bank with branches, the branches shall be mutually responsible for each other's liabilities, upon all paper credit issued as money.

SEC. 6. The stockholders in every bank, or banking company, shall be individually responsible to an amount over and above their stock, equal to their respective shares of stock, for all debts or liabilities of said bank or banking company.

SEC. 7. All bills or notes issued as money shall be, at all times, redeemable in gold or silver; and no law shall be passed, sanctioning, directly or indirectly, the suspension, by any bank or banking company, of specie payments.

SEC. 8. Holders of bank notes shall be entitled, in case of insolvency, to preference of payment over all other creditors.

SEC. 9. No bank shall receive, directly or indirectly, a greater rate of interest than shall be allowed by law to individuals loaning money.

SEC. 10. Every bank, or banking company, shall be required to cease all banking operations within twenty years from the time of its organization, and promptly thereafter to close its business.

SEC. 11. The General Assembly is not prohibited from investing the trust funds in a bank with branches; but in case of such investment, the safety of the same shall be guaranteed by unquestionable security.

SEC. 12. The State shall not be a stockholder in any bank, after the expiration of the present bank charter; nor shall the credit of the State ever be given, or loaned, in aid of any person, association, or corporation, nor shall the State hereafter become a stockholder in any corporation or association.

SEC. 13. Corporations, other than banking, shall not be created by special act, but may be formed under general laws.

SEC. 14. Dues from corporations, other than banking, shall be secured by such individual liability of the corporators, or other means, as may be prescribed by law.

ARTICLE XII.

MILITIA.

SECTION 1. The militia shall consist of all able-bodied white male persons between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States, or of this State; and shall be organized, officered, armed, equipped and trained in such manner as may be provided by law.

SEC. 2. The Governor shall appoint the Adjutant, Quartermaster and Commissary Generals.

SEC. 3. All militia officers shall be commissioned by the Governor, and shall hold their offices not longer than six years.

SEC. 4. The General Assembly shall determine the method of dividing the militia into divisions, brigades, regiments, battalions and companies, and fix the rank of all staff officers.

SEC. 5. The militia may be divided into classes of sedentary and active militia in such manner as shall be prescribed by law.

SEC. 6. No person conscientiously opposed to bearing arms shall be compelled to do militia duty; but such person shall pay an equivalent for exemption; the amount to be prescribed by law.

ARTICLE XIII.

POLITICAL AND MUNICIPAL CORPORATIONS.

SECTION 1. No political or municipal corporation in this State shall ever become indebted, in any manner or for any purpose, to any amount, in the aggregate exceeding two per centum on the value of taxable property within such corporation, to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness, and all bonds or obligations, in excess of such amount, given by such corporations, shall be void: *Provided*, That in time of war, foreign invasion, or other great public calamity, on petition of a majority of the property owners, in number and value, within the limits of such corporation, the public authorities, in their discretion, may incur obligations necessary for the public protection and defense, to such an amount as may be requested in such petition.

[The original Article 13 is stricken out and the amendment of March 24, 1881, inserted in lieu thereof.]

ARTICLE XIV.

BOUNDARIES.

SECTION 1. In order that the boundaries of the State may be known and established, it is hereby ordained and declared, that the State of Indiana is bounded on the east by the meridian line which forms the western boundary of the State of Ohio; on the south by the Ohio River, from the mouth of the Great Miami River to the mouth of the Wabash River; on the west, by a line drawn along the middle of the Wabash River, from its mouth to a point where a due north line, drawn from the town of Vincennes, would last touch the northwestern shore of said Wabash River; and thence by a due north line, until the same shall intersect an east and west line, drawn through a point ten miles north of the southern extreme of Lake Michigan; on the north, by said east and west line, until the same shall intersect the first-mentioned meridian line, which forms the western boundary of the State of Ohio.

SEC. 2. The State of Indiana shall possess jurisdiction, and sovereignty co-extensive with the boundaries declared in the preceding section; and shall have concurrent jurisdiction, in civil and criminal cases, with the State of Kentucky on the Ohio River, and with the State of Illinois on the Wabash River, so far as said rivers form the common boundary between this State and said States respectively.

ARTICLE XV.

MISCELLANEOUS.

