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OHIO SCHOOL LAWS

IN FORCE APRIL 15TH, 1889.

ALSO

A SET OF

Blank Forms, and Directions for their Use,

TO SERVE AS A

GUIDE FOR SCHOOL OFFICERS.

COLUMBUS:

THE WESTBOTE COMPANY, STATE PRINTERS.

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PREFACE,

Section 360 of the Revised Statutes of Ohio thus provides: "He [the State Commissioner of Common Schools] shall cause as many copies of the laws as are necessary, relating to schools and teachers' institutes, with an appendix of appropriate forms and instructions for carrying into execution all such laws, to be printed in a separate volume, and distributed to each county with the laws, journals, and other documents, for the use of the school officers therein, as often as any change in the laws is made of sufficient importance, in the opinion of the commissioner, to require a republication and distribution thereof."

There have been in this office for distribution no copies of the edition of the school laws of 1883—the last edition published—for more than two years. The demand for copies throughout the whole State is now most importunate. There is, therefore, an urgent necessity for a new issue.

The notes and the references to the decisions of courts in the edition of 1883, are very valuable and complete. Most of these notes and nearly all the citations of decisions have been retained in this edition. Neither to these notes nor to the citations has it seemed necessary to make large additions. To the comparatively few that have been made an asterisk is prefixed.

In preparing this reissue of the school laws, I have been under many obligations to Attorney-General Watson for advice on legal points. Valuable help has also been obtained from a little work entitled "Common School Law," written and published by C. W. Bardeen, Syracuse, N. Y.

In this volume will be found, as an appendix, the Forms and Instructions prepared by former commissioners for the guidance of school officers.

JOHN HANCOCK,

State Commissioner of Common Schools.

GENERAL RULES OF INTERPRETATION.

“In considering questions arising under the school legislation of the State, such construction should be placed upon its various enactments, and the several provisions thereof, as will give harmony to our educational system, and secure, as far as practicable, its equal benefits, and the reasonable facilities for their enjoyment, to every locality.” [21 O. S., 339.]

“Statutes should be so construed as to give effect to the intention of the legislature, and, if possible, render every section and clause effectually operative.” [1 O. 381.]

“In interpreting a statute or other written instrument the intention of the framers must be arrived at, if possible, and, when necessary, the strict letter of the act, instrument, or law must yield to the manifest intent.” [39 Mo., 80.]

REVISED STATUTES OF OHIO.

TITLE III.

SCHOOLS.

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CHAPTER 1.

CLASSIFICATION AND CHANGE OF DISTRICTS.

SECTION	SECTION
3885. Classes of school districts.	3892. Boundaries of sub-districts not changed.
3886. City districts of first class.	3893. Transfer of territory from one district to another.
3887. City districts of second class.	3894. Township districts may become village districts.
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3890. Township districts.	
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Classes of school districts.

SEC. 3885. The state is hereby divided into school districts, to be styled, respectively, city district of the first grade of the first class, city districts of the second grade of the first class, city districts of the first class, city districts of the second class, village districts, special districts, and township districts. [70 v. 195, § 1; 84 v. 184.]

City districts:

SEC. 3886. Each city having a population of two hun-

dred and fifty thousand or more by the last preceding census of the United States, including the territory annexed to it for school purposes, and excluding the territory detached from it for school purposes, shall constitute a city district of the first grade of the first class; each city having a population of one hundred and fifty thousand or more, and less than two hundred and fifty thousand, by the last preceding census of the United States, including the territory annexed to it for school purposes, shall constitute a city district of the second grade of the first class; and each city having a population of ten thousand and less than one hundred and fifty thousand by the last preceding census of the United States, including the territory annexed to it for school purposes, and excluding territory detached from it for school purposes, shall constitute a city district of the first class. [70 v. 195, § 2; 81 v. 71; 84 v. 184.]

First grade,
first class.

Second grade,
first class.

First class.

SEC. 3886. Each city having a population of ten thousand or more, including the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, shall constitute a school district, to be styled a city district of the first class; and each district that has heretofore been constituted a city district of the first class shall remain such. [70 v. 195, § 2; 81 v. 71; 85 v. 91.]

City school
districts of
first class.

*SEC. 3886 (a). It will be observed there are two sections with this number. The original section 3886 was amended and repealed in 1884, and the section as amended in 1884 was amended and repealed in 1887. The author of the amendment of 1888 seems to have overlooked the amendment of 1887, and to have gone back to the amendment of 1884, which had been repealed by the amendment of 1887. Under this condition of facts there was nothing left to do but to retain the two sections with the same number.

(b) In the interpretation of several of the sections of this title, it will be necessary to observe that "city districts of the first class," and "cities of the first class" are not related terms. A city of the first class has over 31,500 inhabitants.

SEC. 3887. Observe also that "city districts of the second class," and "cities of the second class" are not co-incident.

SEC. 3888. *Territory attached for school purposes.*—The phrase "territory attached for school purposes," as used in sections 3886, 3887, and 3888, evidently applies to territory not included in the corporate limits of a city or village, but which, at the time of its organization, formed a part of the school district or sub-district to which the territory of such city or village

Ch. 1.

Classification and Change of Districts.

City districts
of second
class.

SEC. 3887. Each city of the second class, having a population of less than ten thousand by the census of 1870, including the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, shall constitute a school district, to be styled a city district of the second class. [70 v. 195, § 3.]

Village dis-
tricts.

SEC. 3888. Each village, including the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, shall constitute a school district, to be styled a village district. [74 v. 140, § 4.]

Changes of
classification
in certain
cases.

SEC. 3889. Municipal corporations hereafter created, or advanced to higher grade, except villages created by advancement or otherwise, shall, from and after their creation or advancement, be school districts corresponding to their grade as herein provided. [70 v. 195, § 5.]

Township
districts.

SEC. 3890. Each organized township, exclusive of any of its territory included in a city, village, or special district,

belonged; or to territory transferred from one district to another, for school purposes, under section 3893 of this chapter.

"Territory detached for school purposes" is territory taken into the corporate limits of a city or village, but not transferred to the village district, by mutual consent of the boards of education concerned; or it is territory formally transferred by the city or village district adjoining.

SEC. 3889 (a). Villages created by advancement or otherwise, become village districts only when action is taken for that purpose under section 3912, et seq.

(b) The corporate character of a school district cannot be questioned in a collateral proceeding. This is to be done in direct proceeding by *quo warranto*. If the corporation is acting by virtue of legislative enactment, this is sufficient as against everybody, except the State itself, and private parties cannot question the regularity.—Cooley's Constitutional Limitations, 254.

SEC. 3890. A change of township boundaries accordingly works a change in the township district boundaries.

* SEC. 3891. The decision of the supreme court in the case of the State v. Powers, 38 O. S., 54, which declared it beyond the constitutional powers of the general assembly to create a special school district, has been overruled by the same court in the case of the State ex rel. Attorney-General v. Shearer (February, 1889). The latter decision revives all the special districts created by the legislature, except the New London special district.

SEC. 3892. Sub-districts are the sub-divisions of a township district. These sub-divisions are made by township boards of education, and by commissioners appointed by the probate court.

shall constitute a school district, to be styled a township district. [70 v. 195, § 7.]

SEC. 3891. Any school district now existing, other than those mentioned in sections *thirty-eight hundred and eighty-six, thirty-eight hundred and eighty-seven, thirty-eight hundred and eighty-eight, and thirty-eight hundred and ninety*, which has been established by a vote of the people in accordance with any act of the general assembly, or which has been established by a general or local act of the general assembly, shall constitute a school district, to be styled a special district; and such districts may be established as provided in chapter five of this title. [70 v. 195, § 6.]

Special districts.

SEC. 3892. The several sub-districts and joint sub-districts now existing within any township district shall continue, according to their respective boundaries, to be sub-districts or joint sub-districts thereof, subject to the provisions of this title. [70 v. 195, § 8.]

Boundaries of sub-districts not changed.

CHANGE OF DISTRICT.

SEC. 3893. A part or the whole of any district may be transferred to an adjoining district, by the mutual consent of the boards of education having control of such districts; but no such transfer shall take effect until a statement or map, showing the boundaries of the territory transferred, is entered upon the records of such boards, nor, except when the transfer is for the purpose of forming a joint sub-district, until a copy of such statement or map, certified by the clerks of the board making the transfer, is filed with the auditor of the county in which the transferred territory is situate; and any person living in the territory so transferred may appeal to

Transfer of territory from one district to another.

Concerning joint sub-districts, see chapter 5.

SEC. 3893 (a). There is no such thing as transferring territory for temporary purposes, with an understanding that it shall be set back at a definite future time. Such territory can be transferred again as other territory may be; thus changing again the boundaries of the district and the voting relations of residents.

Transfer of territory.

(b). Unless boards transfer territory, an appeal does not lie to the commissioners, under this section. But if a case arises such as is described under section 3969, the commissioners may be applied to for relief.

(c). It is the evident intention of the statute that the territory to be transferred to an adjoining district must be contiguous to the district.

Must be contiguous.

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Classification and Change of Districts.

the county commissioners, as provided in section *thirty-nine hundred and sixty seven*, and the commissioners, at their first regular meeting thereafter, shall approve or vacate such transfer. [70 v. 195, § 40.]

Township districts may become village districts.

SEC. 3894. The board of education of any township district may decide to submit, and, on petition of one-third of the electors of the district, shall submit, at the first regular election for township officers after such decision is made or petition received, the question whether such township district shall be governed by the provisions of this title relating to village districts; and the board shall give notice of the vote to be taken, by posting up written or printed notices, in ten or more public places in the township, at least twenty days prior to such election. [70 v. 195, § 155.]

How vote shall be taken.

SEC. 3895. The election shall be conducted by the township trustees, who shall provide a separate ballot-box and separate poll-books, and make a return of the vote to the township clerk, and also to the commissioner of common schools, within five days after the election; and the persons voting at such elections in favor of such change shall have written or printed on their ballots—"School District," and those opposed to such change—"No School District." [70 v. 195, § 156.]

How board organized.

SEC. 3896. At the annual organization of the township board after any such election, if it be found that a majority of the votes cast were in favor of the change, the board shall select, by vote or lot, six persons to serve as a township board of education, two of whom shall serve for three years, two for two years, and two for one year; and such board shall thereafter be governed by the provisions of this title relating to boards of village districts. [70 v. 195, § 167.]

CHAPTER 2.

CITY DISTRICTS OF THE FIRST CLASS.

SECTION	SECTION
3897. Board of education—how constituted, and how membership increased.	3900. Where certain electors to vote, plats of attached territory.
3898. When two members for each ward, how elected.	3901. Conduct of elections.
3899. When one member for each ward, how elected.	3902. How electors on attached territory to cast ballots.
	3903. Meetings and certain powers of the board.

SEC. 3897. In city districts of the first grade of the first class, the board of education shall consist of one member from each ward, and each member of the board shall be an elector of the ward, or of the township, or part of the township, which, for school purposes, has been or may be attached to such ward, for which he is elected or appointed; provided, that [in] city districts of the first grade of the first class, beginning with the annual election for city officers held in April, 1887, one member shall be elected from each ward having an even numerical designation, or from territory attached for school purposes to such ward having an even numerical designation, as above provided, who shall serve for the term of one year, and that at the annual election for city officers held in April, 1887, one member shall be elected from each ward having an odd numerical designation, or from territory attached for school purposes to such ward having an odd numerical designation as above provided, who shall serve for a term of two years, and annually thereafter as the term of members elected by said ward or ward with territory attached for school purposes, as above provided, shall expire, successors shall be elected to hold for the term of two years; and if any person elected a member of said board shall, during his term as said member, move out of the ward for which he was elected, then his term shall cease and determine, and said board shall elect a person to fill the vacancy; the members elected under this act shall hold office until their successors are elected and qualified; provided, that the board of education established by this act shall be in all respects the successors of the respective board whose place they take; but the

Board of education in city district, first grade, first class: election of members; their terms of office.

Vacancy by removal.

Appointment and removal of teachers.

SEC. 3897. *Change of Residence.*—When a member of a board of education or a local director ceases to be an elector in the district, ward, or sub-district which he was elected to represent, he vacates his office.

New wards.

members of such board of education shall not, as individuals or as local committees, exercise supervisory authority over the schools in the several wards or districts, or have the selection or nomination of teachers. The superintendent of the public schools of said city district of the first grade of the first class shall appoint all the teachers of said schools by and with the consent of the board of education, and the superintendent or the board of education may remove for cause; and provided further, that when a new or additional ward shall be created in such city district, the board of education shall proceed to elect a person who is an elector of such additional ward, or of territory thereto attached for school purposes, as a member of the board from such ward, to serve until the next annual election for city officers, at which annual election the qualified electors of each such new wards, and the territory annexed thereto for school purposes, shall elect one judicious and competent person, having the qualification of an elector of such ward or territory thereto attached for school purposes, to serve as a member of the board of education; provided, that if such new wards have an even numerical designation, the member so elected, as provided above, shall serve until the expiration of the term of other members who are or have been elected from wards having an even numerical designation, and if such new ward having an odd numerical designation, the member so elected, as provided above, shall serve until the expiration of the term of other members of said board, who are or have been elected from wards having an odd numerical designation; and annually thereafter, as the term of members so elected, as above provided, shall expire, successors shall be elected, who shall serve for the term of two years, and until the election and qualification of their successors. [77 v. 80; 82 v. 7; 84 v. 184.]

Board of education in city districts first class; election and term of members.

SEC. 3898. In each city district of the first class, and not of the first or second grade, the board of education shall consist of two members from each ward, except in city districts organized under a law providing for one member only for each ward, in which districts the board may, at any time, by a vote of the majority of all its members, provide that thereafter each ward shall be represented by two members, and thereupon proceed to choose one additional member for

each ward, to serve until the next annual election for city officers, and until the election and qualification of his successor; and each member of the board shall be an elector of the ward for which he is elected or appointed; and at every annual election for city officers in a city which constitutes districts of the first class, wherein the board consists of two members for each ward, there shall be elected in each ward, by the qualified electors thereof, one judicious and competent person to serve as a member of the board of education of the districts for two years, from the third Monday of April succeeding his election, and until the election and qualification of his successor; provided, that at the annual election for city officers, held first after a city has been constituted a city district of the first class, with a board to consist of two members from each ward, there shall be elected in each ward of such city, by the qualified electors of such ward and of said district entitled to vote in such wards, two persons of the required qualifications to serve as members of the board of education of such districts, one for one year and the other for two years from the third Monday of April succeeding their election, and until the election and qualification of their successors; and provided, that any elector residing in such district, but not in any ward of such city, shall, if the territory containing his residence has not been attached to any ward for school purposes, as provided in section thirty-nine hundred, be entitled to vote for members of the school board in the ward nearest his residence; and in such case a separate ballot-box and poll-book shall be provided and used, as required in section thirty-nine hundred and two, in each ward where any such elector may be entitled to vote; when the board of education in such city district of the first class consists of as many members as there are wards, there shall be elected at the annual election for city officers in the year eighteen hundred and eighty, and every two years thereafter, in each ward designated by an even number, and in the year eighteen hundred and eighty-one, and every two years thereafter, in each ward designated by an odd number, by the qualified electors thereof, one member of the board, who shall hold his office for two years, and until the election and the qualification of his successor. [70 v. 195, § 11; 84 v. 184.]

Board of education in city districts, first class.

Ch. 2.

City Districts of the First Class.

Cleveland¹
board of edu-
cation.

SEC. 3899. In city districts of the first class, second grade, the board of education shall consist of twenty members, to be elected by districts, to serve for the term of two years, except as hereinafter provided; and for the purpose of electing such board of education such cities shall be and are hereby divided into twenty districts, as follows:

City divided
into districts.

The second and fourth wards shall constitute the first district.

The fifth and eighth wards shall constitute the second district.

The sixth and seventh wards shall constitute the third district.

The ninth and eighteenth wards shall constitute the fourth district.

The nineteenth and twenty-first wards shall constitute the fifth district.

The twentieth and twenty-second wards shall constitute the sixth district.

The twenty-third and twenty-sixth wards shall constitute the seventh district.

The twenty-fifth and twenty-seventh wards shall constitute the eighth district.

The seventeenth and twenty-fourth wards shall constitute the ninth district.

The thirteenth and fifteenth wards shall constitute the tenth district.

The twelfth and fourteenth wards shall constitute the eleventh district.

The tenth and eleventh wards shall constitute the twelfth district.

The first and sixteenth wards shall constitute the thirteenth district.

The third and twenty-eighth wards shall constitute the fourteenth district.

The twenty-ninth and thirtieth wards shall constitute the fifteenth district.

The thirty-first and thirty-third wards shall constitute the sixteenth district.

The thirty-fourth and thirty-fifth wards shall constitute the seventeenth district.

The thirty-second and thirty-sixth wards shall constitute the eighteenth district.

The thirty-ninth and fortieth wards shall constitute the nineteenth district.

The thirty-seventh and thirty-eighth wards shall constitute the twentieth district.

And in said cities of the second grade, first class, there shall be elected at the first annual municipal election to be held after the passage of this act, in each district designated by an even number, by the qualified electors thereof, for the term of three years, and thereafter biennially, and in each district designated by an odd number, by the qualified electors thereof, for the term of two years, and thereafter biennially, one member of the board, who shall hold his office until the election and qualification of his successor. [70 v. 195, § 11; 71 v. 55, §§ 1, 2, 3; 83 v. 3'.]

Election and term of members.

SEC. 3900. An elector residing in the city district, but not in any ward of the city, shall be entitled to vote in the ward to which he is attached by the board of education for school purposes; but an elector residing in the city, and not in the city district, shall not be entitled to vote at any election provided for in this chapter; the board shall ascertain whether the city limits are co-extensive with the limits of the school district; and in case the school district includes territory without the corporate limits, the board shall make or cause to be made a plat of the territory so attached for school purposes, designating thereon by metes and bounds the ward or wards to which such attached territory is to be thereafter assigned; which plat shall be recorded as a part of the proceedings of the board. [70 v. 195, §§ 10, 12.]

Where certain electors to vote; plats of attached territory.

SEC. 3901. The election provided for in section *thirty-eight hundred and ninety-nine* shall be conducted by the judges

Conduct of elections.

SEC. 3900. Of course an elector residing in a city of the first class, and not in the city district, votes for school officers with the voters outside of the city, and in the same district with him. See sections 3908 and 3916. "Shall be elected by the qualified electors of such districts," however the districts may be situated as to the boundaries of cities, etc.

SEC. 3901. The method of contesting an election is by *quo warranto*. R. S., Section 6760.

(a). "Shall make returns," that is, a certificate showing the vote for each candidate for the required office in the proper ward, [or township,

Returns.

and clerks of the city elections, and they shall make returns of such election to the board of education within five days from the time of holding the same. [70 v. 195, § 13.]

How electors on attached territory to cast ballots.

SEC. 3902. The judges and clerks of city elections, in the wards to which any territory beyond the city limits has been attached by the board of education for school purposes, shall have two separate ballot-boxes and two sets of poll-books; the electors residing on such attached territory may vote at all regular and special elections in such wards for members of the board of education; the judges of election in such wards shall receive the ballots of the electors residing on such attached territory, and deposit them in the ballot-box provided for that purpose; the clerks of election

village, or special district] at the proper date, signed by the judges and clerks of election before they disperse, sealed, marked "Election Returns," and directed and sent in this case to the board of education. See notes to section 3917.

Poll-books.

(b). Poll-books duly certified and returned are *prima facie* evidence of the truth of their contents, but this presumption will be rebutted by proof that they are fraudulent and fictitious to such an extent as to render them wholly unreliable. Phelps v. Schroder, 26 O. S., 549.

(c). Where a poll-book is thus impeached and rejected, the legal voters are not disfranchised, but the burden of otherwise proving legal votes is thrown upon the party claiming them. *Ib.*

(d). The relator having received a certificate of election as school director, was sworn in, and some months afterward, the board having become satisfied that he had not received a majority of the votes and that defendant had, swore in the latter and excluded the relator from their meetings, and the relator thereupon filed an information in the nature of a *quo warranto*, against defendant. *Held*, as the law for the election of school directors makes no provision for contest of election, the method adopted in this case is available. Therefore the fact that the relator had received a certificate is not conclusive, for the court must go behind the certificate to ascertain who had the majority of votes. State *ex rel.*, (Langdon) v. Goodale. 4 Bull., 1065, 8 Rec., 432.

Contest by quo warranto.

(e). That this remedy is exclusive, and that a *mandamus* to recanvass will not lie, see 26 O. S., 216.

(f). In case of fraud on the part of the judges in receiving or in counting votes, McCray on Elections, § 184, after referring to many cases and authorities, remarks: "The safe rule probably is that where an election board are found to have willfully and deliberately committed a fraud, even though it effect a number of votes too small to change the result, it is sufficient to destroy all confidence in their official acts, and to put the party claiming anything under the election conducted by them, to the proof of his votes, by evidence, other than the returns." See Judkins v. Hill, 50 N. H., 140; Knox Co. v. Davis, 63 Ill., 405; Russell v. State, 11 Kan., 308."

shall enter upon the separate poll-books provided for that purpose the names of such electors so voting; and due returns of such elections for members of the board shall be made as provided by section *thirty-nine hundred and one*. [70 v. 195, § 12.]

SEC. 3903. The board of education, except in cities of the first class, second grade, shall hold regular meetings once every two weeks. In cities of the first class, second grade, said board shall hold its meetings on the first and third Monday of each month following the third Monday of April, and in all city districts of the first class, said board may hold such special meetings as it may deem necessary; it may fill all vacancies that occur in the board until the next annual election, and may make such rules and regulations for its own government as it may deem necessary; but such rules and regulations must be consistent with the constitution and laws of the State. [79 v. 59.]

Time of regular meetings of boards of education.

Special meetings, etc.

CHAPTER 3.

CITY DISTRICTS OF THE SECOND CLASS, AND VILLAGE DISTRICTS.

SECTION	SECTION
3904. Membership of board of education.	3909. Notice of elections.
3905. Election of members in city districts.	3910. Returns to be made to board.
3906. Conduct of the election.	3911. How membership increased.
3907. Election when as many members as wards.	3912. How village may become village district.
3908. Election in village districts.	3913. How village district organized.
	3914. Organization of board.

SECTION 3904. In city districts of the second class, and in village districts, the board of education shall consist of six members, except in districts organized under a law providing for only three members, who shall have the qualifications of an elector therein, and in such districts the membership may be increased to six, in the manner hereinafter provided; but the board of a city district of the second class, may provide, by a vote of the majority of its members, that the board shall consist of as many members as the city has wards. [70 v. 195, §§ 16, 17.]

Membership of board of education.

SEC. 3903 (a). For manner of filling vacancies in the board, see section 3981, with the notes thereto.

(b). For classification of cities, see sections 1547-8, of Revised Statutes. See also remarks under sections 3886 and 3887.

Ch. 3.

City Districts of the Second Class, and Village Districts.

Election of members in city districts.

SEC. 3905. In city districts of the second class, except such as are mentioned in section *thirty-nine hundred and seven*, members of the board of education shall be elected annually, to serve for the term of three years from the third Monday of April succeeding their election, and until the election and qualification of their successors; if the board consists of six members, two judicious and competent persons shall be elected each year; and if the board consists of three members, one such person shall be elected each year. [75 v. 53, § 18.]