SECTION 1. All officers whose appointment is not otherwise provided for in this Constitution, shall be chosen in such manner as now is, or hereafter may be, prescribed by law.

SEC. 2. When the duration of any office is not provided for by this Constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the General Assembly shall not create any office, the tenure of which shall be longer than four years.

SEC. 3. Whenever it is provided in this Constitution, or in any law which may be hereafter passed, that any officer, other than a member of the General Assembly, shall hold his office for any given term, the same shall be construed to mean that such officer shall hold his office for such term, and until his successor shall have been elected and qualified.

SEC. 4. Every person elected or appointed to any office under this Constitution shall, before entering on the duties thereof, take an oath or affirmation to support the Constitution of this State and of the United States, and also an oath of office.

SEC. 5. There shall be a seal of the State, kept by the Governor for official purposes, which shall be called the Seal of the State of Indiana.

SEC. 6. All commissions shall issue in the name of the State, shall be signed by the Governor, sealed by the State Seal, and attested by the Secretary of State.

SEC. 7. No county shall be reduced to an area less than four hundred square miles; nor shall any county under that area be further reduced.

SEC. 8. No lottery shall be authorized, nor shall the sale of lottery tickets be allowed.

SEC. 9. The following grounds owned by the State in Indianapolis, namely: the State House Square, the Governor's Circle, and so much of outlot numbered one hundred and forty-seven as lies north of the arm of the Central Canal, shall not be sold or leased.

SEC. 10. It shall be the duty of the General Assembly to provide for the permanent enclosure and preservation of the Tippecanoe Battle Ground.

ARTICLE XVI.

AMENDMENTS.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in either branch of the General Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals and referred to the General Assembly to be chosen at the next general election; and, if in the General Assembly so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such amendment or amendments to the electors of the State, and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this Constitution.

SEC. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately; and while such an amendment or amendments which shall have been agreed upon by one General Assembly, shall

be awaiting the action of the succeeding General Assembly, or of the electors, no additional amendment or amendments shall be proposed.

SCHEDULE.

This Constitution, if adopted, shall take effect on the first day of November, in the year one thousand eight hundred and fifty-one, and shall supersede the Constitution adopted in the year one thousand eight hundred and sixteen. That no inconvenience may arise from the change in the government, it is hereby ordained as follows:

First. All laws now in force, and not inconsistent with this Constitution, shall remain in force until they shall expire or be repealed.

Second. All indictments, prosecutions, suits, pleas, plaints and other proceedings pending in any of the Courts, shall be prosecuted to final judgment and execution; and all appeals, writs of error, certiorari and injunctions shall be carried on in the several Courts, in the same manner as is now provided by law.

Third. All fines, penalties and forfeitures, due or accruing to the State, or to any county therein, shall inure to the State, or to such county in the manner prescribed by law. All bonds executed to the State, or to any officer, in his official capacity, shall remain in force, and inure to the use of those concerned.

Fourth. All acts of incorporation for municipal purposes shall continue in force under this Constitution, until such time as the General Assembly shall, in its discretion, modify or repeal the same.

Fifth. The Governor, at the expiration of the present official term, shall continue to act until his successor shall have been sworn into office.

Sixth. There shall be a session of the General Assembly, commencing on the first Monday of December, in the year one thousand eight hundred and fifty-one.

Seventh. Senators now in office and holding over, under the existing Constitution, and such as may be elected at the next general election, and the Representatives then elected, shall continue in office until the first general election under this Constitution.

Eighth. The first general election under this Constitution shall be held in the year one thousand eight hundred and fifty-two.

Ninth. The first election for Governor, Lieutenant-Governor, Judges of the Supreme Court and Circuit Courts, Clerk of the Supreme Court, Prosecuting Attorney, Secretary, Auditor, and Treasurer of State, and State Superintendent of Public Instruction, under this Constitution, shall be held at the general election in the year one thousand eight hundred and fifty-two; and such of said officers as may be in office when this Constitution shall go into effect, shall continue in their respective offices until their successors shall have been elected and qualified.

Tenth. Every person elected by popular vote, and now in any office which is continued by this Constitution, and every person who shall be so elected to any such office before the taking effect of this Constitution (except as in this Constitution otherwise provided), shall continue in office until the term for which such person has been, or may be, elected, shall expire: *Provided*, That no such person shall continue in office after the taking effect of this Constitution, for a longer period than the term of such office in this Constitution prescribed.