Conduct of election of members of board of education in city districts, second class.

SEC. 3906. If the boundaries of the district and [the] city are identical, or, if territory has been detached from the city and attached to another district, the election shall be conducted exclusively by the judges and clerks of the city election, but electors residing within the bounds of such detached territory shall not vote thereat; but if territory outside the city limits is attached to the district, an election shall also be held for the same purpose in the township from which it was detached, and conducted by the judges and clerks of the township election, but only electors residing within the bounds of such territory shall vote thereat; the election shall be held at the same time and places as the election for city or township officers shall be held; the names of candidates for such member shall be upon separate tickets, and all such tickets voted shall be deposited in separate ballot-boxes, which shall be provided by the board of education; separate poll-books of the election shall be kept, and

Territory detached from city!

SEC. 3906 (a). According to the first clause of this section, a district adjoining a city district of the second class, and having attached to it some territory of the city, holds its election for school officers wholly in its own territory. All the voters resident in such district whether outside of the city or within it, vote together for members of the board.

Territory attached to city district.

(b). According to the second clause, voters living outside the limits of a city of the second class, and yet on territory attached to such city for school purposes, do not vote within their district, that is, at the city or ward poll, but at the poll of the township in which their school-house is situated—depositing their ballots for school officers for the city district “in a separate ballot-box which shall be provided by the board of education” of the city district, since the township board is not interested in the subject. For the same reason the separate poll-book is probably to be provided by the same board. “The returns”—see note to 3901—are to be made to the city clerk, who will combine this count with the count of those cast within the city and returned to him.

Ch. 2. City Districts of the Second Class, and Village Districts.

returns of the election shall be made to the clerk of the city which constitutes the district. [75 v. 53, § 18; 82 v. 6; 83 v. 82.]

SEC. 3907. In a city district of the second class in which the board consists of as many members as the city has wards, there shall be elected biennially in each ward, at the time and in the manner provided in the preceding chapter for election in city districts of the first class, one competent and judicious person to serve as a member of the board for two years from the third Monday of April succeeding his election, and until the election and qualification of his successor; but at the first election after it is decided that the board shall be so constituted, the persons elected in wards designated by odd numbers shall serve for only one year from the third Monday of April succeeding their election, and until the election and qualification of their successors; and the board shall ascertain the limits of the district, assign attached territory to wards, and make and record a plat thereof, as provided in section *thirty-nine hundred*. [75 v. 53, § 18; 70 v. 195, § 101.]

Election attendance increased.

SEC. 3908. In village districts members of the board of education shall be elected on the first Monday of April annually, to serve for the term of three years from the third Monday of April succeeding their election, and until the election and qualification of their successors; the qualified electors of the district, including those residing within the bounds of territory attached to the district, but beyond the village limits, shall meet between the hours of six o'clock A. M. and six o'clock P. M. of said day, at the usual places of

Election in village districts.

SEC. 3908 (a). The evident intent of the law requires that when the polls are once opened, they should be kept open until the hour prescribed for finally closing; but the statute on the conduct of elections, section 2929, is said to be directory, and, if so, "a departure from its strict observance will not necessarily invalidate an election, where no fraud has been practiced and no substantial right violated." *Fry v. Booth*, 19 O. S., 25.

Opening and closing polls.

(b). It is presumed that the same principle holds in the school law. But the burden of proof will be on the party denying the violation of personal rights in the case.

The polls should be opened and closed at the precise time designated by the statute, if the statute fixes the time, or by the notice, if so fixed.

(c). For method of contesting elections, see note to section 3901.

*If one candidate is ineligible, and the other is not elected, the election is void. See note *d*, Sec. 3917.

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holding school elections, organize by the appointment of a chairman and secretary, and proceed to vote by ballot for persons to serve as members of the board; and if the board consist of six members, two judicious and competent persons shall be elected each year, and if it consists of three members, one such person shall be elected each year. [75 v. 53, § 18.]

Notice of elections.

SEC. 3909. The clerk of the board of education of each city district of the second class, and of each village district, shall publish a notice of the election and meeting provided for in the preceding sections, in a newspaper of general circulation in the district, or post written notices of such meeting in five of the most public places in the district, at least ten days before the holding of the same, which notice

Length of notice.

SEC. 3909 (a). In the law pertaining to such notices, a day is held to be indivisible. Hence a notice issued on any day, allows the whole of that day to be included in the ten, or other number of days' notice, provided for by a statute. Since the ten days must all expire before the meeting begins, it must also expire before the day begins on which the meeting is held, the day itself being but a point of time. The acts of a meeting held on any other day than that expressed in the notice, are invalid. 16 O., 408. 4 Western Law Monthly, 215.

Omission of notice of vacancy.

(b). A notice for a school election must state the purpose for which it is to be held, and no other business can be legally transacted thereat, 14 Vermont, 300. The transaction of such business, however, would not invalidate acts done in accordance with the notice. Furthermore, "the omission of the sheriff [clerk] to mention in his notice one of the vacancies to be filled is not *conclusive* evidence of the invalidity of the election. Taken in *connection* with other circumstances, it is competent evidence of fraud or conspiracy. State v. Taylor, 15 O. S., 137. State v. Stewart, 26 O. S., 216. But if the sheriff [clerk] fails to give such notice for one of the vacancies to be filled, and in consequence of such neglect, only a small minority of the electors present vote for a person to fill such vacancy, such election is irregular and invalid. Foster v. Scarff, 15 O. S., 532."

Notice of time and place.

(c). On this subject, McCrary on Elections, § 135, says: "It must be conceded that time and place are of the substance of every election, while many provisions which appertain to the manner of conducting an election may be directory only. [Dickey v. Hulburt, 5 Cal., 343.] But it does not follow that due notice of time and place of holding an election is always essential to its validity. Whether it is so or not depends upon the question whether the want of due notice has resulted in depriving any portion of the electors of their rights." 13 N. Y., 350; 12 Mich., 508; see also Foster v. Scarf, 15 O. S., 532.

(d). It is more essential that proper legal notice be given for an election to fill a vacancy, or to authorize a tax, than of a regular, stated election, provided for by law.

shall specify the time and place of the election or meeting, and the number of members to be elected. [75 v. 53, § 19.]

SEC. 3910. The secretary of the meeting or clerks of elections in village districts provided for in this chapter shall keep a poll-book and tally-sheet, and return the same within five days after the election to the clerk of the board of education of the district, duly certified. [75 v. 53, § 20.]

Returns to be made to board.

SEC. 3911. When the electors of a city district of the second class, or of a village district, the board of education of which consists of three members, desire that the board shall consist of six members, they may make such change in the manner following: Written or printed notices shall be posted in at least five of the most public places in the district, at least ten days prior to the day designated therein, signed by a majority of the members of the board of education, or by one member of the board and at least ten resident electors of the district, requesting the qualified electors of the district to assemble on a day, and at an hour and a place, to be designated therein, then and there to vote for or against such change; the electors, when assembled in accordance with the notice, shall appoint a chairman and two clerks, who shall be judges of the election; the electors in favor of the proposed change shall have written or printed upon their ballots the words, "Board—change," and those opposed thereto the words, "Board—no change," and the ballots cast shall determine the question whether the change shall be made; the judges shall make due return of the election to the board of education of the district, within ten days after the holding of the same; and if a majority of the votes cast be found to be in favor of the change, three additional members of the board shall be chosen at the next annual election for school officers, one to serve for one year, one for two years, and one for three years, and annually thereafter two members of the board shall be chosen to serve for three years, as provided in section *thirty-nine hundred and five*. [70 v. 195, § 21.]

How membership increased.

SEC. 3912. When the electors of a village desire to erect it into a village district, they may proceed in the following manner: Written or printed notices, signed by not less than five electors, resident of the village, shall be posted, at least ten days prior to the day designated therein, in at least five

How village may become village district.

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of the most public places within the village, requesting the electors thereof to meet for the purpose of voting on the question of establishing a village district, on a day, and at an hour and a place, to be designated in the notices; the meeting shall be held within the limits of the village, between the hours of six o'clock A. M. and six o'clock P. M., and the polls shall be kept open at least six hours; the electors, when assembled in accordance with this notice, shall appoint a chairman and two clerks, who shall be judges of the election; the electors in favor of the proposed village district shall have written or printed on their ballots the words, "Village district, yes," and those opposed thereto the words, "Village district, no;" and the votes cast shall determine the question whether such village district shall be established; if a majority of the votes cast at such election be opposed to the establishment of such village district, the question of establishing the same shall not again be submitted to the electors of the village until the succeeding regular annual election for village officers, and then only upon notice being given as above provided; and if a majority of the votes cast at such election be in favor of the establishment of such district, the village may be organized as a village district in the manner provided in the next two sections. [74 v. 140, § 4.]

SEC. 3913. Written or printed notices, signed by not less than five electors residing within the limits of the village, shall be posted in at least five of the most conspicuous places therein, requesting the electors of the village to meet for the purpose of electing a board of education for such proposed village district, on a day, and at an hour and a place, designated in the notices, which notices shall be posted at least ten days prior to the day designated in them for such meeting; the electors, when assembled in accordance with the

SEC. 3912. Under the act of March 14, 1853, (51 v. 429), when an incorporated village was formed within or to include a material portion of a sub-district, no portion thereof is, by reason of such incorporation, withdrawn from the school jurisdiction of the township, but the whole continues to be a sub-district until the actual election or appointment of a separate school board, and the portion of a sub-district not included within the limits of such incorporated village, is "territory annexed for school purposes" within the meaning of the act. *Cist v. State*, 21 O. S., 339.]

How village district organized.

notice, shall appoint a chairman and two clerks, who shall be judges of the election, and shall then choose by ballot six competent and judicious persons to serve as members of the board of education of the proposed district—two to serve for one year, two to serve for two years, and two to serve for three years, from the third Monday of April next preceding the organization of the district, and until the election and qualification of their successors; but if the election be held on the day of the annual election for school officers, there shall be elected two persons to serve for one year, two for two years, and two for three years, from the third Monday of April succeeding their election, and until the election and qualification of their successors. [71 v. 55, § 5.]

SEC. 3914. If such election be held on the first Monday of April, the board elected thereat shall organize at the time and in the manner provided in section *thirty-nine hundred and*

Organization
of board.

SEC. 3913. (a). Notice given on the first day of the month for such election on the tenth, is not sufficient. See note to section 3909.

Time of notice.

(b).— If the time of the giving of the notice is not stated, it may be proved.

(c). If an emergency should occur, making it necessary to change the place of holding the election after the regular notice has been given, and if such notice is given as would leave no excuse for not voting on account of the change, the election would not be invalidated by such change. 78 Illinois, 171.

Change of
place.

* (d). When candidates for different terms are running for the office of director, the term each is to serve should be designated on the ballots, and such designation can not be disregarded by the judges of election. 20 O. S., 336.

Designation
of term on
ballots.

(e). This decision means this: *the judges can count no votes on which such designation does not appear.* When the election is that of members for two or more different terms, the offices are two or more distinct offices.

(f). Receiving illegal or improper votes will not alone vitiate an election. It must be shown affirmatively, in order to overturn the declared result, that the wrongful action changed it. Dillon on Municipal Corporations, 261.

Illegal votes.

(g). Statutory provisions regarding an election are often regarded by the courts as directory, and if the courts can determine what the popular will was in the case, they are likely to sustain it. This is more especially true regarding the election of officers. The construction is more rigid regarding votes to supply money—to impose taxes. See notes to sections 3909, 3916, 3981, etc.

Statutes often
directory.

(h). As to fraudulently receiving votes by judges and fraudulent counts by them, see notes to section 3901.

eighty; but if the election be held at any other time, the board shall organize on the next Monday thereafter, and in the same manner. [71 v. 55, § 6.]

CHAPTER 4.

TOWNSHIP AND SPECIAL DISTRICTS.

SECTION

3915. Township board of education—how constituted and organized.
3916. Election and qualification of directors.
3917. Notice and conduct of election.
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3920. Regular and special meetings of board.
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SECTION

3922. Elections in new sub-districts.
3923. Board of special district—how constituted, and how increased.
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3927. Members of the board to become directors; disposition of property, etc.

TOWNSHIP DISTRICTS.

SECTION 3915. The board of education of each township district divided into sub-districts shall consist of the town-

SEC. 3914 (a). A village or a city of the second class may surrender its charter without its school organization being affected thereby. Revised Statutes, sections 1640 and 1643.

(b). The property, real and personal, within the village district so established, now belongs to said district, including a *pro rata* share of all moneys now in the treasury of the township district, and of the levy or levies already made.

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

SEC. 3915 (a). This quasi membership of the clerk leaves it in doubt whether half of the sub-district clerks with him, would constitute a quorum. It is presumed that a quorum of a majority will, by its votes, be able to protect the public interests. If the clerk, a non-voter, and hence not in the full sense a member, can help to make a quorum, this theory of the law is here counteracted. Hon. E. E. White submitted the opinion that the township clerk may fill up a quorum, and his successors in this office have generally adopted this view.

(b). The certificate of an election as clerk of a local board of directors, signed by the chairman and secretary of the meeting of such directors convened for the purpose of organizing, is conclusive evidence of membership in such township board. The township board of education can not go behind such evidence, except in case of fraud.

Township board of education—how constituted and organized.

Surrender of charter.

Ownership of property.

What constitutes a quorum.

Certificate of membership.

ship clerk, and the directors who have been appointed clerks of the sub-districts; the board of a township district which is not divided into sub-districts shall consist of the township clerk, and the directors of the district; the board of a township district which is composed of not more than two sub-districts shall consist of the township clerk, and the directors of the two sub-districts; and the clerk of the township shall be clerk of the board, but shall not be entitled to a vote. [70 v. 195, §§ 26, 29; 70 v. 241, § 44.]

SEC. 3916. There shall be elected by ballot, on the second Monday of April, annually, in each sub-district, and in each township not divided into sub-districts, by the qualified electors thereof, one competent person, having the qualifications of an elector therein, to be styled director, who shall hold his office for three years from the day of his election, and until his successor is elected and qualified; and such director shall, within five days after his election, take an oath or affirmation to support the constitution of the United States, and the constitution of the State of Ohio, and to discharge the duties of his office faithfully and impartially, which oath or affirmation may be administered by any director of a sub-district of the township, or by the township clerk. [75 v. 81, § 27.]

Election and qualification of directors.

SEC. 3917. The clerk of each sub-district, or if a township is not divided into sub-districts, the clerk of the township, shall post written or printed notices in three or more conspicuous places in his sub-district or township, as the case may be, at least six days prior to the day of election, designat-

SEC. 3916 (a). When the legislature has fixed by law the time for holding an election of officers, an election at any other time, unless provided for by law, is unauthorized and void. *State v. Dombaugh*, 20 O. S., 167.

Legal time of election.

(b). No person can exercise the functions or perform the official duties of an elective officer until he has been both elected and qualified.

Must be elected and qualified.

(c). An official trust can not be delegated; see III Central Law Journal, page 472. Hence the practice sometimes resorted to in this State, of calling on a neighbor to attend a meeting of the local directors, and even of a township board, is manifestly illegal, and the acts of such boards, which depend on the votes of such substitutes, are invalid and void.

Official trust can not be delegated.

(d). A person who is entitled to vote at a township election, may vote for a director in the sub-district in which he actually resides, however recently his residence was acquired.

Voters in sub-districts.

(e). See also notes under 3913.

ing the day and hour of opening, and the hour of closing the election; the election shall be held at the usual place of holding school meetings in the sub-district, or township which is not divided into sub-districts; the meeting shall be organized by appointing a chairman and a secretary, who shall act as judges of the election; and the secretary shall keep a poll-book and tally-sheet, which shall be signed by the judges, and delivered within eight days to the clerk of the township. [77 v. 63.]

SEC. 3918. The directors of each sub-district, two of whom shall constitute a quorum, shall meet within five days after the second Monday of April each year, at such place as may be most convenient in the sub-district, and organize by appointing one of their number clerk of the sub-district, who

SEC. 3917 (a). The officers of an election board cannot, after dissolving the board and dispersing, return and perform any official act regarding such election. When they have dispersed, they cease to be officers of the election—are *functi officio*. 21 O. S., 216; 14 O. S., 315.

(b). When judges and clerks of election fail to sign poll books and tally sheets, to fill up blanks in the caption, or to carry out the aggregate votes, such omissions and mistakes may be corrected upon the trial of a contest, by parol evidence, and when so corrected, the documents, sustained by the parol proof, are competent evidence of the result of the election. 16 O. S., 184.

(c). When poll-books are substantially in compliance with law, the clerk, and the justices called to his aid, are not authorized to reject the same on account of alleged fraud. *Phelps vs. Schroder*, 26 O. S., 549.

(d). In case a candidate receiving the highest number of votes at an election is ineligible, the next highest candidate is not elected. (See 13 Cal., 145; 38 Maine, 597; 1 Chandler, Wis., 117.) Another election shall be provided for, or an appointment be made according to law.

(e). A person voted for under the name of E. H. Smith, whose name is H. E. Smith, there being no such man as E. H. Smith, should have the votes counted, if the judges are satisfied that the person H. E. Smith was intended. See case of *Gates v. Beckwith*, 11 W. L. M., 589.

See, also, *State ex rel. Jas. E. Campbell v. Charles Foster*, Governor, and Charles Townsend, Secretary of State, *Ohio Law Journal*, Feb. 10, 1883, in which the court held:

"Where the Governor and Secretary of State, under section 2886 of the Revised Statutes, in canvassing the returns of votes from a congressional district aggregate the votes returned from one county for H. L. Morey, with the votes returned from other counties for Henry L. Morey, treating the names as designating the same person, a mandamus will not be awarded requiring the votes thus aggregated to be counted as given for different persons, in the absence of an averment that the votes were intended for different persons."

Meeting of directors.

Failure to sign poll-book and tally-sheet.

Ineligible candidate.

Wrong initials to name.

shall preside at the official meeting of the directors, and record their proceedings in a book to be provided for that purpose, together with the minutes of the proceedings of the annual school meetings held in the sub-district by the electors thereof, which shall be a public record; all such proceedings, when so recorded, shall be signed by the clerk; the directors may meet as frequently as they deem necessary for the transaction of business, and may fill vacancies in the office of clerk, or, if the clerk be absent, either of the other directors may officiate temporarily in his place; but no business shall be transacted at a meeting of which due notice has not been given to each of the directors of the sub-district, either personally or by a written notice left at his residence or usual place of business. [70 v. 195, § 28.]

SEC. 3919. If the qualified electors of a sub-district, or of a township not divided into sub-districts, fail to meet and elect a director on the second Monday of April in any year, as prescribed in this chapter, or if a vacancy occur in the board of directors, any three qualified electors of such sub-district or township may call a special meeting of the directors thereof within ten days after such failure to elect, or the occurrence

How vacancies in board filled.

SEC. 3918 (a). As the township board is to organize and do business on the third Monday of April, it is quite necessary that the directors organize promptly after the day of election. No meeting of such directors is legal unless every director has had due notice of it.

Organization of board.

(b). The notice for each meeting must be personal, or in writing, left as directed in the law. If the mail should be resorted to, and it could be proved that each member actually received notice, it might be held sufficient. The presumptions are against such procedure, and the burden of proof would certainly be on the party affirming such sufficiency.

Notice to member.

(c). Though a member may be out of town, it would appear that action done without leaving the notice as required, would be illegal and invalid. 16 Maine, 185.

(d). In the absence of the duly elected clerk, at any legal meeting of the directors, a clerk *pro tem.* may be appointed. Such appointment does not make him a member of the township board.

Clerk *pro tem.*

(e). No pretended or attempted acts of a board of education or of a local board of directors, has any legal validity whatever, except as they are performed by the board in its organized capacity, its acts being duly recorded on its journal. The board is one organized body and not even an aggregate of three or six men, whose separate acts performed at different times and places, will constitute a legal act in any sense, nor for any purpose requiring official sanction. 22 O. S., 144; 25 Mich., 483.

Business must be transacted at meeting.

(f). As to contest of elections, see notes to sections 3906, 3987, etc.

of such vacancy, for the purpose of electing a director, on first giving five days' notice in writing of the time and place of holding such meeting, by posting the same in three of the most public places in the sub-district or township; the director elected at such meeting shall hold his office for the unexpired term to be filled, and until the election and qualification of his successor; and if there be a failure to hold such general election, or the special election provided for in this section, the township clerk shall appoint some suitable resident of the sub-district to act as director until the next election, and until the election and qualification of his successor. [70 v. 195, § 20.]

SEC. 3920. The board of education shall hold regular sessions on the third Monday of April and the last Monday of August in each year, at the usual places of holding township elections, or at such place in the immediate vicinity thereof as may be convenient, for the transaction of business, and may adjourn from time to time, or hold special meetings at any other time or place within the township, as it deems desirable, for the transaction of business; which special meeting may be called by the township clerk, by the president of the board, or by two or more members of the board, but each member of the board must be duly notified thereof personally, or by written notice left at his residence or usual place of business. 70 v. 195, § 31; 86 v. 346.]

SEC. 3921. A map of each township district shall be prepared by the board, as often as it may deem necessary, in which shall be designated the numbers and boundaries of the sub-districts thereof; the board may at any regular session, increase or diminish the number, or change the boundaries of sub-districts; but no sub-district shall contain less than

Map of township district; change of sub-districts.

SEC. 3919 (a). When the time is calculated from an act done, the whole day on which the act is done is included; but if the calculation be from the day itself, then the day is excluded.

(b). As to what a notice must contain, see notes to section 3991.

(c). The term election implies a *choice* of a qualified person to an office by an electoral body, at the time, and substantially in the manner, and with the safeguards provided by law, to prevent surprise upon the electoral body. 15 O. S., 534.

SEC. 3920. The adjourned meetings of a regular session are regular meetings.

Computation of time.

General requirements as to notice, etc.

sixty resident scholars by enumeration, except in cases where, in the opinion of the board, it is necessary to reduce the number; and any sub-district which may be established by act of the general assembly shall be governed by the provisions of this title, except that it cannot be changed or consolidated by the board within three years after its formation, unless the written consent of two-thirds of the electors residing in the territory affected by such change is obtained. [75 v. 120, § 32.]

SEC. 3922. When the board consolidates two or more sub-districts into a new sub-district, or establishes a new sub-district in any other way, it shall call a special meeting of the qualified electors resident in the new sub-district, for the purpose of electing directors for the same; at least five days before the time fixed for the meeting the board shall post, in three of the most public places in the new sub-district, written or printed notices, stating time, place, and object of holding the meeting; the election shall be conducted as provided in this chapter, and three directors shall be elected, one to serve for one year, one for two years, and one for three years from the annual meeting next preceding the organization of the new sub-district; and the terms of office of the directors of sub-districts so consolidated shall expire at the time such new sub-district is created. [75 v. 120, § 32.]

Election in new sub-districts.

SEC. 3921. The term "sub-district," as used in section 1 of this supplementary act of April 9, 1867 (64 v. 117), does not include the subordinate territorial divisions of separate school districts into which a city or village may be sub-divided, but applies exclusively to township or county sub-districts. [Anders v. Spargur, 19 O. S., 577.]

Sub-districts exist only in township districts.

SEC. 3922 (a). The attaching of a territory composing a sub-district to adjacent sub-districts by a township board of education, under section 32 of the act of May 1, 1873 (70 v. 203), is not a consolidation of two or more sub-districts into a new sub-district, within the meaning of said section, but is a change or alteration of the boundaries of the sub-districts; and the offices of local directors in the sub-district to which such territory is attached are not thereby vacated. [State v. Gibbs, 25 O. S., 256.]

Effect of attaching territory.

(b). In case of consolidation of sub-districts, members of local boards continue to serve and the clerks remain in the township board, until the actual election and qualification of the new board. 21 O. S., 339.

SPECIAL DISTRICTS.

Board of special district—how constituted, and how increased.

SEC. 3923. The board of education of each special district shall consist of three members, who shall be residents of the district, and have the qualifications of an elector therein; and when the electors of any special district, the board of education of which consists of three members, desire that the board shall consist of six members, they may make such change in the same manner as provided for city districts of the second class and village districts, in section *thirty-nine hundred and eleven*. [70 v. 195, § 22.]

Election of members.

SEC. 3924. There shall be elected annually, by ballot, on the second Monday of April, in each special district, by the qualified electors thereof, at the usual time and place of holding school elections in such district, one judicious and competent person to serve as member of the board for three years from the first Monday succeeding his election, and until the election and qualification of his successor; but in special districts hereafter established, the first election for members of the board shall be held within twenty days after such establishment, at least five days' previous notice of which, stating the time and place of meeting, and signed by at least three electors of the district, shall be posted in three of the most conspicuous places in the district; at such meeting a chairman and clerk shall be chosen, and there shall be elected three members of the board, one to serve until the third Monday of April next succeeding his election, and one to serve for one year, and one for two years from said third Monday, and each to serve until the election and qualification of his successor. [71 v. 57, § 23; 75 v. 120, § 19.]

Notice and conduct of election.

SEC. 3925. The clerk of the district shall post written or printed notices, in three or more conspicuous places in the district, at least six days prior to the day of election, designating the day and the hour of opening and closing the election; and the election shall proceed, and a return thereof be made, in the manner provided for elections in village districts, and shall continue at least two hours. [71 v. 57, § 24.]

SEC. 3924. If not held on the day fixed by law, see note on sec. 3916.

SEC. 3925. Notice on the first for an election on the sixth, is not sufficient. See note on sec. 3909.

SEC. 3926. When the electors of a special district desire to abandon their organization, and become a part of the township district of the township in which such special district is located, they make the change in the following manner: Written or printed notices shall be posted in at least five of the most public places in the district, signed by a majority of the members of the board of education, or one of the board and at least six resident electors of the district, requesting the qualified electors thereof to assemble on a day, and at an hour and a place, designated in the notices, which notices shall be posted at least ten days prior to the day designated in them, then and there to vote for or against such change; the electors, when assembled at the time and place designated in the notices, shall appoint a chairman and two clerks, who shall be judges of the election, which shall continue at least two hours; those in favor of the proposed change shall have written or printed on their ballots the words "School—change," and those opposed thereto the words "School—no change," and a majority of the ballots cast shall determine the question whether the change shall be made; the judges shall within five days after the election, make due return thereof to the board of education of the district; and if a majority of the votes cast are in favor of the change, the board shall immediately certify that fact to the township board, which shall thereupon assume jurisdiction of the territory, property, and affairs [of the special district, and thereafter treat such district as a sub-district of the township district. [72 v. 27, § 25.]

How special districts abandoned.

SEC. 3927. The members of the board of education of the special district shall be directors of the sub-districts so created, for the remainder of the terms for which they were elected respectively; the clerk of the special district board shall deliver to the clerk of the township board all the books and papers of the special district in his custody, and notify the county auditor, in writing, of the abandonment of the organization of the district; the treasurer of the special district board shall deliver to the treasurer of the township

Members of the board to become directors; disposition of property, etc.

SEC. 3926. The general rule in computation of time *within* which an act is to be done is to exclude the first day and include the last. [Am. Law Register, N. S. X 36; 16 O. S., 208, 209.]

board all the books, papers, and money of the special district in his possession; the township board shall complete all unfinished business pertaining to the special district; any debt contracted by the special district board shall be paid out of the money transferred to the treasurer of the township board, as herein provided, and money arising from taxes levied by the special district board; and if such funds are insufficient therefor, the remainder shall be paid by a special tax upon the property of the sub district so created. [72 v. 27, § 2.]

CHAPTER 5.

JOINT SUB-DISTRICTS.

SECTION	SECTION
3928. Township boards may establish by mutual agreement.	3940. Clerks to have present plats and papers.
3929. How the school governed and supported.	3941. The report of the commissioners.
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SECTION 2928. When the better accommodation of scholars makes it desirable to form a sub-district, composed of parts of two or more townships, the boards of education of the townships interested may, by mutual agreement, at a joint meeting held for the purpose, establish the same, and fix the boundaries thereof; if there is no suitable school-house within such boundaries, or if there is one, but it is not

Township boards may establish by mutual agreement.

Mutual consent.

Teacher, where examined.

SECTION 3928 (a). [Mutual agreement implies consent of each board interested; that is, it requires a majority of a quorum of each board to form a joint sub-district.]

(b). Joint sub-districts can be established only by a transfer of territory. The teacher thereof must hold a certificate from the board of examiners of the county in which the school-house is situated.]

(c). These proceedings should be carefully recorded. See note (e) to section 3914.

suitably located, the board shall designate a site whereon to erect such building; but if there is a suitable school-house within such boundaries, properly located, the school shall be held therein; a chairman and secretary shall be chosen at such meeting, and the secretary shall make a memorandum of the proceedings had thereat; a copy of such memorandum, signed by the chairman and secretary, shall be transmitted to the clerk of each of the boards, who shall record the same in his record of proceedings of the board; and the secretary shall transmit a like copy of the proceedings to the auditor of each county having territory embraced in the sub-district. [70 v. 195, § 34.]

SEC. 3929. The school in a joint sub-district shall be under the control of the board of education in the township in which the school house is situate, of which board the director who is clerk of the joint sub-district shall be a member; but such school shall be supported from the school funds of the townships having territory in the joint sub-district, in proportion to the enumeration of youth, as provided in sections *thirty-nine hundred and sixty-one and thirty-nine hundred and sixty-two*. [75 v. 84, § 35.]

How the school governed and supported.

SEC. 3930. Joint sub-districts may be established also in the manner provided in succeeding sections of this chapter.

Further provisions for establishment.

SEC. 3931. Three or more qualified electors, resident of the territory sought to be included therein, may apply, in writing, to the board of education of any township wherein any part of the territory is situate, for the creation thereof. [75 v. 120, § 1.]

May be established on petition.

SEC. 3932. The petition shall describe the territory sought to be included in the joint sub-district, may set forth the reasons requiring the creation thereof, and shall be filed with the clerk of the board of education to which it is addressed. [75 v. 120, § 2.]

What petition to contain.

SEC. 3933. Upon the filing of such petition, such clerk shall forthwith give notice thereof, in writing, to the mem-

Clerks to give notice of filing, etc.

SEC. 3929 (a). "Shall be a member," let him live in which township he may.

(b). No money will be contributed from a township which has no youth enumerated within the joint sub-district.

bers of the board of which he is clerk, which notices shall name a suitable and convenient place, and a day and hour, for the boards to meet; he shall also transmit a like notice, forthwith, to the clerks of all other boards of education having jurisdiction over any of the territory sought to be affected; and such clerks, upon the receipt of such notice, shall in like manner give notice forthwith of the filing of such petition, and of the time and place of meeting, to each member of their respective boards. [75 v. 120, § 3.]

When petition for joint sub-district may be filed with probate judge.

SEC. 3934. It shall be the duty of such boards to meet and consider the petition within thirty days from the time the same is filed, but if they do not do so within sixty days from such time, or having met, established, or determined not to establish a joint sub-district, three or more electors of the territory sought to be included therein may file a petition or remonstrance, for or against the same, with the probate judge of the county; and if the territory sought to be included therein is situated in two or more counties, the petition may be filed with the probate judge of either county. [75 v. 120, § 4; 78 v. 8.]

Security for costs to be given.

SEC. 3935. The petitioners shall also file with the probate judge the undertaking of one or more of their number, with security to the satisfaction of the judge, in the sum of one hundred dollars, conditioned that the petitioners will pay all the cost of a proceeding if a joint sub district be not established thereby. [75 v. 120, § 5.]

Time and place of meeting of commissioners.

SEC. 3936. Upon the filing of such petition and undertaking, the judge shall fix a time, not more than sixty days thereafter, and a place, which shall be the school-house upon the territory, if there is one thereon, and if there is more than one school-house thereon, then the house last built, and if there is no school-house thereon, then some convenient place within the territory, for the meeting of the commissioners hereinafter directed to be appointed. [75 v. 120, § 6.]

Publication of notice.

SEC. 3937. The judge shall thereupon cause to be published, for four consecutive weeks, in two newspapers of opposite politics, printed and of general circulation in the county where the petition is filed, notice of the filing of such petition, and of the time and place of meeting of the commissioners. [75 v. 120, § 7.]

SEC. 3938. The judge shall also make an order appointing three judicious, disinterested men of the county, and not residents of either of the townships to be affected, to be commissioners, and to act in the premises; if a person so appointed die, or fail from any cause to be present and to act, or if he give notice of his inability to serve, the judge shall forthwith, by order, appoint another in his stead, who may act as if he had been originally appointed; and the judge shall deliver a copy of the petition and his order to the commissioners, and shall instruct them in the law applicable to such proceedings. [75 v. 120, § 8.]

Commissioners to be appointed.

SEC. 3939. The commissioners shall take an oath to discharge faithfully the duties required by this chapter, according to the best of their knowledge and understanding, and shall meet at the time and place named in the published notice, may examine witnesses under oath, which may be administered by one of their own number, and consider and determine the question whether a joint sub-district ought to be established. [75 v. 120, § 9.]

Oath and duties of commissioners.

SEC. 3940. The clerk of the several boards of education interested shall be present at the meeting of the commissioners, and have with them the plats of the several townships, with the lines of the several sub-districts marked thereon, and such other papers and documents as will serve to inform the commissioners, and give them a correct idea of the wants of the petitioners. [75 v. 120, § 10.]

Clerks to have present plats and papers.

SEC. 3941. The commissioners shall report, in writing, to the probate judge:

The report of the commissioners.

1. Whether or not a joint sub-district ought to be established, and their reasons therefor.
2. If they find in favor of the establishment of a joint sub-district, they shall give the lines and a plat thereof; they may also change the lines of the sub-district proposed in the petition, by including therein other territory, or excluding territory included therein, or both; and if there is no

SEC. 3934. The petition is first to go to the board of education and only in case of there being three persons who are to be affected by the neglect of the board to act, or by their establishment of, or determination not to establish such joint sub-district, can the petition or remonstrance go to the probate judge.

Petition must be first presented to the board.

suitable school-house within such boundaries, or, if there is one, but it is not suitably located, they shall designate a site whereon to erect such building. [75 v. 120, § 11.]

Local directors to designate site for school-house.

SEC. 3941 a. Where, in any joint sub-district heretofore established by proceedings in the probate court, there is no suitable school-house, and no site has been designated whereon to erect such building, the local directors, or a majority of them, of such joint sub-district, are hereby authorized and required to designate a site for such school-house, and report the same to the clerks of the boards of education of the several townships having territory in such joint sub-district. And the board of education of the township in which such school-house site is located, shall, at its next meeting thereafter, at which it may make the annual estimates and levies for school purposes, make the necessary estimate to purchase such school-house site, and to erect and furnish a suitable school-house thereon, according to the provisions of section *thirty-nine hundred and sixty-one*. And if such board of education fail to make and report such estimate, to the county auditor before the first Monday of June next thereafter, the county commissioners of such county shall, at the request of a majority of the local directors of such joint sub-district, make such estimate and levy and report at the same time to the county auditor. And such levy shall be made and the money collected in like manner as the funds are levied and collected for other joint sub-districts. [80 v. 62.]

Board of education to estimate.

Proceedings if board fail.

The effect of the report.

SEC. 3942. The report of the commissioners, if against the establishment of a joint sub-district, shall be a bar to any proceeding to establish a joint sub-district out of any of the territory described in the petition for three years; and if the report be in favor of the establishment of a joint sub-district,

Dissolution of the joint sub-district.

SEC. 3942. There is little reason to suppose that the word "final" is intended to mean any more than it would mean, in case the boards of education had themselves proceeded to complete the formation of a joint sub-district. It becomes, by this act of the commissioners, an established joint sub-district, ready for the completion of its organization by the election of directors and the erection of a school-house on the site designated by the commissioners. In case the legislature had established the district, a board could not, of course, repeal its act. If the boards had formed it, they could dissolve it. It is, no doubt, in the same condition it would be in had the boards formed it.

it shall be final, unless set aside by the probate court for fraud. [75 v. 120, § 12.]

SEC. 3943. If the report be against the establishment of a joint sub-district, the judge shall render judgment against the petitioners for all the cost of the proceeding; and the commissioners and the judge shall receive the same fees as are authorized to be charged for like services in proceedings to establish roads, and such other fees as are authorized by law. [75 v. 120, § 13.]

Judgment for cost; what fees allowed.

SEC. 3944. If the report be in favor of the establishment of a joint sub-district, the judge shall make an entry confirming the same; and a certified copy of the report, including the plat and his order, shall be delivered to the clerk of the board of education of each township interested therein, and thereafter such joint sub-district shall be fully established, and it shall be governed and controlled in the same manner as joint sub-districts otherwise established. [75 v. 120, § 14.]

Report and judgment of sub-district.

SEC. 3945. In such case the judge shall tax the costs of the proceedings to the board of education of the several townships interested, in such proportion as he may deem just and equitable, and certify the same to the clerks of such boards; and the boards shall be liable therefor, and at the first regular or special meeting of each thereafter payment of the amount so taxed to it shall be ordered. [75 v. 120, § 15.]

How costs paid in such case.

SEC. 3946. A petition may, in like manner, be filed with the clerk of the board of education of any township, praying for the creation of an additional sub-district, or for changing the lines of sub-districts, or for the creation of a

Petition for such purposes.

SEC. 3945. Concerning the record of these proceedings see note (c) to section 3914.

SEC. 3946 (a). The petition is not applicable to a case in which it is sought to change the boundaries between two special or two village or city districts, or between a special and a village or city district. It pertains only to cases in which the boundaries of a sub-district are in some way to be affected, as only in such cases has the township board jurisdiction. But according to section 3893, the boards of education having the management of such special, village, or city districts may transfer their territory from one to the other. Ham. Co. Com. Pleas, Boards of Ed'n Sycamore Tp. v. Henry C. Bowen *et al.*

Petition applicable when.

(b). As to what matters public notices must contain, see notes to section 3991.

special school district, or for changing the lines of special or village districts, and adjoining sub-districts; but when a special or village district is interested in such proposed change, the petition may be filed either with the clerk of the township board, or the clerk of the board of education of such special or village district; and when any such lines have been so changed, they shall not be altered by any board or boards of education until after the expiration of three years, except upon the written consent of two thirds of the electors residing within the territory affected by the change. [75 v. 120, § 16.]

Proceedings thereon.

SEC. 3947. Such petition may be filed with the clerk of the board of education of such special or village district, with the clerk of the board of education of the township, or, if the changes sought by the petition affect territory in more than one township, with the clerk of the board of education of either township; and, upon the filing thereof, the members of the board or boards interested shall be notified, as provided in section *thirty-nine hundred and thirty three*. [75 v. 120, § 17.]

When such petition may be filed with probate judge.

SEC. 3948. It shall be the duty of such board or boards to meet and consider the petition within thirty days from the time the same is filed, but on failure to do so within sixty days of such time, or if the board or boards meet and grant, or refuse to grant, the prayer of the petition, a petition or a remonstrance may be filed with the probate judge of the county, by either party, as provided in section *thirty-nine hundred and thirty four*; and, thereafter, such proceedings may be had thereon, and they shall have the same effect as is herein provided for the formation of joint sub districts. [75 v. 120, § 18; 78 v. 9.]

Election, duties, etc., of directors.

SEC. 3949. Directors of joint sub-districts shall be elected at the same time, in the same manner, and for the same term, as directors of other sub-districts, and shall organize at the same time, and in the same manner, have the same powers, perform like duties, and be subject to the same penalties; but in such sub-districts hereafter established, the first election shall be held within twenty days after such establishment, at least five days' previous notice of which, stating the time and place of meeting, and signed by at least three electors of the sub-district, shall be posted in three of

Joint Sub-districts.

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the most public places in the sub-district; and at such meeting a chairman and clerk shall be chosen, and there shall be elected three directors, one to serve until the third Monday of April next succeeding his election, and one to serve for one year and one for two years from said third Monday, and until the election and qualification of their successors. [70 v. 195, § 34; 75 v. 120, § 19.]

SEC. 3950. No joint sub-district which is now organized, or may hereafter be organized, shall be dissolved, changed or altered, unless by the concurrent action of the boards of education of the several townships having territory included therein; provided, however, that when any board of education, in a joint sub-district desires to dissolve, change or alter the same, the board of education desiring such dissolution, change or alteration, shall notify, in writing, the boards of education interested, of the time when they will meet to consider the proposed dissolution, change or alteration. The place of meeting shall be the school-house in such joint sub-district; but if there be none, then at some convenient place in the vicinity of such joint sub-district. If the joint boards fail to meet, or having met, cannot agree upon a dissolution, change or alteration, as the case may be, then the board of education desiring such dissolution, change or alteration, may appeal to the probate court of the proper county, and the same proceedings shall be had as in case of appeals in the formation of joint sub-districts, so far as applicable, as provided in sections 3935, 3936, 3937, 3938, 3939, 3940 and 3941; and any joint sub-district established by proceedings in the probate court may be dissolved, changed or altered, as provided in this section, at any time after the expiration of five years, or the court may dissolve the same at any time upon being petitioned to do so by two-thirds of the

Power to
change joint
sub-districts.

Proceedings to
effect change.

SEC. 3950. Where a joint sub-school district is established by the probate court under the provisions of sections 3930 to 3950, inclusive, of the Revised Statutes, and the judgment of said court remains in full force and un-reversed, an action by the board of education of the township in which such joint sub-district is established, to enjoin the county commissioners from levying a tax to support the same, can not be maintained. The judgment of the probate court is final, unless reversed for error or set aside for fraud. Board of Education of Washington township, Darke county, *vs.* John H. Stuck et al. 39 O. S., 259.

voters residing in the district which is affected by the change, when the best interests of the school demand such dissolution, change or alteration. [77 v. 186; 81 v. 211; 84 v. 117; 86 v. 211.]

CHAPTER 6.

SCHOOL FUNDS.

SECTION	SECTION
3951. The "state common school fund."	3962. Same when county line divides such sub-district
3952. Interest upon proceeds of salt and swamp lands.	3963. Funds of district composed of territory in more than one county.
3953. The "common school fund."	3964. Apportionment of school funds by county auditor.
3954. Accounts of common school fund—how kept, etc.	3965. Distribution of money after apportionment.
3955. Bequests, etc., in trust for common school fund.	3966. Apportionment of common school fund by county auditor when county line divides original surveyed township.
3956. Apportionment of school funds by auditor of state.	3967. Apportionment of contingent fund by boards of education.
3957. To what county common school fund paid when county line divides original surveyed township.	3968. How contingent fund to be applied in Toledo.
3958. Estimate and levy for contingent fund.	3969. County commissioners to levy contingent fund when board neglects.
3959. Limitation as to levy for contingent fund.	3970. County auditor to collect fines, etc., and inspect section sixteen accounts.
3960. Estimate to be certified to county auditor.	
3961. Contingent fund for joint sub-district.	

The "state common school fund."

SECTION 3951. For the purpose of affording advantages of a free education to all the youth of the state, there shall be levied, annually, a tax upon the grand list of taxable property of the state, which shall be collected in the same manner as other state taxes are collected, and the proceeds of which shall constitute the "state common school fund;" the rate of such levy shall be designated by the general assembly at least once in two years; and if the general assembly fail to designate the rate for any year, the same shall be one mill upon each dollar of valuation of such taxable property. [70 v. 195, § 126.]

Interest on proceeds of salt and swamp lands.

SEC. 3952. The state shall pay interest annually, at the rate of six per cent. per annum, upon all money which has been paid into the state treasury on account of sales of lands commonly called "salt lands," and upon all money heretofore paid, or which may hereafter be paid into the state treasury on account of sales of swamp lands granted to the state of Ohio by act of congress; the money received from such sales shall constitute an irreducible debt of the state; and the

interest shall be apportioned annually on the same basis as the state common school fund is apportioned, and distributed to the several counties as provided in section *thirty-nine hundred and fifty six*. [70 v. 195, § 132; 49 v. 40, § 1.]

SEC. 3953. The money which has been and may hereafter be paid into the state treasury on account of sales of lands granted by congress for the support of public schools in any original surveyed township, or other district of country, shall constitute the "common school fund," of which the auditor of state shall be superintendent, and the income of which shall be applied exclusively to the support of common schools, in the manner designated in this chapter. [70 v. 195, §§ 127, 128.]

The "common school fund."

SEC. 3954. The common school fund shall constitute an irreducible debt of the state, on which the state shall pay interest annually, at the rate of six per cent. per annum, to be computed for the calendar year, and the first computation on any payment of principal hereafter made to be from the time of payment to and including the thirty-first day of December next succeeding; and the auditor of state shall keep an account of the fund, and of the interest which accrues thereon, in a book or books to be provided for the purpose, with each original surveyed township and other district of country to which any part of the fund belongs, crediting each with its share of the fund, and showing the amount of interest thereon which accrues and the amount which is disbursed annually to each. [70 v. 195, §§ 128, 129.]

Accounts of common school fund—how kept, etc.

SEC. 3955. When any grant or devise of land, or any donation or bequest of money or other personal property, is made to the state of Ohio, or to any person, or otherwise, in trust for the common school fund, the same shall become vested in said fund; and when the money arising therefrom is paid into the state treasury, proper accounts thereof shall be kept by the auditor of state, and the interest accruing therefrom shall be applied according to the intent of the grantor, donor, or devisor. [70 v. 195, § 131.]

Bequests, etc., in trust for the common school fund.