Eleventh. On the taking effect of this Constitution, all officers thereby continued in office shall, before proceeding in the further discharge of their duties, take an oath or affirmation to support this Constitution.

Twelfth. All vacancies that may occur in existing offices prior to the first general election under this Constitution, shall be filled in the manner now prescribed by law.

Thirteenth. At the time of submitting this Constitution to the electors for their approval or disapproval, the article numbered thirteen, in relation to negroes and mulattoes, shall be

submitted as a distinct proposition, in the following form: "Exclusion and Colonization of Negroes and Mulattoes," "Aye," or "No." And if a majority of the votes cast shall be in favor of said article, then the same shall form a part of this Constitution, otherwise it shall be void and form no part thereof.

Fourteenth. No article or section of this Constitution shall be submitted as a distinct proposition to a vote of the electors otherwise than as herein provided.

Fifteenth. Whenever a portion of the citizens of the counties of Perry and Spencer shall deem it expedient to form, of the contiguous territory of said counties, a new county, it shall be the duty of those interested in the organization of such new county, to lay off the same by proper metes and bounds of equal portions as nearly as practicable, not to exceed one-third of the territory of each of said counties. The proposal to create such new county shall be submitted to the voters of said counties, at a general election, in such manner as shall be prescribed by law. And if a majority of all the votes given at said election shall be in favor of the organization of said new county, it shall be the duty of the General Assembly to organize the same out of the territory thus designated.

Sixteenth. The General Assembly may alter or amend the charter of Clarksville, and make such regulations as may be necessary for carrying into effect the objects contemplated in granting the same, and the funds belonging to said town shall be applied according to the intention of the grantor.

Done in Convention, at Indianapolis, the tenth day of February, in the year of our Lord, one thousand eight hundred and fifty-one, and of the independence of the United States, the seventy-fifth.

GEORGE WHITFIELD CARR,
President and Delegate from the County of Lawrence.

Attest: WM. H. ENGLISH,
Principal Secretary.

GEO. L. SITES,
HERMAN G. BARKWELL,
ROBERT M. EVANS,
Assistant Secretaries.

ADDENDA.

The original sections stricken out or amended read as follows:

ARTICLE II.

SUFFRAGE AND ELECTION.

SECTION 2. In all elections, not otherwise provided for by this Constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months immediately preceding such election; and every white male, of foreign birth of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside.

SEC. 5. No negro or mulatto shall have the right of suffrage.

SEC. 14. All general elections shall be held on the second Tuesday in October.

ARTICLE IV.

LEGISLATIVE.

SECTION 4. The General Assembly shall, at its second session after the adoption of this Constitution, and every six years thereafter, cause an enumeration to be made of all the *white* male inhabitants over the age of twenty-one years.

SEC. 5. The number of Senators and Representatives shall, at the session next following each period of making such enumeration, be fixed by law, and apportioned among the several counties, according to the number of *white* male inhabitants, above twenty-one years of age, in each; *Provided*, That the first and second elections of members of the General Assembly, under this Constitution, shall be according to the apportionment last made by the General Assembly, before the adoption of this Constitution.

SEC. 22. In relation to fees or salaries.

ARTICLE VII.

JUDICIAL.

SECTION 1. The judicial power of the State shall be vested in a Supreme Court, in Circuit Courts, and in such inferior courts as the General Assembly may establish.

ARTICLE XIII.

NEGROES AND MULATTOES.

SECTION 1. No negro or mulatto shall come into, or settle in, the State, after the adoption of this Constitution.

SEC. 2. All contracts made with any negro or mulatto coming into the State, contrary to the provisions of the foregoing section, shall be void; and any person who shall employ such negro or mulatto, or otherwise encourage him to remain in the State, shall be fined in any sum not less than ten dollars, nor more than five hundred dollars.

SEC. 3. All fines which may be collected for a violation of the provisions of this article, or of any law which may hereafter be passed for the purpose of carrying the same into execution, shall be set apart and appropriated for the colonization of such negroes and mulattoes, and their descendants, as may be in the State at the adoption of this Constitution, and may be willing to emigrate.

SEC. 4. The General Assembly shall pass laws to carry out the provisions of this article.

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