SEC. 3956. The auditor of state shall apportion the state common school fund to the several counties of the state semi-annually, upon the basis of the enumeration of youth therein, as shown by the latest abstract of enumeration transmitted

Apportionment of school funds by auditor of state.

to him by the state commissioner of common schools; before making his February settlement with county treasurers, he shall apportion such amount thereof as he shall estimate to have been collected up to that time, and, in the settlement sheet which he transmits to the auditor of each county, shall certify the amount payable to the treasurer of his county; before making his final settlement with county treasurers each year, he shall apportion the remainder of the whole fund collected, as nearly as the same can be ascertained, and in the August settlement sheet which he transmits to the auditor of each county; shall certify the amount payable to the treasurer of his county; in each February settlement sheet he shall also enter the amount of money payable to the county treasurer on the apportionment of interest specified in section *thirty-nine hundred and fifty two*; he shall also enter in each February settlement sheet the amount of money payable to the county treasurer on account of interest for the preceding year on the common school fund, and designate the source or sources from which the interest accrued; he shall transmit with each February settlement sheet a certified statement, showing the amount of interest derived from the common school fund payable to each original surveyed township or other district of country within the county; and the treasurer of each county shall, at each semi-annual settlement with the auditor of state, retain in the county treasury, from the state taxes collected by him, the amount of the funds herein mentioned shown by the settlement sheet of the auditor of state to be payable to him at that time; but if such amount for any county exceeds the

SEC. 3956 (a). By section 4036 the county auditor is authorized to employ a proper person to take the enumeration in any district whenever the same is not taken as required by law, and section 4038 makes the clerk liable for all damage or loss accruing to any school district by his neglect to cause such enumeration to be taken and returned to the county auditor.

(b). The Auditor of State apportions these funds to the several counties, and certifies the same to the county auditors, and they apportion them to the school districts in the county, giving the clerks and treasurers of school districts a copy of such apportionment, and giving orders on the county treasurer for the amounts so apportioned, and taking their receipts therefor.

(c). All fines, etc., collected and paid into the county treasury should be disbursed to the proper school districts in the same manner.

amount of state taxes collected therein, the auditor of state shall draw an order on the treasurer of state, in favor of the treasurer of such county, for the balance of school funds due his county, and transmit the same to such county treasurer, and the treasurer of state shall pay such order upon its presentation to him. [70 v. 195, §§ 120, 130.]

SEC. 3957. If parts of an original surveyed township or fractional township are situate in two or more counties, the amount of interest on common school fund due to such township shall be paid in the manner provided in the last section, to the treasurer of the county wherein the greatest relative portion of such township is situate; but if it be uncertain in which county such portion is situate, the amount of interest due to such township shall be paid to the treasurer of the oldest county in which any part of the township is situate. [70 v. 195. § 130.]

To what county common school fund paid when county line divides original surveyed township.

SEC. 3958. Each board of education shall, annually, at a regular or special meeting, to be held between the third Monday in April and the first Monday in June, determine by estimate, as nearly as practicable, the entire amount of money necessary to be levied as a contingent fund for the continuance of the school or schools of the district, after the state funds are exhausted, to purchase sites for school-houses, to erect, purchase, lease, repair, and furnish school-houses, and build additions thereto, and for other school expenses. [75 v. 526, § 56; 75 v. 101, § 4; 80 v. 17, 124; 81 v. 177.]

Board of education to make estimate for expenses.

SEC. 3958 (a). "It is a general rule that statutes, so far as they limit a time for the performance of an act by a public officer, for the public benefit, are merely directory, when *time* is not the *essence* of the thing to be done, unless there are negative words, and the act is valid if done afterwards.

Statutes when directory.

(b). "A notice, by a clerk of a board of education, of a tax voted by the board, to build a school-house, delivered to the auditor on the 11th day of June, is sufficient authority to the auditor for carrying the tax into his duplicate." II. Western Law Monthly, page 589.

When tax may be placed on duplicate.

(c). Tuition from non-resident pupils is to be paid to the board of education, and disbursed like other contingent funds. Neither the teacher nor the local directors have any authority to retain or to pay out such funds.

Tuition of non-resident pupils.

(d). The term "Contingent Fund" is used to designate the local levy, because the amount of it is *contingent* on the difference between the wants of the district and the amount of State funds received. It includes both the amount levied for the payment of teachers, and that for building, repairs, and other expenses. The language of this section and that of section 3967 seems to imply that the State funds are to be used only for the payment of teachers.

What the contingent fund is.

Amount of
levy.

SEC. 3959. Such estimate and levy shall not exceed, in cities of the first grade of the first class, three and one fourth mills, provided, however, that the boards of education in said cities may levy one mill additional for every five thousand pupils over and above twenty-five thousand enrolled in the public schools of said cities, which levy, however, shall in no case exceed four mills; and in cities of the second grade, first class, five mills; and in all other districts, seven mills on each dollar of valuation of taxable property. [61 v. 63, § 2; 63 v. 15, § 1; 75 v. 101, § 4; 75 v. 526, § 56; 79 v. 80; 80 v. 124; 81 v. 177.]

Estimate to be
certified to
county au-
ditor.

SEC. 3960. The amount so estimated the board shall certify, in writing, on or before the first Monday in June in each year, to the auditor of the county to which the district belongs, who shall assess the entire amount upon all the taxable property of the district, and enter it upon the tax list of the county, and the county treasurer shall collect the same, at the same time and in the same manner as state and county taxes are collected, and pay it to the treasurer of the district, upon the warrant of the county auditor; and unless he is paid a fixed salary, he shall receive one per centum on all money so collected, and no more. [70 v. 195, §§ 57, 58.]

Contingent
fund of joint
sub-district.

SEC. 3961. For a joint sub-district the estimate required by section *thirty-nine hundred and fifty eight* shall be made by the board of education having control of the school thereof, and apportioned to the several townships having territory therein in proportion to the enumeration of youth in the ter-

Levy voted by
electors.

SEC. 3960 (a). The board must also certify any additional amount for building or other purposes which may have been voted at a special meeting of electors, and so required to be certified in Sec. 3992.

The board may certify the amount of money, not rates of levy.

Boards liable
for failure to
provide school
advantages.

If the certificate is sent in after the day, the auditor is still to levy the tax, if possible. See note and authority on section 3958.

(b). If the board of education fails to provide for all the youth of school age in the district, the county commissioners are to perform the work of the board, and the members of the board "shall each be severally liable in a penalty" of \$25 to \$50 for such failure. See section 3969.

Transfer of
joint sub-dis-
trict funds.

SEC. 3961. As the auditor does not actually handle or transfer the moneys, the word "transfer," must here refer to his record and warrant. He certifies to the clerk and treasurer of each township the amounts due to the joint sub-districts from such township, that the money may be properly paid by the treasurer of each township district to the joint sub districts, and that the accounts may be fully adjusted by each.

ritory belonging to each; the board shall certify such estimate, so apportioned, to the county auditor, who shall add the portion for each township to the estimate for a contingent fund certified to him by its board of education, and place it on the tax list therewith for collection as part of the township estimate; when the county auditor apportions the school funds he shall trans'er to the township having control of the school, from the other townships, the amounts so assessed and collected, and certify to the clerk and treasurer of each township the amount due the joint sub-district, including state tax, interest on the common school fund, contingent fund, and money received from other sources, which amount shall be paid to the treasurer of the board having control of the school; and such board shall cause to be kept such accounts as will show the funds received from each township, and the disposition thereof, and transmit to the other board or boards interested, at the end of the school year, a statement of such receipts and expenditures. [75 v. 84, § 35.]

SEC. 3962. When a joint sub-district is composed of fractions of two or more counties, such estimate shall be apportioned to townships, as provided in the preceding section, and the amount apportioned to the township or townships belonging to each county shall be certified by the board to the auditor thereof, whose duties in the premises shall be the same as prescribed for the auditor in the preceding section, so far as the provisions thereof are applicable; and the board shall keep accounts, and report receipts and expenditures, as provided in said section. [72 v. 63, § 36]

Same when county line divides such sub-district.

SEC. 3963. The funds belonging to a district composed of territory in more than one county shall be paid by the treasurer of the other counties to the treasurer of the county in which the school-house of the district is situate; the auditors of other counties shall make settlement on account of such funds with the auditor of the county in which such school-house is situate; and the treasurer of the district shall make the settlement required by section *thirty-nine hundred and sixty-six* with such auditor.

Funds of district in more than one county.

SEC. 3964. Each county auditor shall, annually, immediately after his annual settlement with the county treasurer, apportion the school funds for his county; the state common

Apportionment of school funds by county auditor.

school fund shall be apportioned in proportion to the enumeration of youth, to districts, sub-districts, and joint sub-districts, and fractions of districts and joint sub districts, within the county; but if an enumeration of the youth of any district, for any year, has not been taken and returned, such district shall not be entitled to receive any portion of said fund; the contingent funds collected from the several districts shall be paid to the districts to which they respectively belong; money received from the state on account of interest on the common school fund shall be apportioned to the school districts and parts of school districts within the territory designated by the auditor of state as entitled thereto, in proportion to the enumeration of youth therein, and all other money in the county treasury for the support of common schools, and not otherwise appropriated by law, shall be apportioned annually in the same manner as the state common school fund. [70 v. 195, § 120; S. & C. 64, § 2; S. & C. 1406, § 3; 77 v: 58.]

Distribution
of money after
apportion-
ment.

SEC. 3965. The auditor shall, immediately after such apportionment is made, enter the same in a book to be kept for that purpose, and furnish a certified copy of the apportionment to each school treasurer and clerk in his county; and he shall give to each of such treasurers an order on the county treasurer for the amount of money payable to him, and take his receipt therefor. [70 v. 195, § 120.]

Apportion-
ment of com-
mon school
fund by coun-
ty auditor
when county
line divides
original sur-
veyed town-
ship.

SEC. 3966. When an original surveyed township or fractional township is situate in two or more counties, and the land granted thereto by congress for the support of public schools has been sold, the auditor of the county, to whose treasurer the interest on the proceeds of such sale is paid, shall apportion such interest to the counties in which such township is situate, in proportion to the youth of the township enumerated in each; such auditor shall certify to the auditor of each of the other counties the amount so ascertained to belong to the part of the township situate in his county, and transmit to the treasurer of each of such counties an order on the treasurer of his own county for such amount; and the auditor of each county shall apportion the amount of such interest belonging to the part of the township in his county, to the districts or parts of districts entitled thereto, in

proportion to the enumeration of youth therein, and certify and pay the same to the proper school officers, as provided in the preceding section. [70 v. 195, §§ 121, 122; 72 v. 63, § 36.]

SEC. 3967. So much of the contingent fund as may be set apart by a township board for the continuance of schools after the state funds are exhausted, shall be so apportioned by the board that the schools in all the sub-districts of the township shall be continued the same length of time each year; and if the apportionment be not satisfactory to the directors of any sub-district, or a majority of them, they may give notice thereof, in writing, to the county commissioners, who, at their first regular meeting for the transaction of business after the receipt of such notice, shall revise the apportionment, and the amount aforesaid shall be apportioned in the manner determined by the commissioners; but neither the township board nor the commissioners shall reapportion any funds which were apportioned among the sub-districts before any preceding annual settlement, and in making an apportionment of funds, the amount set apart for any sub-district shall not be increased or diminished by reason of any deficit or surplus in the funds previously apportioned to such sub-district. [70 v. 195, § 60; 82 v. 92.]

Maximum of levy.

SEC. 3968. In the city of Toledo, at each annual settlement of the treasurer of the board of education with the county auditor, there shall be placed to the credit of a sinking fund so much of the proceeds of the levy for contingent fund as would be produced by a levy of two mills, and the treasurer shall apply the same in payment of school bonds, and interest thereon, and to no other purpose. [75 v. 526, § 56.]

How contingent fund to be applied in Toledo.

SEC. 3967 (a). The custom which has prevailed in some township districts of dividing the contingent fund and placing it in the hands of directors, is not legal. All school funds should be retained in the custody of the township treasurer until drawn out for the payment of expenses legally incurred.

School funds remain in custody of the treasurers.

(b). It is advisable for each board to require directors to report for payment all contracts made under the provisions of this section to the board at their next meeting after the making of such contracts.

Contracts to be reported.

(c). Inasmuch as the larger sub-districts receive more of the State funds than the smaller sub-districts, the latter ought to receive proportionally more of the township tuition fund than the former. If, however, the larger sub-districts contain two or more schools, or actually require more

Apportionment of funds.

County commissioners to levy contingent fund when board neglects.

SEC. 3969. If the board of education of any district fail in any year to estimate and certify the levy for a contingent fund, as required by this chapter, or to provide sufficient school privilege for all the youth of school age in the district, or to provide for the continuance of any school in the district for at least six months in the year, or to provide for each school an equitable share of school advantages as required by

tuition money than the smaller to sustain their schools an equal length of time, they are entitled to more.

The larger sub-districts may, in some instances, be obliged to pay higher wages than the smaller. The intention of the law is to require boards of education to provide the necessary funds, all the circumstances being duly considered, for continuing the schools of the several sub-districts an equal length of time.

*(d). The adding together of the State and contingent funds, and then dividing the sum equally among the several sub-districts, as is so frequently done by township boards, is not a compliance with either the letter or the spirit of the law. An *equal* division, except in rare instances, cannot be an equitable division.

(e). In case the township tuition fund is distributed by the board illegally, complaint should be made to the county commissioners under this section.

SEC. 3969 (a). Several questions have come up under this section. In solving any doubts that have arisen, it has seemed proper to consider that the *purpose* of the section is to provide an absolute remedy against the suspension of a school, and to assure to each pupil in the State reasonably convenient facilities for attending school six months each year.

*If, however, a board has levied up to the full limit allowed by law, and the sum produced is not sufficient to continue the schools of the district for six months, there seems to be no remedy. But if a levy under this limit fails to sustain the schools for the minimum time prescribed in this section, then an appeal should be made to the county commissioners, whose duty it will be to raise the levy to the highest limit warranted by the law; and they will be justified in acting as soon as they are satisfied that the amount levied by the board of the district will be insufficient to meet the demands of the law.

In case of tie.

(b). If in a large city, where teachers have been paid each month, a board of education stands at a tie in its organization, so that it can not act for months together, and the prospect for action does not brighten, the case would seem to be one in which the schools must stop unless the means are provided for continuing them. In such case the commissioners should interfere.

Should continue schools the usual time.

(c). The law does not seem to intend that the commissioners shall stop a school which has come under their control, when six months' school has been taught during the year. They should be governed by the customs of the district. In a city they should keep up the schools 40 weeks, if that has been the custom.

this title, or to provide suitable school-houses for all the schools under its control, the commissioners of the county to which such district belongs, upon being advised and satisfied thereof, shall do and perform any or all of said duties and acts, in as full a manner as the board of education is by this title authorized to do and perform the same; and the members of a board who cause such failure shall be each severally liable, in a penalty not exceeding fifty nor less than twenty-five dollars, to be recovered in a civil action in the name of the state, upon complaint of any elector of the district, which sum shall be collected by the prosecuting attorney of the county, and when collected shall be paid into the treasury of the county, for the benefit of the school or schools of the district. [72 v. 59, § 59.]

SEC. 3970. The auditor of each county shall collect, or cause to be collected, all fines and other money, for the support of common schools in his county, and pay the same to the county treasurer; he shall inspect all accounts of interest accruing on account of section sixteen or other school lands, whether the same is payable by the state or by the debtors; and he shall take all proper measures to secure to each school district in his county the full amount of school funds to which it is entitled. [70 v. 195, § 120.]

County auditor to collect fines, etc., and inspect section sixteen accounts.

(d). Local directors, or patrons of the school, may appeal to the commissioners under the fourth item here enumerated, if the township board of education have treated the sub-district unjustly in the apportionment of funds, or continue to treat families unjustly by imposing the necessity of excessive travel to reach a school.

Local directors may appeal from township boards.

(e). Under the fifth item, if a school building is unsafe, or becomes so, any persons interested may, after due appeal to the board of education, appeal to the commissioners, who should consider the necessity for action. The same is true in case the school-house or school premises are in condition to engender disease, or great discomfort, or are intolerably near to a nuisance or source of disease, as a glue factory, slaughter-house, untidy stable, stagnant pool, or the like.

Case of unsafe school houses, nuisances, etc.

SEC. 3970. The list of such fines is here appended:

SEC. 3479 (Amended 1881). Penalty for avoiding toll on turnpikes or plankroads.

Penalties and forfeitures payable into the township (district) treasury.

SEC. 4033. Penalty against the clerks of local boards who fail to take the enumeration.

SECS. 4201-04. Penalty for allowing certain animals to run at large.

SEC. 4382. Penalty against owners or keepers of wharf boats.

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School Funds.

Penalties and forfeitures payable into the county treasury.

SECS. 4401-02. Penalty against *peddlers* that do not obtain a license.

SEC. 1504. (Amended 1883). Penalty against township clerk failing to make detailed statement—act relating to oil wells. Laws of 1883, page 191.

SEC. 288. Penalty against *insurance corporations and others* violating the provisions of Chapter VIII, Title III, Revised Statutes.

SECS. 1052 and 4215. Relating to *dog tax*.

SEC. 1279. Relating to the disposition, by the *prosecuting attorney*, of the proceeds of the sale of timber that grew on State or school lands.

SECS. 1280-81. Providing for the disposition of the proceeds of the sale of *property, stolen, embezzled, or obtained under false pretenses*.

SEC. 1375. Penalty against *township trustees and treasurers* who refuse to serve.

SEC. 3969. Penalty against *members of a board of education* who fail to perform certain duties.

SEC. 4027. Penalty against *parents and guardians* for detaining children from school contrary to law.

SEC. 4038. Penalty against the *clerk of a local board* for failing to take the school enumeration.

SEC. 4045. Penalty against *treasurers of school districts* for failing to make their annual settlement.

SEC. 4061. Penalty against *county auditors and clerks of boards of education* for failing to make certain reports.

SEC. 4063. Penalty against *county auditors*.

SECS. 4088-89. Penalty against *institute committee* for failing to make required report.

SECS. 4217-18. Penalty against *fishng* unlawfully in Lake Erie.

SEC. 4398 (amended) 4399. Relating to *peddlers' license*.

SEC. 4487. Penalty against *auditors, engineers, commissioners, and probate judges*, who fail to perform certain duties relating to county ditches.

SEC. 6396. Penalty against *assessors, physicians, midwives, clergymen, sextons, and probate judges*, who fail to furnish statistics of births and deaths.

SEC. 19 of act relating to sinkholes and fissures. Laws 1883, page 211.

SECS. 1050-51. Penalty against *county auditors* for failing to report to State Auditor.

SEC. 1524. Penalty against *assessors* for neglecting or refusing to make out and return statistics.

SEC. 1525. Penalty against any *person, company, or corporation*, refusing to make out and deliver a statement of facts for taxation.

SEC. 3225. Relating to the proceeds of the sale of *unclaimed goods* by express companies, common carriers, etc.

* Penalties for the violation of the compulsory education act, passed April 15, 1889.

Penalties and forfeitures payable into the State treasury.

CHAPTER 7.

PROVISIONS APPLYING TO ALL BOARDS.

SECTION	SECTION
3971. Powers of boards of education.	3980. Organization of board.
3972. What property the boards have title to.	3981. Vacancies in board, and how filled.
3973. School property exempt from taxation.	3982. Quorum; yeas and nays to be taken in certain cases.
3974. Conveyances and contracts.	3983. Absence of president or clerk.
3975. Boards may accept bequests.	3984. Record of proceedings, and attestation thereof.
3976. Process against boards and how served.	3985. Boards to make rules; illegal meetings.
3977. Duties of prosecuting attorney and city solicitor.	3986. Boards may make and enforce rules for vaccination.
3978. Tie votes to be decided by lot.	
3979. Oath of members and other officers.	

SECTION 3971. The boards of education of all school districts now organized and established, and of all school districts organized under the provisions of this title, shall be and they are hereby declared to be bodies politic and corporate; and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of property, both real and personal, and taking and holding in trust, for the use and benefit of such districts, any grant or devise of land, and any donation or bequest of money or other personal property, and of exercising such other powers, and having such other privileges as are con-

Boards of education—powers and duties.

SEC. 3971 (a). Corporations must take and grant by their corporate names. 2 Kent, II Ed., 351.

(b). A board of education is not liable in its corporate capacity, for damages for an injury resulting to a pupil while attending a common school, from its negligence in the discharge of its official duty in the erection and maintenance of a common school building under its charge, in the absence of a statute creating a liability. *Finch v. Board of Education*, 30 O. S., 37.

Liability of boards for injury to persons.

(c). It is never desirable or proper, and it is questionable whether a board of education has the right, to build on property to which it has not acquired a clear title by lease, deed, or process of law. In the latter case, either the time for appeal to a higher court should have elapsed, or the appeal, if made, should have been decided.

Building on land without clear title.

(d). The power to contract, implies the power to settle with contractors, and to do this in the interest of the district, so as to avoid the expense of litigation. Where a contracting party has rights which he can enforce in equity, a board of education is, like other municipal corporations, author-

Powers of boards to consider equities in contracts.

ferred by this title; but when a board of education decides to dispose of any property, real or personal, held by it in its corporate capacity, exceeding in value three hundred dollars, it shall sell the same at public auction, after giving at least thirty days' notice thereof, by publication in some newspaper of general circulation, or by posting notices in five of the most public places in the district to which such property belongs. Provided, that when such board has twice offered a tract of real estate for sale at public auction, as hereinbefore provided, and the same is not sold, the board may sell said real estate at private sale, either as an entire tract, or in parcels thereof, as the board may deem best, and the president and secretary of the board shall execute and deliver the deed or deeds necessary to complete such sale or sales. Provided, that upon a vote of the majority of the members of any board of education, and a concurring vote of the council of any municipal corporation, that an exchange of any real estate held by such board of education for school purposes, for real estate held by such municipal corporations for municipal purposes, will be mutually beneficial to such school district, and to such municipal corporation, such exchange may be made by conveyances, to be executed by the mayor and clerk of the municipal corporation, and by the president and clerk of such board of education. [70 v. 195, § 37; 80 v. 36; 85 v. 133.]

How real estate may be sold or exchanged.

What property the boards have title to.

SEC. 3972. All property, real or personal, which has heretofore vested in and is now held by any board of education, or the council of any municipal corporation, for the use

ized to recognize and provide for these as well as for strictly legal rights. See *Brewster v. Syracuse*, 19 N. Y., 116; *Friend v. Gilbert*, 108 Mass., 408.

(e). As to what notices must contain, see notes to section 3991.

(f). See opinion of Attorney General, under section 3977.

Rights of action inure to boards in certain cases.

SEC. 3972 (a). Under the act of May 1, 1873 [70 v. 195], the corporate boards of education therein provided for, succeed to all existing rights of action in relation to the common school property and funds which were theretofore vested, by previous legislation, in other agencies to whose control such property and funds had been confided. *Crofton v. Board of Education*, 26 O. S., 571.

Defacing school-house penalty for.

(b). SEC. 6877, R. S. Whoever maliciously injures or defaces any church edifice, school-house, dwelling-house, or other building, its fixtures, books, or appurtenances, or commits any nuisance therein, or purposely and maliciously commits any trespass upon the inclosed grounds attached

of public or common schools in any district, is hereby vested in the board of education provided for in this title, having under this title jurisdiction and control of the schools in such district. [70 v. 195, § 39.]

SEC. 3973. All property, real or personal, vested in any board of education, shall be exempt from tax, and from sale

School property exempt from taxation.

thereto, or any fixtures placed thereon, or any inclosure or sidewalk about the same, shall be fined in any sum not more than one hundred dollars. [63 v. 175, § 1, S. & S., 280, § 51; 70 v. 216, § 73.]

(c). Sec. 6831, R. S., provides that "Whoever maliciously burns, or attempts to burn any * * * school-house * * * shall be imprisoned in the penitentiary not more than twenty years."

Penalty for burning school property.

(d). Sec. 6835, R. S., provides that "Whoever, in the night season, maliciously and forcibly breaks and enters any * * * school-house * * * with intent to commit a felony, or with intent to steal property of any value, shall be imprisoned in the penitentiary not more than ten years nor less than one year."

Penalty for felony and stealing.

(e). A similar penalty is imposed by section 6836, R. S., for entering a school-house in the day-time or night season, and attempting to commit a felony."

(f). Sec. 6837, R. S., provides that "Whoever maliciously, in the day-time, breaks and enters any * * * school-house * * * with intent to steal, shall be fined not more than three hundred dollars, and imprisoned not more than sixty days."

Penalty for breaking into school-house to steal.

(g). Sec. 6896, R. S., provides that "Whoever willfully interrupts or disturbs any assembly of persons met for a lawful purpose, or any person while he is at or about the place where such assembly is to be held, or is and has been held, shall be fined not more than fifty dollars, or imprisoned not more than ten days, or both. [73 v. 224, § 1; 61 v. 98, § 1, S. & S., 288; 70 v. 216, § 74.]"

Penalty for disturbing a meeting (school).

(h). A member of a board of education is as liable to prosecution for violently disturbing a school in session as any other person. Such member is also equally liable with any other person for forcibly breaking into a school-house, for the purpose of admitting any meeting, or for promoting other use of the school-house not authorized by a majority of the board of education, or by law. In short, an individual member of the board, as such, has no more authority concerning school property than any other individual has. If he is, by law or by the board, constituted a committee to look after the school-house, he may exercise such authority; but even then, he has no power to open the house for purposes unauthorized by the board. The limitation of course applies, that for mere errors of judgment, with proper purpose and intent to act within the authority vested in him by the board, the law will exonerate him.

Members of board liable for disturbing school, or breaking into school-house, and the like.

(i). By "public school-houses" are meant such as belong to the public, and are designed for schools established and conducted under public authority. The fact that the use of the property is free is not a necessary element in determining whether the use is public. *Gerke v. Purcell*, 25 O. S., 229.

What are public school-houses.

Ch. 7.

Provisions Applying to all Boards.

on execution, or other writ or order in the nature of an execution. [70 v. 195, § 72.]

Conveyances
and contracts.

SEC. 3974. All conveyances made by a board of education shall be executed by the president and clerk thereof; no member of a board shall have any pecuniary interest, either direct or indirect, in any contract of the board, or be employed in any manner for compensation by the board of which he is a member, except as clerk or treasurer; and no contract shall be binding upon any board unless it be made or authorized to be made at a regular or special meeting of the board. [70 v. 195, §§ 31, 38.]

Boards may accept
bequests.

SEC. 3975. All boards of education may, by the adoption of a resolution, accept any bequest made to them by will, upon the conditions and stipulations contained in the will, and for the purpose of enabling such boards to carry out the conditions and limitations upon which the bequest is made, they are authorized to make all rules and regulations that may be required to fully carry into effect the provisions of the will in relation to the bequest. [73 v. 205, § 2.]

Lease and sale
of school
lands.

(j). For leasing of school lands and void leases, see 5 O., 184, and 8 O., 174.

Injury to
school timber.

(k). For leasing and sale of school lands, see R. S., secs. 1404-1440.

Auditors' fees.

For penalty for injury to timber on school lands, see sec. 6880, R. S.

For county auditors' fees for transfer of sale of school land, for payments on the same, etc., see section 1073, R. S.

How to enforce
claims against
boards.

SEC. 3973 (a). A mechanic's lien or a mortgage could not be enforced, since such enforcement would require an "order in the nature of an execution."

Non-taxation
of school prop-
erty.

(b). For additional provision relating to non-taxation of school property, see section 2732, R. S.

Taxation of
school lands.

(e). For provisions relating to taxation of school and ministerial lands held under a lease exceeding fourteen years, see section 2733, R. S.

SEC. 3974 (a). The failure of an officer to attach his official title to his signature, will not affect the instrument so far as the district is concerned; *provided*, the contract was authorized, and made for the district, and this fact can be shown.

Members can-
not draw pay
except as clerk
or treasurer.

(b). A member of a board of education cannot draw wages or pay as superintendent of schools or of buildings, as teacher or janitor, as contractor for fuel, for drawing fuel, or for any other service to the district in which he is serving as such member, except for services as clerk or treasurer. Nor can a local director draw pay for any such service in his sub-district, if he is a member of the township board, or if the service is such as the board of education or the statute has authorized the local board to contract for.

Provisions Applying to all Boards.

Ch. 7.

SEC. 3976. The process in all suits against a board of education shall be by summons, and shall be served by leaving a copy thereof with the clerk or president of the board. [70 v. 195, § 68.]

Process against boards, and how served.

SEC. 3977. The prosecuting attorney of the proper county, or, in case of a city district, the city solicitor, shall prosecute all actions which, by this title, may be brought against any member or officer of a school board in his individual capacity, and shall act in his official capacity as the legal counsel of such boards or officers in all civil actions brought by or against them in their corporate or official capacity; but no prosecuting attorney or city solicitor shall be a member of the board

Prosecuting attorney to act as counsel of school board.

(c). There is, perhaps, no reason why a local director who is not a member of the township board of education may not teach, or furnish fuel, or the like, in a sub-district in which he is not a local director. The principles of law without this statute would decide that a party cannot be on both sides of a contract. 27 O. S., 159 and 195; Parsons on Contracts, vol. 1, p. 86; Pollock's Principles of Contract, p. 253.

Local director may draw pay in other sub-districts.

(d). School property should be insured, but not in a company represented by a member of the board. See section 6969, R. S. The Attorney-General concurs in this opinion; see opinions of Attorney-General, vol. F, 36.

Insurance of school property.

(e). Sec. 6975, R. S. "A member of a board of education organized under any law of this state, who accepts or receives any compensation for his services as such member, except as clerk or treasurer of said board, shall be deemed guilty of embezzlement of the amount so received, and punished accordingly."

Accepting pay is embezzlement.

SEC. 3976 (a). The want of notice is waived by the voluntary appearance of the party for any purpose directly connected with the cause.

Notice.

(b). The legality of the election of members of the school board is not a subject of inquiry in a suit to enforce payment of money due. 45 Mo., 294.

(c). Title to office cannot be questioned collaterally, but must be done in a direct proceeding by *quo warranto*, in one of the tribunals provided by law for hearing and determining all questions pertaining to elections. 44 Mo., 154.

When and how title to office can be questioned.

(d). In the absence of restriction, express or implied, the school board has authority to employ an attorney to conduct suits to which the district is a party, and it is bound to pay for his services. 30 Vermont, 285. See the next section.

Employment of attorney, and how paid.

SEC. 3977 (a). The following opinion was rendered by Attorney-General Nash, November 4, 1881:

Prosecuting attorney is attorney for boards of education.

"Section 3977 of the Revised Statutes provides that the prosecuting attorney of a county shall be the attorney for the school boards within his county, except in city districts, and sets forth what duties he shall perform in this regard. This service is made one of the duties of the prosecuting

of education; provided, that in counties having a county solicitor such officer shall prosecute all actions which may be brought against any member or officer of a school board in his individual capacity, and shall do and perform all the duties herein required of the prosecuting attorney as to schools, school boards, and officers of schools in the county, outside of said city; but for such service he shall receive no additional compensation. [70 v. 195, § 69; 79 v. 26]

Tie votes to be decided by lot

SEC. 3978. In all cases of tie votes, at an election for members of a board of education, or of directors of a sub-district, the judges of election shall decide the election by lot;

attorney which he is bound to render under his salary, as no express provision is made for the payment of such services.

When another attorney may be employed.

"It frequently happens that the prosecuting attorney, on account of his numerous other duties, is wholly unable to perform the service required by this section, and it sometimes happens that cases arise which require that the prosecuting attorney should have assistance in them. In such cases as these, the question—'Have boards of education the right to employ and pay counsel, or, in short, have such boards the right and authority to pay attorney fees in defending or prosecuting cases in which they are parties?' becomes important.

Authority for paying attorney fees.

"Under such circumstances as I have indicated above, I answer the question in the affirmative, and for this answer I rely on section 3971 of the Revised Statutes. This section makes boards of education bodies politic and corporate, and vests them with the power of suing and being sued. I think that the law which authorizes these boards to sue and be sued, by implication confers upon them authority to do all things that are necessary to prosecute successfully or defend a suit." Opinions Attorney-General, vol. F, 145.

Additional compensation.

(b). Public officers for whom pay is provided by statute, will not be allowed compensation for extra work, unless this is specially authorized by statute. 9 Neb., 85; X Central L. J., 299.

Additional duties.

(c). The prosecuting attorney is required to prosecute for injuries to timber on school lands. Section 1279, R. S.

Effect of failure to cast lots.

SEC. 3978 (a). In case the judges fail so to decide, the board must appoint, or in case of a local director, a new election must be had. This "lot," like all other matters required of the judges of elections, must be perfected, their decision made, and the certificate of such action signed *before the judges separate*. "When such board has once dissolved, its officers are *functi officio*, and can no longer perform official acts relating to the election, not even to the signing of returns." 21 O. S., 216.

Of failure to sign poll-books before separating.

Omissions and mistakes may be corrected.

But in case such judges fail to sign poll-books, tally-sheets [and certificates such as above referred to] to fill up blanks in a caption, or to carry out the aggregate of the votes, such omissions and mistakes may be corrected, on the trial of a contest, by parol evidence, and when so corrected, the doc-

and in other cases of failure to elect members of the board, or in case of a refusal to serve, the board shall appoint. [70 v. 195, § 43.]

SEC. 3979. Each person elected or appointed a member of a board of education, or elected or appointed to any other office under this title, shall, before entering upon the duties

Oath of members and other officers.

uments sustained by parol proof, are competent evidence of the result of the election. 16 O. S., 184.

(b). In case of trustees, collectors, and the like, general reputation of their being such officers, and proof of their acting as such, is *prima facie* sufficient, without producing evidence of their election, especially where there is evidence of their acting under color of election. 7 Wendell's Rep., 341.

What evidence of official character is required in certain cases.

(c). An individual coming into office by color of election or appointment, is an officer *de facto*, and his acts in relation to the public, or to third persons, are valid until he is removed, although it be, [in the end], conceded that his election or appointment was illegal. 5 Wendell's Rep., 170.

Of officers *de facto*.

SEC. 3979 (a). But a person so elected may appear before any person authorized by law to administer an oath, and may take his oath of office. This should be done in case the member elect is, for any reason, unable to attend the meeting for organization. The certificate of the officer administering the oath should be sent to the board and copied in the records, to obviate all questions. For the same reason, a record should be made of the oath administered to each member.

May be taken before any officer authorized to administer oaths.

(b). Officers who have sworn to perform official duties may be compelled to perform them by writ of *mandamus*. This writ issues from the supreme, district, or common pleas court. R. S., section 6742, as amended 1880.

Mandamus to compel officers to act.

They may also be restrained from doing illegal acts under color of authority as officers, by writ of *injunction*. This writ issues from the supreme or common pleas court, or a judge of either; or from the probate court, in case none of the above named judges are in the county. R. S., section 5573.

Injunction to restrain them from acting.

(c). But to boards of education is left large discretion as to the manner of performing their official duties, and courts will not interfere with this discretion. 23 O. S., 211.

(d). Officers required by law to exercise their judgments, are not answerable for mistakes of law or mere errors of judgment, where there is neither fraud nor malice. *Jenkins v. Waldron*, 11 Johnson's Rep., 114.

(e). An officer acting within the scope of his authority is only responsible for an injury resulting from a corrupt motive. 17 Ohio, 402.

(f). A public officer who is required by law to act in certain cases, according to his judgment or opinion, and subject to penalties for his neglect, is not liable to a party for an omission arising from a mistake or want of skill, if acting in *good faith*. *Seamen v. Patten*, 2d Caine's Rep., 312.

Not liable for honest mistakes.

(g). But an officer entrusted by the common law or by statute is liable to an action for *negligence* in the performance of his trust, or for *fraud* or neglect in the execution of his office. *Jenner v. Joliffe*, 9 John. Rep., 381.

Liable for willful neglect.

of his office, take an oath or affirmation to support the constitution of the United States and the constitution of the state of Ohio, and that he will perform faithfully the duties of his office; which oath or affirmation may be administered by the clerk or any member of the board. [71 v. 15, § 42.]

Organization;
selection of of-
ficers.

SEC. 3980. Each board of education shall organize by choosing one of its members president, and, except township boards, by choosing also a clerk, who may or may not be a member of the board; if at the organization of a township board the township clerk is absent, the board shall appoint one of its members clerk pro tempore; each board of education, however, as chosen under the provisions of section 3899, shall further, at its first regular meeting after its annual organization, choose or appoint an auditor, who shall not be a member of the board, and who shall receive such compensation and perform such duties as the board may provide for and determine; and such organization shall be effected on the third Monday of April of each year, except as otherwise provided in section thirty-nine hundred and fourteen. [70 v. 195, § 29; 70 v. 241, § 44; 84 v. 212.]

Vacancies in
board, and how
filled.

SEC. 3981. Vacancies in any board of education, except of a township district, arising from death, non-residence, resignation, expulsion for gross neglect of duty, failure of a person elected or appointed to qualify within ten days after the annual organization or after his appointment, or from other cause, which occur more than fifteen days before the next

(h). The performance of any act prohibited by statute, or any willful neglect of duty, and for which no penalty is provided by enactment, is a misdemeanor.

SEC. 3980 (a). For the number of votes necessary in the election of officers of the board, see section 3982.

When board
may organize.

(b). If the board of education, for any reason, fails to organize on the day named in the law, they may organize on a subsequent day. For want of a quorum a minority may adjourn from day to day. See note to section 3958.

President enti-
tled to vote.

(c). The president has the right to vote on all questions coming before the board. If by such vote a tie is produced, the motion is lost.

SEC. 3981 (a). Temporary absence from home will not vacate an office; but if such absence creates embarrassment the holder ought to resign.

Resignation, to
whom made.

(b). The resignation of a district or sub-district officer must be made to the other members of the district or sub-district board, or to one of them, and should be in writing.

annual election, the board shall fill without delay until the next annual election, when a successor shall be elected to fill the unexpired term; any vacancy which occurs in a township board, from any of the causes aforesaid, shall be filled by the election of a clerk by the directors of the proper sub district; and a clerk of a sub district who is guilty of gross neglect of

A person claiming to be a legal officer, and in possession, cannot be voted out by the board, but should be proceeded against by a writ of *quo warranto*. Section 6760, R. S.

(c). The section provides that the vacancy shall be filled without delay. Hence, if any other business is attempted to be performed before the filling of such vacancy, a point of order should be raised under this clause of the section. The law here provides that no vacancy need exist when a vote is to be taken, hence no item of business enumerated in section 3982 can be transacted which does not receive the votes of a majority of all the members constituting a full board.

Filling vacancy first business.

To elect an officer of the board requires a majority of all the members composing the board of education, by law, in the given district. See section 3982. But though a member holding an office may die, the election of a member to fill the vacancy is not the election of an officer. The election of the member, not being in the list of acts requiring such full majority vote, may be effected by a majority of a quorum.

Number of votes required to appoint a member.

(d). An officer elected for three years continues for three years, and until his successor is elected and qualified. 23 Vermont, 416.

How long members elected serve.

(e). The officer, once qualified, continues in the responsibilities of his office until his successor is qualified. There can be no successor until after such qualification takes place. 22 Pick., 122; 4 Ky., 433.

(f). An officer may resign, but he remains in his office subject to all its responsibilities, until his resignation is accepted. It is generally supposed that an office is held at the will of either party. It is held at the will of both. Resignations are so generally accepted that, with respect to lucrative offices, it has grown into a common notion that to resign is a matter of right. But it is otherwise. The public has a right to the services of all citizens, and may demand them in all civil departments as well as in the military. *Hoke v. Henderson*, 4 Devereux, N. C., 1.

Officer responsible till resignation accepted.

(g). The following case goes still further, holding a resigning officer to his responsibilities and duties until his successor is elected or appointed and qualified:

And until his successor is qualified.

"Tennessee constitution, article 7, section 5, provides that 'every officer shall hold his office until his successor is elected or appointed and qualified.' Held, that this applies to a resigning officer, who must continue in the discharge of his duties until his successor is elected or appointed and qualified; that the officer remains under an obligation to obey a writ of *mandamus* notwithstanding his resignation, and is guilty of contempt if he fails to comply with the writ, and the obligation passes to his successor when qualified." *Watts v. Lauderdale Co.*, 14 Central Law Journal, 210 U. S. Circuit Court, Dist. West Tenn.

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duty shall cease to hold his office, and a new election shall be held by the directors to fill such office. [70 v. 195, § 43.]

Quorum: yeas and nays to be taken in certain cases.

SEC. 3982. A majority of the board of education shall constitute a quorum for the transaction of business; upon a motion to adopt a resolution authorizing the purchase or sale of property, either real or personal, or to employ a superinten-

(i). Acceptance by a corporation is, at common law, necessary to a consummation of the resignation, and, until acceptance by proper authority, the tender is revocable. The right to accept a resignation is a power incidental to every corporation, also to any power of appointment. Dillon on Municipal Corporations, 283.

If all the members are disqualified, what?

(j). In case a board should really lose all of its members, the county commissioners must keep up the school. As they may do all that a board could do, they may appoint a new board, or members enough to proceed with the appointments to the completion of a new board.

Township clerk's name not called.

SEC. 3982 (a). It is presumed that the name of the township clerk need not be called, as he does not vote. It is evident that a majority of all the voting members of the township board will carry a measure. See section 3915. In all cases except those which are declared to require a majority of all the members composing the board, a majority of a quorum is sufficient to pass a measure, and the roll need not be called unless demanded by a member of the board. In case a vacancy occurs in the board, see note on section 3981.

A majority of a quorum, when sufficient.

Power cannot be delegated.

(b) No member of a board can delegate his power to act to another person, either a member of the board or otherwise. It is said that this is sometimes done. But acts depending on such delegated votes are void. For heavy penalty attached to such assumption of official duty, see R. S., section 6913.

Manner of contracting.

(c). Respecting the mode in which contracts by corporations shall be made, it is important to observe that *when the mode of contracting is specially and plainly prescribed and limited, that mode is exclusive*, and must be pursued, or the contract will not bind the corporation; but the courts have sometimes regarded provisions on this subject as directory. Dillon on Municipal Corporations, 465.

This section mandatory.

There is no room to doubt that the requirements of this section are mandatory, and that they absolutely forbid the transaction of these enumerated items of business in any other way than that prescribed in this section.

To make any one of these contracts in any other mode than that prescribed, is to act *ultra vires*.

Buying maps, etc., out-side of board meetings.

(d) An agreement by members of a township board of education, acting in their individual capacity, to purchase from another person apparatus for the schools of the township, and to ratify such contract of purchase at the next meeting of the board, is contrary to public policy, and is, therefore, illegal and void, and not enforceable, either against the board or members thereof as individuals. *McCortle v. Bates*, 29 O. S., 419.

Boynnton, J., also said: "Such defenses as would have been allowed,

dent, teacher, janitor, or other employe, or to elect or appoint an officer, or to pay any debt or claim, or to adopt any textbook, the clerk of the board shall call, publicly, the roll of all the members composing the board, and enter on the record required to be kept the names of those voting "aye," and the names of those voting "no;" if a majority of all the members of the board vote "aye," the president shall declare the motion carried; and upon any motion or resolution any member of the board may demand the yeas and nays, and thereupon the clerk shall call the roll, and record the names of those voting "aye" and those voting "no." [71 v. 15, § 42.]

SEC. 3983. If, at any meeting of the board, either the president or the clerk is absent, the members present shall

Absence of president or clerk.

had the map vendor retained the claim and brought suit upon it himself, are now admissible against the plaintiff. Assuming, without deciding, that, by the understanding of the parties to the agreement, the defendants incurred personal liability, it was quite clear that there was no error in the action of the common pleas in sustaining the demurrer and dismissing the petition. * * The state requires the clerk to record, in a book to be provided for that purpose, all the official proceedings. * * * Clothed with such powers and charged with such duties and responsibilities, it will not be permitted to such boards of education to make any agreement among themselves, or with others, by which their public action is to be, or may be restrained or embarrassed, or its freedom in any wise affected or impaired. The public, for whom they act, have the right to their best judgment after free and full discussion and consultation among themselves of and upon the public matters entrusted to them, in the session provided for by statute. * * * The court will not enter on the inquiry whether such contract would, or would not, in a given case, be injurious in its consequences, if enforced. It being against the public interest to enforce it, the law refuses to recognize its claim to validity."

(e) A board of education is a body corporate, and the contracting of a debt by the board, and the directing the issuance of an order to pay it, are corporate acts which cannot be performed by the individual members of the board separately; and, therefore, a contract which was signed by the members of the board separately, and delivered to the clerks, and which was afterward, at a subsequent meeting, repudiated by the board, was held not to be binding upon either party. *State v. Liberty Tp.*, 22 O. S., 144.

Contract signed by members separately not binding.

(f). The order of the clerk on the treasurer is not negotiable, and the written acceptance of an order by a treasurer who has gone out of office imposes no greater obligation on the treasurer to pay than if it had been presented without such indorsement. *Ib.*

Order on treasurer not negotiable.

(g). To rescind action requiring such full majority of the board as this section calls for, or requiring a full two-thirds vote, of course requires a like vote.

Vote required to rescind.

choose one of their number to serve in his place pro tempore; and if both are absent, both places shall be so filled; but on the appearance of either at the meeting, after his place has been so filled, he shall immediately assume the duties of his office. [70 v. 195, § 31.]

Record of proceedings and attestation thereof.

SEC. 3984. The clerk of the board shall record the proceedings of each meeting, in a book to be provided by the board for that purpose, which shall be a public record; the record of proceedings at each meeting of the board shall be read at its next meeting, corrected if necessary, and approved, and the approval shall be noted in the proceedings; and after such approval the president shall sign the record, and the clerk shall attest the same. [70 v. 195, § 29; 71 v. 15. § 42.]

Boards to make rules and regulations for pupils, etc.

SEC. 3985. The board of each district shall make such rules and regulations as it may deem expedient and necessary for its government, and the government of its appointees and the pupils; and no meeting of a board of education not provided for by its rules, or by law, shall be legal unless all the members thereof have been notified as provided in section *thirty-nine hundred and twenty*. [70 v. 195, § 54.]

Illegal meetings.

Board speaks only through its record.

SEC. 3984 (a) A board of education can speak only through its records, and these must accordingly be complete, showing just what the board did, and no more. A motion made by a member, seconded by another member, stated by the president, and voted on by the board, is business, and is to be recorded, though not a single member voted for it. Any vote upon it, as to refer, to postpone, or to lay upon the table, is action and should be recorded. If the board adjourn pending the consideration of the motion, the motion should be recorded. If the mover withdraws the motion, by consent of the board, by general consent it may also be omitted from the records.

Records of special meetings.

(b). The records of a special meeting should state by whom the meeting was called, and the objects mentioned in the notice, as the legality of the proceedings depends on the legality of the call and the conformity of the proceedings with the objects stated in the notice.

Parol evidence as to records, etc.

(c). If a record is inadequately entered, parol evidence may, it seems, be admitted to show that action was taken which is not found on the records at all. The commissioner of schools of Rhode Island, decided under instruction of Judge Brayton, of the supreme court, that "imperfection in a clerk's record of a resolution does not render invalid a tax properly voted." Yet all these imperfections in the record lead to troublesome litigation, often to questions which only courts of law can decide, and in which their decision may be such as to defeat what was attempted to be done in the case.

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SEC. 3986. The board of each district may make and enforce such rules and regulations to secure the vaccination of, and to prevent the spread of small-pox among the pupils attending or eligible to attend the schools of the district, as

Board of education to make and enforce rules for vaccination.

(d). School districts are required by law to keep an account of their proceedings by a sworn clerk, and such proceedings can be proved only by the record, or a copy thereof duly authenticated. 38 Maine, 164.

Power to amend records.

(e). The power to amend the records exists with the clerk while he is in office, but not after his term expires, nor for any purpose other than to make them truthful and complete as to fact. 11 Mass., 477; 17 Maine, 444.

(f). Records of quasi corporations are not considered of that absolute verity that parol testimony is inadmissible to show facts upon which the record is silent. 5 Ohio, 136.

SEC. 3985 (a). A court may review the action of a board and pass upon the reasonableness of any of its rules, but if they have erred, while discharging their duty in good faith, they are not liable to action therefor. 32 Vermont, 224.

(b). The act of the board of education and the teachers, in matters of organizing, grading, and governing the school, will be conclusive, unless the power is abused or perverted under some apparently reasonable pretense. 23 Pick., 254; 2 Cushing, 18.

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

*(d). "In the school-room the teacher has the exclusive control and supervision of his pupils, subject only to such regulations and directions as may be prescribed or given by the school board." Barden, School Law, p. 79.

"The conduct of the pupils upon any part of the premises connected with the school-house or in the immediate vicinity of the same (the pupils being thus virtually under the care of the teacher), whether within the regular school hours or before or after them, is properly cognizable by the teacher. And any disturbance made by them within this range injuriously affecting in any way the interests of the school, may clearly be the subject of reproof and correction by the teacher." Idem.

(e). *Hathaway v. Rice*, 19, Vt. 108. "The right of a school-master to correct his scholars has always been practically and judicially sanctioned, but the chastisement must not exceed the limits of moderate correction; and though courts are bound, with a view to the maintenance of necessary order and decorum in schools, to look with all reasonable indulgence upon the exercise of this right, yet, whenever the correction shall appear to have been clearly excessive and cruel, it must be adjudged illegal."

The right to inflict corporal punishment.

Cooper v. McJunkin, 4 Ind. 290. "A teacher, in the exercise of the power of corporal punishment, must not make such power a pretext for cruelty and oppression; but the cause must be sufficient, the instrument suitable, and the manner and extent of the correction, the part of the person to which it is applied, and the temper in which it is inflicted, should

be distinguished with the kindness, prudence, and propriety which become the station."

"*Reeces' Domestic Relations*," page 534. "The school-master has a right to give moderate corporal correction to his pupils for disobedience to his lawful commands, negligence, or for insolent conduct. A school-master, in his own right, and not by delegation, possesses this power."

State v. Pendergrass, 2 Devereaux & Bottles, 365. "The law confides to school-masters and teachers a discretionary power in the infliction of corporal punishment upon their pupils, and will not hold them responsible criminally, unless the punishment be such as to occasion permanent injury to the child, or be inflicted merely to gratify their own evil passions." In passing this topic, the language of Judge Gaston seems peculiarly appropriate: "It is not easy to state with precision the power which the law grants to school-masters and teachers, with respect to the correction of their pupils. It is analogous to that which belongs to parents, and the authority of the teacher is regarded as a delegation of parental authority. One of the most sacred duties of parents is to raise up and qualify their children for becoming useful and virtuous members of society; this duty cannot be effectually performed without the ability to command obedience, to control stubbornness, to quicken diligence, and to reform bad habits; and to enable him to exercise their salutary sway, he is armed with the power to administer moderate correction, when he shall believe it to be just and necessary."

If excessive.

A school-master is not relieved from liability in damages for the punishment of a scholar which is *clearly* excessive and unnecessary, by the fact that he acted in good faith and without malice, honestly thinking that the punishment was necessary, both for the discipline of the school and the welfare of the scholar.

If there is any reasonable doubt whether the punishment was excessive, the teacher should have the benefit of the doubt. *Lander v. Seaver*, 32 Vt. R. 123; *Wharton's American Crim. Law*, 1259, and 1 *Sanders on Pl. and Ev.*, 144.

Whether under the facts the punishment is excessive, must be left to the jury to decide. *Commonwealth of Massachusetts v. Randall*, 4 Gray, 38.

In the case of *Martin Quinn v. Mary D. Nolan*, a suit tried in the Superior Court of Cincinnati, Judge Harmon, in charging the jury, used the following language:

"If the jury should find the defendant did not, in view of all the circumstances, inflict a greater degree of punishment upon the plaintiff's son than she was fairly entitled to do, and was proper, of course they must find for defendant. But, if they should find she did go beyond that, then it would be necessary to go further and inquire into the damages that should be allowed. The law holds a person responsible only for the natural and ordinary consequences of his acts, those consequences which the law presumes he might or should have foreseen at the time he committed the act. Therefore, it might make a difference in the amount of their finding if it should appear that the child was afflicted with or predisposed to certain diseases, and the defendant had no notice thereof from his parents, the boy himself, his appearance, or otherwise. If the defendant, from the knowledge she had of the boy and his appearance, would be justified in supposing him

Responsible only for natural and ordinary consequences.

in its opinion the safety and interest of the public require ; and the boards of health and councils of municipal corpora-

to be like other boys of his age, and inflicted only a proper punishment, then she would not be liable at all, even though unfortunately some hidden defect in the boy's constitution should cause injury to his health to follow. Or, if they should find for the plaintiff, this fact of ignorance on her part would prevent her from being liable for any consequence arising from such weakness or predisposition in the boy, of which she was ignorant in fact and of which his appearance furnished no warning. It is the duty of parents who send their children to school, whose health or disposition would render the punishment permitted by the rules of the school dangerous or improper, to see the teacher is informed of the fact."

The parent may be said to exercise a judicial authority in determining what punishment, *by himself*, is proper for his child, but is liable, criminally, in a clear case of excess. *Johanson v. State*, 2 Humph., 283. The teacher also acts judicially in such a case, and is not to be made liable, civilly or criminally, unless he acted with express malice, or was guilty of such excess that malice must be implied. *State v. Pendergrass*, 2 Dev. and Bat. 365. *Cooper v. McJunkin*, 4 Ind. R. 290.

Must be express malice to be criminally

After citing all of these cases, except the first, Judge Cooley appends this note:

"It may be proper to observe, however, that public sentiment does not now tolerate such corporal punishment of pupils in schools as was formerly thought permissible and even necessary." 1 Cooley's Blackstone, 453.

Justice Tillinghast, of the Supreme Court of Rhode Island, speaks of the authority of a teacher to take notice of a pupil's conduct when out of school, or after school is dismissed, as follows:

"Upon this point there is some difference of opinion in the community, but the law seems to be well settled, and is this—that for such misbehavior out of school as has a direct and immediate tendency to injure the school, to subvert the master's authority, and to beget disorder and insubordination, the teacher may inflict corporal punishment. 'It is not misbehavior generally,' says Aldis, J., 'or towards other persons, or even towards the master in matters in no ways connected with or affecting the school. For as to such matters, committed by the child after his return home from school, the parents and they alone, have the power of punishment.' But where the offense has a direct and immediate tendency to injure the school and bring the teachers' authority into contempt, as in this case, when done in the presence of other scholars and of the teacher, and with a design to insult her, she has the right to punish the scholar for such acts, if he comes again to school.

Offenses committed out of school.

"The misbehavior,' says the same Judge, 'must not have merely a remote and indirect tendency to injure the school. All improper conduct or language may, perhaps, have, by influence and example, a remote tendency of that kind. But the tendency of the acts so done out of the teacher's supervision, for which he may punish, must be direct and immediate in their bearing upon the welfare of the school, or the authority of the teacher and the respect due him.'

tions, and the trustees of townships shall, on application of the board of education of the district, provide at the public expenses, without delay, the means of vaccination to such pupils as are not provided therewith by their parents or guardians. [69 v. 22, § 1.]

“Cases may readily be supposed which lie very near the line, and it will often be difficult to distinguish between the acts which have such immediate, and those which have such a remote, tendency. Hence, each case must be determined by its peculiar circumstances.

Acts to injure
or deface prop-
erty.

“Acts done to deface or injure the school-room, to destroy the books of scholars, or the books or apparatus for instruction, or the instruments of punishment of the master; language used to other scholars to stir up disorder and insubordination, or to heap odium and disgrace upon the master; writings and pictures placed so as to suggest evil and corrupt language, images and thoughts to the youth who must frequent the school; all such or similar acts tend directly to impair the usefulness of the school, the welfare of the scholars, and the authority of the master. By common consent, and by the universal custom in our New England schools, the master has always been deemed to have the right to punish such offenses.

“Such power is essential to the preservation of order, decency, decorum, and good government in schools.”

If the effects of acts done out of school-houses reach within the school-room during school hours, and are detrimental to good order and the best interests of the pupils, it is evident that such acts may be forbidden. *Burdick & Chandler v. Babcock et al.*, 31 Iowa, 562.

Though a school-master has, in general, no right to punish a pupil for misconduct committed after the dismissal of school for the day and the return of the pupil to his home, yet he may, on the pupil's return to school, punish him for any misbehavior, though committed out of school, which has a direct or immediate tendency to injure the school and to subvert the master's authority. 32 Vermont, 114.

* In general, the courts of the Eastern States—notably, the Supreme Court of Vermont—in their decisions sustain the authority of the teacher and the doctrine that he stands *in loco parentis* much more fully than do the Western courts.

CHAPTER 8.

SCHOOL-HOUSES AND LIBRARIES.

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3987.	Boards to provide school-houses.
3988.	Directions for bidding and for letting contracts.
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SECTION	
3997.	How library tax to be expended.
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4000.	Board of Cleveland to appoint library committee.
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4004.	Board of Portsmouth to appoint library committee.
4005.	Powers and duties of such committees.
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SCHOOL-HOUSES.

SECTION 3987. The board of education of any district is empowered to build, enlarge, repair, and furnish the necessary school-houses, purchase or lease sites therefor, or rights of way thereto, or rent suitable school rooms, and make all other necessary provisions for the schools under its control. Directors of sub-districts shall, under such rules and regulations as the township board of education may prescribe, provide fuel for schools, build, enlarge, repair, and furnish school-houses, purchase or lease sites therefor, rent school-houses, build and keep in good repair all fences enclosing such school-houses, plant shade and ornamental trees on the school grounds, and make all other provisions necessary for the convenience and prosperity of the schools within their sub-districts, and the township board shall be held responsible, in its corporate capacity, for all contracts made by such directors, when they are made in accordance with the rules and regulations of the township board, or any resolution thereof. [70 v. 195, § 55; 82 v. 286; 83 v. 84.]

School-houses

SECTION 3987 (a). The law requires, under severe penalties to be visited on those who have control thereof, that "all school-houses are to have ample means of convenient egress, and doors opening outward." For requirements as to certificates regarding the safety of such buildings, and the penalties relating to neglect, see Revised Statutes, sections 2568, 2572, and 7010 (amended 1883).

Safety of buildings—of egress.

(b). As to any building otherwise "in a condition dangerous to life or health," see Revised Statutes, sections 2128 and 2466.

[SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That when, in the judgment of any board of education, it will be for the advantage of the children residing in any school district to hold literary societies, school exhibitions, singing schools, or religious meetings, the board of education shall, upon the application of the sub-district directors, authorize the opening of such school-houses for the purposes aforesaid.

SEC. 2. This act shall take effect on its passage.

Passed January 31, 1889.]

Statute referring to care of buildings.

(c). Concerning the full power of boards of education, teachers, or other citizens, to secure protection against the injury or defacement of "school-houses, school-yards, trees, fences, gates and bars," see Revised Statutes, section 6863, also sections 6877 and 6896, as quoted under section 3972. Any citizen may prosecute the transgressor in these cases. School-houses, school furniture, and other school property belonging to the township, and not to the sub-district, are entirely under the legal control of the township board.

(d). Directors have also a supervisory care of the school-house and other school property in their sub-district, but their authority is *subordinate* to that of the township board, and must always be exercised in obedience to their directions.

Use of school-houses for other purposes.

(e). It is the duty of the township board of education to exercise such supervision over the school-houses in the several sub-districts, as may be necessary to prevent their being used in such a manner and for such purposes as may interfere with their use, for the legitimate and special purposes for which they were erected.

(f). A lease of a public school-house for the purpose of having a private or select school taught therein for a term of weeks is in violation of the trust; and such use of the school-house may be restrained at the suit of a resident taxpayer of the district. 35 O. S., 143.

Local directors are to follow directions of township board.

(g). Where a township board has resolved to sell the old site of a sub-district school-house, and has purchased a new site, and, notifying the local directors of the sub-district of their action in the premises, instructed them to sell the former, and to build a new school-house on the latter, and the local directors, disregarding such instructions, proceed to build a new school-house on the old site, and keep up a school therein—*Held*: That the local directors are guilty of such insubordination and neglect as to justify the township board in exercising the powers and duties which would otherwise devolve on the local directors, and in building a school-house on the new site, and in employing a teacher therein; and such teacher is entitled to be paid his wages out of the township treasury, on the order of the township board. *State v. Lynch*, 8 O. S., 348.

Local board building committee.

(h). *Building Committees*.—In township districts, directors are the legal building committees, but they can take the necessary steps for building or repairing only under the instruction and by the authority of the board of education.

SEC. 3938. When a board of education determines to build, repair, enlarge, or furnish a school house or school-houses, or make any improvement or repair provided for in this chapter, the cost of which will exceed, in city districts of the first and second class, fifteen hundred dollars, and in other districts five hundred dollars, except in cases of urgent necessity, or for the security and protection of school property, it shall proceed as follows:

Directions for bidding, and for letting contracts.

1. The board shall advertise for bids, for the period of four weeks, in some newspaper of general circulation in the district, and two such newspapers, if there are so many; and if no newspaper has a general circulation therein, then by posting such advertisements in three public places therein, which advertisements shall be entered in full by the clerk, on the record of the proceedings of the board.

2. The bids, duly sealed up, shall be filed with the clerk by twelve o'clock, noon, of the last day stated in the advertisement.

(i). Under the act of March 14, 1853 (51 v. 429), a township board of education has the power to designate the particular place where school-houses in sub-districts shall be built; and the powers which, in this respect, the statute confers on the local directors of a sub-district, are to be exercised in subordination to the paramount authority of the township board of education. *Hughes v. Board of Education*, 13 O. S., 336.

(j). If a board refuses to appropriate sufficient funds to build a good school-house, the directors may appeal to the county commissioners.

(k) Directors cannot receive any portion of the school funds for disbursement, but, on the contrary, they are required to report all contracts for fuel, etc. to the township board for payment; and unless the township clerk is authorized by a resolution of the board to draw the requisite orders for amounts certified by directors to be due, in any given case, on contracts legally made by them, such contracts can only be paid after they have been duly reported to the board and approved. See section 4047.

(l) But as such resolution provides for the payment of money through the agency of such local directors, the records must show that it was passed by the required "majority of all the members legally comprising the board." Section 3982.

* SECTION 3988 (a). Clause 4, of Revised Statutes, which provides that a board of education engaged in the erection of a school building, "may, in its discretion, reject all the bids," does not authorize the acceptance of any "but the lowest responsible bid." 42 O. S., 374.

* (b). "By the proviso to the 55th section of the school law [sec. 3988, R. S.], township boards of education are required, when the cost of building a school-house or other improvement exceeds five hundred dollars, to

3. The bids shall be opened at the next meeting of the board, be publicly read by the clerk, and entered in full on the records of the board.

4. Each bid shall contain the name of every person interested in the same, and shall be accompanied by a sufficient guarantee of some disinterested person, that if the bid be accepted, a contract will be entered into, and the performance of it properly secured.

5. When both labor and materials are embraced in the work bid for, each must be separately stated in the bid, with the price thereof.

6. None but the lowest responsible bid shall be accepted; but the board may, in its discretion, reject all the bids, or accept any bid for both labor and material which is the lowest in the aggregate for such improvement or repair.

advertise, and let the same to the lowest responsible bidder, unless in case of urgent necessity, or for the security and protection of school property. This is a duty imposed on the board in its corporate capacity, and cannot be delegated to the local directors of the sub-district in which the school-house or other improvement is to be made." 38 O. S., 383.

Contract to be let on bids.

When otherwise.

Local boards not authorized to advertise and open bids.

House to cost \$10,000.

When members of the board individually liable.

When contractors act at their own peril.

(c). Boards of education, and not local directors, are to receive bids. In a suit upon a contract under this statute, where the cost of the building exceeds \$500, it must appear from the records of the board that the contract was let after and upon such bids, or that it was a case of urgent necessity for the security of school property.

The record and proceedings of local directors, showing that *they* duly complied with the requirements of the law to advertise, are incompetent evidence, since local directors are not authorized to advertise, open bids, and award the contract. If such incompetent evidence in favor of the prevailing party is allowed to go to the jury against the objection of the other party, error to his prejudice will be presumed, without showing that the jury was influenced by it. Error from District Court, Guernsey county, to Supreme Court, October 26, 1882.

(d). When the school-house is to cost \$10,000 or over, see section 794, Revised Statutes.

(e). Individual members of a board and local directors as mere agents of the board, must see that their acts bind the board; for if they do not secure their principal a right of action or defense, they will themselves be personally liable. *Ives v. Hulet*, 12 Vt., 314; 58 Mo., 245. This principle also applies to the acts of boards of education who, in their corporate capacity, seek to bind the district for which they act, as also their successors.

(f). But those who deal with officers of a corporation must ascertain, at their peril, what they will be conclusively presumed to know, that these public agents are strictly within the sphere limited and prescribed by law,

7. Any part of a bid which is lower than the same part of any other bid, shall be accepted, whether the residue of the bid is higher or not; and if it is higher, such residue shall be rejected.

8. The contract shall be between the board of education and the bidders; and the board shall pay the contract price for the work, when it is completed, in cash, and may pay monthly estimates as the work progresses.

9. When two or more bids are equal, in the whole, or in any part thereof, and are lower than any others, either may be accepted, but in no case shall the work be divided between the makers thereof.

10. When there is reason to believe that there is any collusion or combination among the bidders, or any number of them, the bids of those concerned therein shall be rejected. [70 v. 195, § 55.]

and outside of which they are powerless to act. 60 Mo., 53; Whiteside v. U. S., 93 U. S. Rep., 247; 9th Ed. Story on Agency, sec. 307.

Still, it is well settled that where persons deal with an officer of a corporation, who assumes authority to act in the premises, and no want of authority or irregularity is brought to the knowledge of the party so dealing with the corporation, and there is nothing to excite suspicion of such defect, the corporation is bound, although the agent exceeded his powers. 57 Mo., 207; 93 U. S. Rep., 247.

(g). Unauthorized expenditures, not *ultra vires*, deemed beneficial, may be ratified, and in such case this ratification is equivalent to previous authority. 8 Fost. N. H., 65; 32 N. H., 118. But the subsequent use, in the school, of materials unlawfully contracted for, does not amount to such a ratification as will bind the district. 67 Mo., 319.

When unauthorized expenditures may be ratified.

When not.

(h). Ratification of the acts of a committee in building upon the land of a district a more expensive house than they were authorized to do by vote of the corporation, cannot be inferred from the mere fact that the school is kept in for a few weeks, there being no evidence that the corporation had knowledge of the over-expenditure, or had taken any action on the subject. Dillon on Municipal Corporations, 480. This will probably apply to the case of local directors acting as agents of the board of education in building a house. It is evident from the above that in order to bind their principals the agents must describe themselves as agents of such principals, and their business must be of the kind to which the duties and powers of the principal pertain, and must not be acts prohibited as either criminal or against public policy.

Exceeding authority as to cost of building.

(i) All contracts made by the board or its agents should be in writing and in duplicate, and one copy should be filed with the clerk of the board. The laws of some states require this. This is not, however, necessary to make a contract binding.

Contracts should be in writing.

Erection of school-houses in joint sub-district.

SEC. 3989. When it becomes necessary to rebuild the school-house of a joint sub district, or, for the better accommodation of scholars, to change the school-house site and erect a new building thereon, the question of such rebuilding, or of such change of site and erection of a new building, shall be determined by a majority vote of the board of directors of such sub district, and in such manner as to secure the better accommodation of a majority of scholars in the same; any funds which may be or have been assessed and collected for the building of such school-house shall be transferred to the custody of the board of education of the township in which the new building is to be erected, which board shall proceed in all matters connected with the erection of the building in accordance with the provisions of this chapter; and if the location be changed to another township, the personal property belonging to such sub-district shall be transferred to the board of education of such township; and any real property belonging thereto, and situated in the township from which the location is changed, shall be sold by the board of education of such township, and the proceeds of the sale transferred to the board of education of the township to which the location is changed. [72 v. 63, § 36.]

When boards may appropriate property.

SEC. 3990. When it is necessary to procure or enlarge a school-house site, and the board of education and the owner

SEC. 3989. Under section 3928 the boards of education which establish a joint sub-district are to fix upon the place for building the school-house. This section does not seem to interfere with that provision, but to enact the manner of fixing upon the site on any subsequent occasion.

SEC. 3990 (a). Section 2232 et seq., of the Revised Statutes refer to this subject.

Proceedings to be completed before erection of building.

(b). Before building on such property, it is best to complete the proceedings before the court or courts, if an appeal is taken, and to wait until the time for appeal has elapsed, as such appeal may be taken and may reverse the proceedings below.

Power to condemn strictly construed.

(c). The power to condemn private property to public uses against the will of the owner is a stringent one, based on public necessity or urgent public policy, the rule requiring the power to be strictly construed, and the prescribed mode for its exercise strictly followed, is a just one, and should, within all reasonable limits, be inflexibly adhered to. *Dillon on Mun. Corp.*, 569.

Owner, when entitled to damages.

(d). The owner is entitled to full payment of the damages assessed, before his title is extinguished or his control of the premises ceases. In

of the proposed site or addition are unable, from any cause, to agree upon the sale and purchase thereof, the board shall make an accurate plat and description of the parcel of land which it desires for such purpose, and file the same with the probate judge of the proper county; and thereupon the same proceedings of appropriation shall be had which are provided for the appropriation of private property by municipal corporations. [70 v. 195, § 65.]

SEC. 3991. When the board of education of any district, except a city district of the first class, determines that it is necessary, for the proper accommodation of the schools of such district, to purchase a site or sites, and erect a school-house or school houses thereon, or to do either, and ascertains that the purchase of such site or sites, and the erection and furnishing of such school-house or school-houses, or either, will require a greater tax upon the property of such district than the board is authorized by this title to levy, and that to provide the means therefor it will be necessary to issue bonds, it shall make an estimate of the probable cost of such site or sites, and such school-house or school-houses, or of either, and

When and how questions of tax-levy submitted to voters.

any case of voluntary dedication or of involuntary surrender of property to a public use, the property reverts to the owner, when the use entirely ceases.

When property reverts.

(e). In case premises have been dedicated to a special use, there is no power to alienate such premises without the consent of the dedicator or his representatives, even though the lots, by reason of a railway or depot near by, have been rendered unsuitable for such use, or even dangerous. 18 Ohio, 221.

Dedication to special use.

SEC. 3991 (a). It cannot be too often repeated that a board of education speaks only through its records. Its acts, findings, and determinations are only known by its records. Hence, although the words of the statute may not clearly settle the question, yet it is safest to assume that this *determination* is to be an *official* determination. Purchasers of bonds are likely to scrutinize such matters closely, and they will question whether the board acquires jurisdiction to take steps for raising a tax unless it first officially "ascertains" and "determines" all the preliminary facts mentioned in the statute, and makes a record of such finding.

Record of proceedings to issue bonds.

(b). When the statute requires that notice shall be given of the matter to be acted on, a failure to insert such matter will render void any act done with respect to the matter not so embraced as required. 18 Maine, 184; 12 Cushing, 294. It is presumed that the people of a district know the days appointed by law for the ordinary affairs of the district, yet if it is intended to proceed to any other act of importance a notice is necessary, the same as at any other time. Dillon on Mun. Corp., 319.

Notice must contain matter to be acted on.

at a general election, or a special election called for that purpose, shall submit to the electors of the district the question of levying taxes for such purposes, or either of them, and the further questions whether the levy shall be made from year to year thereafter, and what amount shall be levied each year until the actual cost of such site or sites, and the erection of such school-house or school houses, or either is raised; and ten days' notice of such submission shall be given by the board, by posters put up in five of the most public places in the district, which shall state the time, place, and object of the election. [70 v. 241, § 61.]

If levy approved, board to certify it to auditor.

SEC. 3992. If a majority of the electors at such election vote in favor of levying taxes for such purposes, or either of them, of continuing the levy from year to year thereafter, and for the amount to be levied each year, the board shall certify the levy annually to the county auditor, who shall place the same upon the tax duplicate in the same manner that other taxes certified by such board are required to be placed thereon; and when the district is divided by a county line, the levy shall be certified, collected, and paid in the manner provided in sections *thirty-nine hundred and sixty-one* and *thirty-nine hundred and sixty-two*, in the case of levies for joint sub-districts. [70 v. 195, § 62.]

How the levy may be anticipated.

SEC. 3993. To enable such board to anticipate the money to be raised it may borrow the sum of money necessary, not exceeding the amount so authorized to be levied, and issue bonds therefor, payable as indicated by the vote provided for in section *thirty-nine hundred and ninety-one*, after a certain day

Mode of raising funds.

SEC. 3993 (a). Boards of education are not authorized to raise money on notes or bonds except as provided for by statute.

Official signatures.

(b). Bonds signed by the president and clerk of the board are officially signed.

(c). When specific power is given by the legislature authorizing a board of education to issue negotiable bonds for school purposes upon certain conditions prescribed, the regularity of proceedings of the board cannot be disputed, where the bonds, upon their face, purport to have been issued under the law in question, and where they have been sold by the board and afterwards passed into the hands of a *bona fide* holder.

Injunction against excessive issues.

Mandamus is the proper remedy to compel the board to appropriate moneys already in their treasury for that purpose, toward the payment of such bonds, and to levy such tax as may be necessary to complete such payment. 27 O. S., 96.

to be named therein, and bearing interest payable semi-annually, at a rate specified therein, not exceeding six per centum per annum; the bonds shall be in such sums as the board may determine, be numbered consecutively, made payable to the bearer, bear date the day of sale, and be signed by the board officially; the clerk of the board shall keep a record of the number, date, amount, and rate of interest of each bond sold, the sum for which and the name of the person to whom sold, and the time when payable, which record shall be open to the inspection of the public at all reasonable times; and the bonds so issued shall in no case be sold for a less sum than their par value, nor bear interest until the purchase money for the same shall have been paid by the purchaser. [70 v. 195, § 63.]

SEC. 3994. The board of education of any city district of the first class, except a district embracing a city of the first grade of the first class, may issue bonds to obtain or improve public school property, and in anticipation of income from taxes for such purpose, levied or to be levied, may, from time to time, as occasion requires, issue and sell bonds, under the restrictions and bearing a rate of interest specified in the preceding section, and pay such bonds and interest thereon when due, but shall so provide that no greater amount of such bonds shall be issued in any year than would equal the aggregate of a tax at the rate of two mills, for the year next preceding such issue; but the order to issue such bonds shall be made only at a regular meeting of the board, and by a vote of a majority of all the members thereof, taken by yeas and nays, and entered on the journal of the board. [75 v. 526, § 56.]

Issue of bonds by boards of city districts of first class.

LIBRARIES.

SEC. 3995. In any district the board of education may appropriate money from the contingent fund for the purchase

Certain boards may appropriate money for library, etc.

SEC. 3994. An injunction would lie against a board of education which sought to issue bonds in excess of this authority, but only as to such excess, and not to the whole. 47 Mich., 226; 43 Iowa, 48.

Establishment of libraries.

SEC. 3995 (a). For the establishment of a public library by township trustees, see R. S., secs. 1476-1478. For powers of city and village councils, see section 1692, R. S.

of such books, other than school books, as it may deem suitable for the use and improvement of the scholars and teachers of the district, and in the purchase of philosophical or other apparatus for the demonstration of such branches of education as may be taught in the schools of the district, or for either of such purposes; but not more than one-half of the amount herein authorized to be appropriated shall be expended in the purchase of such apparatus; such appropriation shall not exceed, in any one year, twelve hundred dollars in city districts containing cities of the first grade of the first class, three hundred dollars in other city districts of the first class, one hundred and fifty dollars in city districts of the second class, and seventy-five dollars in other districts; and the books so purchased shall constitute a school library, the control and management of which shall be vested in the board of education. The board of education of any city of the second class, fourth grade, having a free public library organized, in pursuance of law, may allow such free public library association the use and control of the public school library, subject, however, to such rules, regulations, and restrictions as said board of education may prescribe for the use and control thereof. [72 v. 29, § 51; 78 v. 110.]

Levy for library in cities.

SEC. 3996. For the purpose of increasing and maintaining the school library of city districts, the board of education

What is apparatus.

(b). The question sometimes arises as to what is apparatus. It is not customary to regard maps and charts as such. These, like clocks, desks, black-boards and black-board furniture, would be classed among the essentials for furnishing a school, and they may probably be purchased under section 3987, as provisions necessary for the convenience and prosperity of the schools.

* (c). Boards of education may purchase "school or reading charts" for use in the schools of their respective districts, and are not limited to the amount authorized to be expended by the provisions of section 3995, R. S. 2 O. Circuit Rep., 363.

* (d). Under the statute providing for instruction as to the nature of alcoholic drinks and narcotics, and their effects on the human system, in connection with the subject of physiology and hygiene, in all grades of the schools, and which makes it the duties of boards of education to make provision for such instruction, it seems a reasonable construction of the act that such boards are authorized to purchase such anatomical studies and charts as they may deem necessary to give this instruction successfully without regard to the limitations as to the amount to be expended, set forth in this section 3995.

may levy annually a tax of one-tenth of one mill on the dollar valuation of the taxable property thereof, to be assessed, collected, and paid in the same manner as are other school taxes of such districts. [64 v. 62, § 1.]

SEC. 3997. The amount of such tax, when collected, shall be expended, under the direction of the board, for the purchase of such books as are suitable for public school libraries, the bills for which, with the attendant expenses, shall be certified by the president and clerk, and paid by the treasurer of the school funds. [64 v. 62, § 2.]

How library tax to be expended.

SEC. 3998. The board may appoint a librarian, fix his compensation, and make all needful rules and regulations for the management of the library, to which every family resident in such city districts shall have access. [64 v. 62, § 3.]

Board may appoint librarian, etc.

SEC. 3999. In cities not having less than twenty thousand inhabitants, the board of education having custody of any public library therein may, at any regular meeting, adopt a resolution providing for a board of managers of such library, and shall thereupon elect, by ballot, two persons to serve as members of such board for a term of three years, two persons to serve for a term of one year; and annually thereafter two persons shall be elected to serve for a term of three years; all vacancies in such board shall be filled by the board of education by ballot, and a person so elected shall serve during the unexpired term of his predecessor; the president of the board of education shall be a member of the board of managers ex-officio; and the board of managers shall at all times be amenable to and under the control of the board of education, as to tenure of office and authority, and shall serve without compensation. [64 v. 100, § 1.]

In certain cities board may appoint managers of library.

SEC. 4000. The public library board of the city of Cleveland shall consist of seven suitable persons, residents of said city, no one being a member or officer of the board of education. The members of the library board shall serve without compensation, and hold their offices for three years, and until their successors shall have been elected and qualified, except that at the first election two of the board shall be elected for one year, two for two years, and three for three years. After said first election so many shall be elected each year as equals the number whose term expires that year. They shall be

Cleveland public library board.

elected by roll-call as in other cases, by the board of education of the city of Cleveland, at its first regular meeting after the third Monday of April, 1886, and annually thereafter as hereinbefore provided. The board of education shall have power at any time to fill vacancies in the library board for unexpired terms by election as aforesaid. [75 v. 101, § 1; 80 v. 172; 83 v. 104.]

Powers and duties of library board.

SEC. 4001. Such library board shall report in writing to the board of education once each year, and oftener if required by the latter, shall have exclusive charge and control of the public library of the city, and shall have full power to make all rules and regulations for the government and management thereof; to employ a librarian and such assistants and helps as may be needed for the care and protection of the library, and to attend to the drawing and return of books; but prior to such employment the compensation of such librarian, assistants and help, shall be fixed by the library board, by a majority of the members thereof voting in favor of such compensation, on roll-call by the secretary, and such librarian, assistants and help shall be employed by a vote in the same manner. [76 v. 50, § 2; 78 v. 132; 80 v. 172.]

Library tax, and how expended.

SEC. 4002. For the purpose of increasing and maintaining the public library in said city, and the territory thereto attached for school purposes, such library board may levy annually a tax of two and one-half tenths of one mill on each dollar valuation of the taxable property of the city, and the territory thereto attached for school purposes, to be levied, collected and paid in the same manner as are the school taxes of the city; all moneys appropriated, received or collected by tax for the library, shall be expended under the direction of the library board in purchasing such books, pamphlets, papers, magazines, periodicals, journals and other property as may be deemed suitable for the public library, and in payment of all other charges and expenses, including compensation to the librarian, assistants and help, that may be incurred in increasing and maintaining the library; and the pay-rolls and all warrants upon the treasurer given to pay such expenditures, upon the order of the library board, be certified by the president and secretary of such board, and paid by

the treasurer of the city from such library fund. [76 v. 50, § 3; 80 v. 173.]

SEC. 4003. In all cities which at the last federal census had, or at any subsequent federal census may have, a population of ten thousand five hundred and ninety two, it shall be lawful to merge any public library therein heretofore established with any other library or reading room therein existing; but the library formed by such consolidation shall be kept open for the use of the public at all reasonable hours. [75 v. 541, § 1; 76 v. 27, § 1.]

Consolidation of libraries in Portsmouth authorized.

SEC. 4004. The board of education of every such city shall, at its first regular meeting after the second Monday in June, 1879, elect by ballot three suitable persons, residents of the city, but other than members of such board, who shall be known as the library committee of the city, one to serve for one year, one for two years, and one for three years, and until their successors are duly elected and qualified, and shall, annually thereafter, elect in like manner one person with the same qualifications, to serve for three years, and until his successor is elected and qualified; and any vacancy in such committee shall be filled for the unexpired term at the first regular meeting of the board held after the same occurs. [75 v. 541, § 2; 76 v. 97, § 2.]

Board of Portsmouth to appoint library committee.

SEC. 4005. Such committee shall report in writing to the board of education at least once each year, and oftener if required by the board, and shall have entire charge and control of the school library in the city, with full power to make all rules and regulations for the government and regulation thereof, to employ a librarian, and such assistants and help as may be needed for its care and protection, and to require of the librarian such bond as they may deem proper for the faithful performance of his duties, and to attend to the drawing and return of books; but the salary of such librarian, and the rate of compensation of such assistants and help, shall be fixed by resolution prior to such employment. [76 v. 97, § 3.]

Powers and duties of such committee.

SEC. 4006. For the purpose of increasing and maintaining school libraries in cities mentioned in section *forty hundred and three* of the Revised Statutes of Ohio, and the territory thereto attached for school purposes, such library committee

Powers and duties of library committees in Portsmouth.

in such cases is authorized to annually levy a tax of two-tenths of one mill on the dollar valuation of the taxable property of such cities aforesaid, and the territory thereto attached for school purposes, to be assessed, collected, and paid in the same manner as are the school taxes of such cities; and all money appropriated or collected by tax for such library shall be expended under the direction of said library committee in the purchase of such books, pamphlets, papers, magazines, periodicals, and journals, as may be deemed suitable for the public school library, and in payment of all other costs and charges, including the salaries of the librarian and assistants, that may be incurred in maintaining such libraries, the bills and pay-rolls for which said expenditures, shall, upon the order of the library committee, be certified by the chairman and secretary of such committee, and paid by the treasurer of the board of education of said city from such library fund. [55 v. 541, § 2; 76 v. 97, § 4; 78 v. 176]

CHAPTER 9.

SCHOOLS, AND ATTENDANCE ENFORCED.

SECTION	SECTION
4007. Sufficient schools must be provided.	4018. Directors to employ, pay, and dismiss teachers.
4008. Schools for colored children.	4019. Teacher dismissed for insufficient cause may institute suit.
4009. Schools of higher grade than primary.	4020. Board to determine studies and text-books.
4010. Schools at "children's homes" and county infirmaries.	4021. When German language to be taught, etc.
4011. Youth may be sent to charity school at Zanesville.	4022. Pupils may be sent from one district to another.
4012. Evening schools.	4025. Boards to ascertain condition children not at school.
4013. Who may be admitted to public schools.	4026. When board may supply pupil with books.
4014. Suspension and expulsion of pupils.	4027. Penalties against violation of preceding provision.
4015. Teachers may dismiss schools on holidays.	4029. What is equivalent to attendance on day school.
4016. School year, month, and week.	
4017. Board to control schools, and appoint officers.	

SCHOOLS.

SECTION 4007. Each board of education shall establish a sufficient number of schools to provide for the free education of the youth of school age within the district under its control,

Sufficient schools must be provided.

SECTION 4007 (a). In determining the question as to how many schools are necessary in the districts, either of townships, villages, or cities, three

at such places as will be most convenient for the attendance of the largest number of such youth, and shall continue each and every day school so established not less than twenty-four nor more than forty-four weeks in each school year; and each township board of education shall establish at least one primary school in each sub-district under its control. [75 v. 513, § 50.]

[Section 4008, which authorized boards of education to provide separate schools for colored children, was repealed February 22, 1887. See notes.]

SEC. 4009. Any board of education may establish one or more schools of higher grade than the primary schools, whenever it deems the establishment of such school or schools proper or necessary for the convenience or progress of the pupils attending the same, or for the conduct and welfare of the educational interests of the district; and such school or schools when so established, shall not be discontinued under three years from the time of the establishment thereof, except by a vote of three-fourths of the members of the board of education of each township. [75 v. 513, § 50; 79 v. 37.]

Boards of education may establish schools of higher grade than primary

things should be carefully considered: 1. Convenience of access. 2. Economy in expenditures. 3. A proper grading and classification of the pupils, in cases where grading is possible.

Under the first item, a due regard should be had to the arrangement of the population. In some cases the geographical center of the district is not the center of population, nor will it always do utterly to disregard the rights of minorities, and place the school in the exact center of population, when this will force a respectable number of children to travel excessive distances.

Schools should be conveniently located.

There is no reason why two or more school-houses or two or more school-rooms may not be provided in a sub-district.

Two or more school rooms in a sub-district.

(b) The law is absolute in its requirements to continue all schools to which public money is applied at least twenty-four weeks. The law does not limit boards of education to this period, however, and if the time is lengthened as to the schools for any portion of the inhabitants of a township district, it must be equally lengthened for all such inhabitants. This does not imply that all the *grades* of a system of schools accessible to all the pupils of a district must be kept up as long as the other grades. But if the high or grammar schools for one part of the district be kept up for a given time, such grades for other parts of the district must be continued as long. See section 3967. That this same rule is to govern in the case of different parts of a city district, see fourth item enumerated under section 3969.

Schools must continue twenty-four weeks.

SEC. 4009*a*. For the purpose of providing such schools of higher grade, any township district, village and special district, situate within the boundaries of such township may be united together and organized as a special district for high school purposes, by a vote of the electors of such township at any general election as herein provided.

SEC. 4009*b*. Any ten or more of the qualified electors of any township having a village district, or special district within its limits, may give ten days' notice before any general election that a separate vote will be taken at the next general election in said township, in each of the districts proposed to be so united, on the proposition to unite such village, township district, or special district, or any two of said districts, for high school purposes. Such notice shall be sufficient, if given by publication in a newspaper published and of general circulation in said township, and by being conspicuously posted in at least three public places in each of the districts interested. At such next general election held after publication of such notice, all electors voting in favor of such union shall have written or printed on their ballots, "Special District for High School Purposes—Yes;" and all electors voting against such union shall have written or printed on their ballots, "Special District for High School Purposes—No." If a majority of the ballots cast on the proposition in each of said districts have on them the words, "Special District for High School Purposes—Yes," such vil-

* 4008 (*a*). The power to establish and maintain separate schools for colored children was conferred on boards of education by section 4008 and not by section 4013 of the Revised Statutes. Whilst under the latter section power is conferred on boards of education to make such assignments of the youth of their respective districts, to the schools established by them, as will, in their opinion, best promote the interest of education in their districts, such power cannot be exercised with reference to the race or color of the youth; and section 4008 having been repealed by the act of the General Assembly passed February 22, 1887 (84 Ohio L., 34), separate schools for colored children have been abolished, and no regulation can be made under section 4013, that does not apply to all children, irrespective of race or color. 45 O. S., 556.

* (*b*). The fact that prior to the repeal of section 4008, a board of education had, under its provisions, established a separate school for colored children, does not authorize it to continue the same after such repeal, and to require the colored children, against their will, to attend the same. 2 O. Circuit Court Rep., 557.

Vote on union of districts for high school purposes; appointment of board of education for high school.

lage, township and special districts, or any two of said districts, shall thereafter be united as a special district for high school purposes; and the judges of such election shall certify to the court of common pleas of the county in which such township is situate, the result of such election, which certificate shall be placed upon the journal of said court; whereupon said court shall appoint three judicious persons, one for one year, one for two years, and one for three years, residents of said township, as the board of education of such special district for high school purposes, one member of such board of education to be elected every year [t] hereafter, to hold said office [for three years, or until his successor is elected. Such board of education, when so appointed, shall have all the powers now conferred by law upon other boards of education. [82 v. 128.]

SEC. 4010. The board of any district in which a children's home or orphans' asylum is or may be established by law, or in which a county infirmary is or may be established, shall, when requested by the board of trustees of such chil-

Schools at children's homes, orphans' asylums and infirmaries; how sustained.

* SEC. 4009 (a). One of the most encouraging features of the development of our public school system, is the rapid growth of the higher education, particularly in the township districts. The establishment of township high schools is going forward in increasing numbers with each succeeding year. The people seem to be growing into the conviction that the higher education is a necessity in a republic, and that the cheapest and best place for their children to obtain this education is at home, under their own eye.

(b). This authority applies to all boards of education, including township boards. If such higher grade of school is in a sub-district and exclusively for the use of such sub-district, it is, like primary schools so situated, under the provisions of section 4018. If it is designed for the attendance of children from all of the sub-districts, under a general rule that all of a certain grade of scholarship may attend it, without special assignment of individual pupils thereto, it is practically a township high school, and under the management of the township board of education, though it is, of necessity, located within the territory of some sub-district. This is evident from the fact that the full control of the public schools of each district is, under section 4017, in the hands of the board of education of such district, except *only* as provided in section 4018.

To whom applicable and by whom controlled.

(c). An order for the payment of a teacher of a township high school should be signed by the president and countersigned by the clerk of the board of education. See section 4047.

Order of teacher to be signed.

* (d). Of course the superintendent of the schools of a township, is entitled, under the direction of the township board, to exercise the same authority that is exercised by a superintendent of city schools.

dren's home, orphans' asylum or the directors of such infirmary, establish in such home, asylum or infirmary a separate school, so as to afford to the children therein, as far as practicable, the advantages and privileges of a common school education; such schools at infirmaries shall be continued in operation each year until the full share of all the school funds of the district belonging to such children, on the basis of enumeration, is expended, and at such homes and asylums not less than forty-four weeks, if the distributive share of school funds to which such school at any such home or asylum is entitled by the enumeration of children in the institution is not sufficient to continue the schools the length of time hereby required, the deficiency shall be paid out of the funds of the institution; all schools so established in any such home, asylum or infirmary, shall be under the control and management of the respective boards of trustees or directors of such institution, which boards of trustees or directors shall, in the control and management of such schools, as far as practicable, be subject to the same laws that boards of education and other school officers are, who have charge of the common schools of such district; in the establishment of such schools the commissioners of the county in which such children's home, orphans' asylum or county infirmary is established, shall provide the necessary school-room or rooms, furniture, fuel, apparatus and books, the cost of which furniture, fuel, apparatus and books for the schools of such homes, infirmaries and asylums, shall be paid out of the funds provided for such institutions; and the board of education shall incur no expense in supporting such schools. [75 v. 513, § 50; 76 v. 75, § 1; 80 v. 217.]

SEC. 4011. The board of education of the city of Zanesville may contract with the trustees having the management of any fund which has been provided by gift, devise, or bequest for the establishment or support of a school or schools for poor children therein, for the admission to any such school of children resident in the city, and pay to such trustees, out of the school funds under its control, such tuition fee as may be agreed upon for each scholar so admitted, but not entitled to admission according to the terms of such gift, devise, or bequest, and also provide for such right of visitation or control of such school or schools by the board as may be agreed

To be under control of trustees of institutions.

Youth may be sent to charity school at Zanesville.

upon; such school or schools shall be kept, at the least, equal in grade and efficiency to the corresponding public schools of the state, and every such contract shall expire in three years from the time of its execution, unless renewed or extended by agreement; but this section shall in no manner apply to any school or schools supported or controlled by any church, congregation, sect, or religious denomination or association of any kind. [75 v. 530, § 1.]

SEC. 4012. In any district composed, in whole or in part, of a city or village, the board may, at its discretion, provide a suitable number of evening schools for the instruction of such youth as are prevented by their daily vocation from attending day schools, subject to such regulations as the board may, from time to time, adopt for the government thereof. [72 v. 29, § 51.]

Evening schools.

SEC. 4013. The schools of each district shall be free to all youth between six (6) and twenty-one (21) years of age, who are children, wards, or apprentices of actual residents of the district, including children of proper age, who are or may be inmates of a county or district children's home located in any such school district, at the discretion of the board of education of the township in which said school district is located. Each board of education may admit other persons of like age upon such terms or upon payment of such tuition as it may prescribe; provided, that in all counties which do not contain a city of the first grade of the first class, in such case there shall be credited on the tuition so charged the amount of school tax in such district for the current school year, which may be paid by such non-resident pupil or a parent thereof; and the several boards shall make such assignment of the youth of their respective districts to the schools established by them, as will, in their opinion, best promote the interests of education in their districts. [70 v. 195, § 51; 77 v. 196; 84 v. 69.]

Public schools.

Who may be admitted to.

SEC. 4013 (a). Children cannot, as a matter of right, attend the schools of sub-districts in which they do not reside, and to which they have not been assigned by the board of education. The local directors are given no jurisdiction in such matters.

Pupils to attend in their own sub-district.

* (b). By comparing this section with section 4030, it will be seen they do not correspond in one particular. The latter says, there shall be 'an enumeration of all *unmarried* youth,' while in this section there is no

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Schools, and Attendance Enforced.

Suspension
and expulsion
of pupils.

SEC. 4014. No pupil shall be suspended from school by a superintendent or teacher except for such time as may be necessary to convene the board of education of the district or the directors of the sub-district, and no pupil shall be expelled except by a vote of two-thirds of such board or directors, and not until the parent or guardian of the offending pupil has been notified of the proposed expulsion, and permitted to be heard against the same; and no scholar shall be suspended or expelled from any school beyond the current term thereof. [70 v. 195, § 71.]

Dismissal of
schools on
holidays.

SEC. 4015. Teachers employed in the common schools may dismiss their schools, without forfeiture of pay, on the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the twenty-fifth day of December, and on any day set apart by proclamation of the president of the United States, or the governor of this state, as a day of fast or thanksgiving. [70 v. 195, § 116; 79 v. 87; 83 v. 73.]

School year,
month, and
week.

SEC. 4016. The school year shall begin on the first day of September of each year, and close on the thirty-first day

limitation to free admission into school, except as to age. It was doubtless intended by the General Assembly that the two sections should agree on this point. That they do not is owing, it may be presumed, to an inadvertence.

Under this section persons under twenty-one years of age, though married, are entitled to all the privileges of the schools of the district in which they reside, notwithstanding they have not been enumerated in the school census, and in consequence can draw no part of the state school fund.

Electors vote
where.

(c). Under the general law, sections 3898, 3916, etc., boards of education are elected by the qualified electors of their district. This section does not change this provision. Hence, though they may send their children to the school, they cannot vote in any district except where their home is situated.

SEC. 4014 (a). The father of a child entitled to the benefits of the public school of the sub-district of his residence, may maintain an action against the teacher of the school and the directors of the sub-district, for damages for wrongfully expelling the child from school. *Roe v. Deming et al.*, 21 O. S., 666.

Detention of
pupils at home
by parent.

(b). The parent has no right to interfere with the order or progress of the school by detaining his child at home, or by sending him at times that prove an annoyance or hindrance to others. 31 Iowa, 568.

Right to at-
tend not ab-
solute.

The right to attend school is not absolute, but conditional on compliance with the rules. 48 Vt., 473.

of August of the succeeding year; and a school week shall consist of five days, and a school month of four school weeks. [70 v. 215, § 70; 72 v. 181, § 6.]

SEC. 4017. The board of education of each district shall have the management and control of the public schools of the district, with full power, subject to the provisions of the next section, to appoint a superintendent and assistant superintendents of the schools, a superintendent of buildings, and teachers, janitors, and other employes, and fix their salaries or pay, which salaries or pay shall not be either increased or

Board to control schools and appoint officers.

* 4015 (a). Hiring teachers by the day does not affect their rights under this section.

(b). It is held in Michigan that "school management should always conform to those decent usages which recognize the propriety of omitting to hold exercises on recognized holidays. All contracts for teaching during periods mentioned must be construed of necessity as subject to such days, and there can be no penalty laid upon such observances, in the way of forfeitures or deductions of wages." 39 Mich., 484.

SEC. 4016. Teachers have no right, without express authority of the board of education, to make up lost time by teaching on Saturday or on a holiday. The custom is so well established of keeping the schools in session the five working days of each week exclusive of Saturday, and of dismissing on the holidays named, that to change this custom would manifestly require action by the board. As the law does not prescribe the days of the week to be taught, the board may, under section 3985, authorize the intermission of school on Monday or any other day most convenient to the inhabitants. In a few districts in Ohio, there is no session on Monday.

Making up lost time on Saturdays and holidays.

SEC. 4017 (a). Boards of education are authorized to adopt and enforce necessary rules and regulations for the government of schools under their management and control. *Sewell v. Board of Education*, 29 O. S., 89.

Board to enforce necessary rules.

* (b). The assent of both parties must be given to a contract to make it binding. A resolution passed by a board of education, engaging the services of a person in any capacity, may be withdrawn at any time before the person accepts. 40 Mich., 84.

Proposition to teacher may be withdrawn.

(c). Even if time be given for the answer, and no consideration for this delay be paid, the proposal may be withdrawn at any time before acceptance. A letter mailed or a telegram sent determines the time acceptance is completed and the contract sealed. *Pollock on Contracts*, p. 8.

(d). If a teacher is employed for a definite time, and, during the period of his employment, the district officers close the schools on account of the prevalence of contagious diseases, and keep them closed for a time, and the teacher continues ready to perform his contract, he is entitled to full wages during such period. The act of God is not an excuse for non-performance of a contract unless it renders performance impossible; if it merely makes it difficult and inexpedient, it is not sufficient. Although

Schools close on account of contagious disease.

diminished during the term for which the appointment is made; but no person shall be appointed for a longer time than that for which a member of the board is elected; and such board may dismiss any appointee for inefficiency, neglect of duty, immorality, or improper conduct. [70 v. 195, § 53.]

Directors to employ, pay, and dismiss teachers.

SEC. 4018. In township districts the directors shall employ and for sufficient cause dismiss, the teachers of the schools in their respective sub districts, and shall fix their salaries or pay, which salaries or pay may be increased but not diminished in amount by the township board, and shall not exceed in the aggregate, in any year, for any sub-district, the amount of money to which the sub-district is entitled for the purpose of tuition for such year; if the directors of

under such circumstances it is eminently prudent to dismiss school, yet this affords no reason why the misfortune of the district should be visited upon the teacher. Dewey v. Union School District of Alpena, 43 Mich., 480.

Violation of contract.

(e). A person who engages to teach for a definite term, and leaves the school without just cause, cannot sustain an action for services already rendered. 29 Vt., 219.

*(f). It has been held in New York that absence of a teacher for a single day without consent of the trustees annuls the contract. New York Code of Instruction, pp. 705, 723, 731

But a teacher abandoning his school because not sustained by the trustees in the enforcement of reasonable rules is entitled to wages for the time taught. 7 Vermont, 452; 55 Mo., 149.

*(g). The discharge of a janitor's duties is no part of a teacher's work; and, in absence of a contract to perform such duties, he is under no legal obligation to do so, no difference what may have been the custom in the district, nor how long acquiesced in.

The teacher cannot *compel* pupils to do any janitorial work, such as building fires or sweeping school-houses. 97 Ill., 375.

*(h). Many city boards of education have as one of their standing rules that all their employes shall hold their positions at the discretion of the board. This condition in a contract with employes hired for a specified time is null and void. The statute names the causes for which an appointee may be dismissed, and that appointee can be dismissed for no other. A rule of a board of education cannot override a state law.

* 4018. (a). No teacher can be employed except at a *meeting* of the board of directors, and by a majority of the board. If the meeting is a special one, each member must have been notified of the time and place of holding it. If a teacher goes from member to member of the board, and gets their individual assent to his employment, on certain terms, in their district, this will not constitute a legal contract.

any sub-district fail to employ a teacher for their school, the township board shall employ such teacher, and fix the salary to be paid; and the directors, at the end of any month, or at the end of the term, shall give to the teachers employed by them certificates of such employment, and of services rendered, addressed to the township clerk, who, upon presentation

(b). The dismissal is business and must be transacted at a meeting, as set forth in section 3918, and the reasons therefor must be spread upon the minutes. There must be a "sufficient cause."

Dismissal is business.

(c). Under the act of May 1, 1873, (70 v. 195), the local directors of township sub-districts have no power to delegate the employment of teachers to any other person, nor to provide for their payment except as provided in section 53 of that act; and a contract with a teacher that he shall employ an assistant if one be necessary, is illegal and void (State v. Williams, 29 O. S., 161); but where the local directors employed a teacher, and fixed his salary at \$125 per month in case he alone should be able to teach the school to their satisfaction, otherwise the teacher to employ and pay an assistant, and such teacher performed the service under his employment, without the aid of an assistant, to the satisfaction of the directors, who certified to the township clerk the amount due to the teacher under the contract. *Held*: That the township clerk cannot justify his refusal to draw an order on the township treasurer for the amount certified, on the ground that the contract under which the service was performed was against public policy and void. State v. Williams. *1b*.

Power to employ teachers cannot be delegated.

(d). A township board, supposing that local directors were neglecting their duties under the provisions of the act of March 14, 1853 (51 v. 429), employed a teacher for a sub-district, who, without being notified by the local directors to desist, taught the school for three months, and received an order on the township treasurer for his wages. *Held*: That the treasurer could not rightfully withhold payment of the order upon the ground that the directors had not been neglectful of their duties, and that the exercise thereof by the board of education was unwarranted by the facts in the case. Case v. Wresler, 4 O. S., 561.

Local board neglecting duty, township board may act.

(e). Under the act of March 14, 1853 (51 v. 429), the authority and duty conferred by the statute upon the local directors, to employ teachers and certify the amount due them for services, cannot be controlled or interfered with by any order, resolution, or rule of the township board, fixing a maximum compensation not to be exceeded by the local directors in employing teachers in any sub-district. 11 O. S., 326.

Wages of teachers fixed by local board

Where a township board entered an order that teachers should not be employed at a greater compensation than twenty dollars per month and the local directors employed a teacher at thirty dollars per month, and certified the amount due him for his services at that rate, to the township clerk, it became the duty of the township clerk to draw an order in conformity with such certificate of the local directors. *1b*.

(f). The directors may dismiss a teacher for sufficient cause, as incompetency, negligence, immorality. In case the teacher brings suit,

Dismissal of teacher.

thereof, and compliance by such teachers with the provisions of section *forty-hundred and fifty-one*, shall draw orders on the township treasurer for the amounts certified to be due, in favor of the parties entitled thereto, and the treasurer shall pay the same. [70 v. 195, § 53.]

Teachers dismissed for insufficient cause may institute suit.

SEC. 4019. If the directors of any sub-district dismiss any teacher for any frivolous or insufficient reason, such teacher may bring suit against such sub-district, and if, on the trial of the cause, a judgment be obtained against the sub-district, the directors thereof shall certify to the clerk of the board the sum so

he may, his certificate is only *prima facie* evidence of competency and character, and may be overbalanced by proof.

Wages.

(g). If the sub-district's share of the state fund, increased by the amount apportioned for tuition by the township board, is not sufficient to continue the school at least six months, the directors should appeal to the county commissioners.

Payment.

(h). Upon making out a monthly report and presenting it to the clerk along with a certificate of service from the directors, and his certificate from the county examiners, or a copy thereof, a teacher may draw his salary monthly. See section 4051.]

(i). The teacher may be held responsible to the board or directors for the efficient discharge of every duty properly attaching to the office of teacher, including the oversight and preservation of school buildings, grounds, furniture, apparatus, and other school property, as well as the more important work of instruction and government. Such labor, however, as sawing wood, making fires, and sweeping the floors in the school-house, is no appropriate part of a teacher's duty; and its performance by the teacher cannot be legally enforced by the board or directors, unless the teacher has voluntarily stipulated to do it. The cost of the work is properly chargeable to the "contingent fund," and in all well-regulated districts and schools this course is pursued. If teachers voluntarily assume these duties as a matter of convenience and economy to the district, they may do so.

Responsible for care of property.

(j). A township clerk cannot refuse to draw an order on the township treasury for the payment of a teacher's wages, on the ground that the teacher's contract with the local directors contained an illegal requirement of such teacher, such as that he shall exclude all colored children; nor on the ground that the township board of education directs him to refuse such order. 36 O. S., 429.

Decision against sub-district.

SEC. 4019. (a). It will be seen that a decision against the local directors of a sub-district practically renders the township liable for the amount of the judgment. See also section 3987.

Certificate prima facie evidence of competency.

(b). Possession of a certificate is *prima facie* evidence of competency and good character, and in considering these facts the law requires only fair attainments and ability, and the usual diligence and application of the teacher in discharging his duty. 36 Ill., 71.

found due, who shall issue an order upon the township treasurer, to the person entitled thereto, to pay the same out of any money in his hands belonging to such sub-district, and applicable to the payment of teachers; and in such suits process may be served on the clerk of the sub-district, and service upon him shall be sufficient. [76 v. 58, § 1.]

SEC. 4020. Each board shall determine, at a regular meeting, by an affirmative vote of a majority of all its members, the studies to be pursued, and the text-books to be used in the schools under its control, but no text-book shall be changed, nor any portion thereof altered or revised, for five years after its adoption, without the consent of three-fourths of all the members elected to the board, given at a regular meeting; and all branches shall be taught in the English language, and each board of education is authorized to purchase direct from publishers or dealers, at the lowest wholesale or contract prices, such necessary school text-books, and other school supplies as may be determined by the board, and furnish the same to pupils in the schools under its control at cost price, and each board of education is authorized to pay for such necessary school text-books and other school supplies out of the contingent fund at the disposal of the board. [70 v. 195, § 52; 82 v. 142.]

Board to determine studies and text-books.

(c). This *prima facie* evidence throws upon the plaintiff the burden of sustaining a charge against the teacher of incompetency, immorality, or dereliction.

SEC. 4020 (a) This section not only authorizes boards to prescribe a course of study and the text-books to be used, but directs that they *shall* do it. It rightly assumes that classification and system are essential to the economical and effective conduct of its schools. The question is not settled by finding a teacher so indifferent to real success that he is willing in these days to sacrifice the interests of the school, of society, and of the State, by an easy-going acquiescence in inadequate appliances for his work.

Adoption of a course of study a duty

If a board of education neglects or refuses to comply with this peremptory requirement of the law, it is manifest that any tax-payer may secure such action by mandamus or otherwise. The section authorizes the board of education to enforce its order by refusing to continue in school a pupil who, being able, does not conform to it. If the pupil has no one able to supply him with books, the board should supply the want from the contingent fund; see section 4026. Without doubt, a township board may, by injunction or otherwise, enforce its rule upon local directors and on teachers in sub-districts. Economy and efficiency, and not individual caprice, should be the guide in such matters. Changing to the use of a new edition of a

Mandamus to compel action

Board may supply books when

To provide for the study of the nature of alcoholic drinks and narcotics, and their effects on the human system, in the public schools of the State of Ohio, and in all educational institutions supported wholly or in part by public money.

Alcoholic drinks and narcotics required branches in all educational institutions supported by the State.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the nature of alcoholic drinks and narcotics, and their effects upon 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 this 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 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 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.

Oral instruction sufficient compliance.

Certificates to teach after January 1, 1890.

SEC. 2. No certificate shall be granted to any person on or after the first day of January, 1890, to teach in the common schools, 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.

Refusal or neglect cause for dismissal of teachers.

SEC. 3. Any superintendent or principal of, or teacher in any common school or educational institution, supported

book is not a change of text-books. 35 O. S., 368. State ex rel. Flowers v. Board of Education.

Dropping text-book or study.

(b). It would require a majority of all the members composing the board to drop a text-book or a course of study once adopted.

Music, drawing, or any other branch of school studies may be introduced by the board. The section leaves this matter to the wise discretion of the board.

Religious instruction.

(c). The constitution of the State does not enjoin or require religious instruction, or the reading of religious books, in the public schools of the State. Board of Education of Cincinnati v. Minor, et al., 23 O. S., 211.

The legislature having placed the management of the public schools under the exclusive control of directors, trustees, and boards of education, the courts have no rightful authority to interfere by directing what instruction shall be given, or what books shall be read therein. *Id.* 211.

as aforesaid, who willfully refuses or neglects to give the instruction required by this act, shall be dismissed from his or her employment.

SEC. 4. This act shall take effect and be in force from and after the first day of January, 1889.

Passed April 11, 1888. [85 v. 213.]

SEC. 4021. The board of any district shall cause the German language to be taught in any school under its control, during any school year, when a demand therefor is made, in writing, by seventy-five freeholders resident of the district, representing not less than forty pupils who are entitled to attend such school, and who, in good faith, desire and intend to study the German and English languages together; but such demand shall be made at a regular meeting of the board, and prior to the beginning of such school year; and any board may cause the German or other language to be taught in any school under its control, without such demand. [70 v. 195, § 52.]

When German language to be taught, etc.

SEC. 4022. The board of any district may contract with the board of any other district for the admission of pupils into any school in such other district, on such terms as may be

Pupils may be sent from one district to another.

* SEC. 1. (a). The duty of boards of education to make provision for instruction in the nature of alcoholic drinks and narcotics, and their effects on the human system, in connection with the subjects of physiology and hygiene, is imperative, and if these boards neglect this duty, they may be compelled to its performance by a writ of mandamus.

* (b). It is evidently the intent of the law that physiology and hygiene, as well as the nature of alcoholic drinks and narcotics, shall be taught to all youth attending the common schools, from the infants entering school for the first time up to the senior class in the high school; and it is left to the ingenuity of boards of education and teachers to devise the kind of instruction that will be comprehensible to each class of minds in this wide range. As to whether this teaching shall be done or not, neither boards nor teachers are allowed any discretion. It is a compulsory law of the most iron-clad character.

* SEC. 3. (a). The penalty of dismissal from employment cannot in equity be inflicted on superintendents, principals, and teachers for not giving the instruction required by the above act, until after the board of education has made proper provision for such instruction.

SEC. 4021. (a). The law plainly contemplates English schools, though it allows the teaching of other languages as such, and upon the performance of certain named conditions requires the board to have the German language taught.

Instruction in German.

agreed upon by such boards; and the expense so incurred shall be paid out of the school funds of the district sending such pupils. [73 v. 243, § 64.]

Board to ascertain condition children not at school.

SEC. 4025. Each board of education shall ascertain, on the second Monday of February and the second Monday of September, or within fifteen days thereafter, each year, in such manner as it may deem most expedient, the condition of all children under fourteen years of age within its jurisdiction employed at any daily labor, or who are not in attendance at any common or private school, and shall report all violations of this chapter to its clerk, who shall at once proceed to prosecute each and every such offense. [74 v. 57, § 3.]

When board may supply pupils with books.

SEC. 4026. If it be shown to the satisfaction of the board of education that the parent or guardian has not the means wherewith to purchase for his child or children the necessary school-books to enable him to comply with the requirements of this chapter, the board may furnish the same, free of charge, to be paid for out of the contingent fund at the disposal of the board. [74 v. 57, § 4.]

Penalties against violation of preceding provisions.

SEC. 4027. A parent, guardian, or other person, who fails to comply with the provisions of this chapter, shall be

(b). While it is natural that persons of foreign birth should desire their children to learn the tongue of the mother land, it is wise policy for the state to provide that all children in the public schools shall learn the language of this country.

Not a transfer.

SEC. 4022. (a). This is, of course, in no sense a transfer of the child, and as certainly not of his parents, to the district or sub-district in which he is permitted to attend school for pay.

Tuition, to whom paid.

(b). The tuition agreed upon is to be paid on the proper order of the clerk of the board of education which sends the child, to the treasurer of the district to which he is sent,—see last clause of section 4047—and it is to be disbursed by the board of this district. Neither local directors, individual members of the board of education, superintendents, nor teachers can retain or disburse it.

Assignment of pupils.

(c). Such contracts are not authorized to be made by local directors. As to pupils residing in one sub-district and seeking to attend school in other sub-districts, township boards "shall," as we have seen under section 4013, "make such assignment of the youth of their respective districts to the schools established by them, as will, in their opinion, best promote the interests of education in their districts." Under that section, there is, of course, no provision for paying tuition. Section 4017 puts "in the boards of education the management and control of all the public schools of the district, subject *only* to the provisions of section 4018." Besides this, the local board has no control of money with which to pay tuition.

liable to a fine of not less than two nor more than five dollars for the first offense, nor less than five nor more than ten dollars for each subsequent offense; such fine shall be collected by the clerk of the board of education, in the name of the state, in an action before any court having competent jurisdiction; and money so collected by each clerk shall be paid to the county treasurer, and be applied to the use of the common schools of his district. [74 v. 57, § 5.]

SEC. 4029. Two weeks' attendance at half-time or night-school, shall be considered, within the meaning of this chapter, equivalent to an attendance of one week at a day school. [74 v. 57, § 7.]

What is equivalent to attendance on day school.

TO COMPEL CHILDREN UNDER FOURTEEN YEARS OF AGE TO ATTEND SCHOOL A CERTAIN LENGTH OF TIME EACH YEAR.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That all parents, guardians and other persons who have care of children shall instruct them, or cause them to be instructed in spelling, reading, writing, English grammar, geography and arithmetic, and every parent, guardian or other person having control and charge of any child between the ages of eight and fourteen years, shall be required to send any such child or children to a public or private school for a period of not less than twenty weeks in city districts, in each year, ten weeks of which, at least, shall be consecutive; and in village and township districts not less than sixteen weeks in each year, eight of which shall be consecutive, unless such child or children are excused from such attendance by the superintendent of the public, private or parochial schools in cities, or by authority of the board of education in villages and townships, when it shall have been shown to the satisfaction of said superintendent, or said board, that the physical or mental condition of such child or children has been such as to prevent his, her, or their attendance at school, or that said child or children are taught at home by some qualified person or persons in such branches as are usually taught in primary schools.

Children between eight and fourteen years compelled to attend school.

Unlawful to employ children under fourteen years, except under certain conditions.

SEC. 2. That no child under the age of fourteen years shall be employed by any person, company or corporation during the school term, and while the public schools are in session, unless the parent, guardian or other person having care of such child, shall be able to give substantial proof that he or she has fully complied with the requirements of section 1 of this act, or that such child has completed the usual course of primary and grammar grades in some public or private school, and such person, company or corporation shall demand such proof before giving employment to any minor, and shall make a record of said proof given, and shall be required, upon the request of the officer (hereinafter provided for) to allow said officer to examine the said record, and also the record as provided for in section 6986aa of the Revised Statutes, and any person, company or corporation employing any child contrary to the provisions of this act, shall be liable to a penalty of fifty dollars for each offense, to be recovered in an action for debt in any court, or before any justice of the peace having jurisdiction, and such action shall be brought in the name of the clerk of the board of education.

Regarding minors over fourteen and under sixteen who cannot read and write English.

SEC. 3. That all minors over the age of fourteen, and under sixteen years, who cannot read and write the English language, shall be required to attend school at least one-half of each day, or to attend some evening school organized and maintained by the board of education, or to take regular private instruction from some person qualified, in the opinion of the superintendent of schools in cities, and the clerk of the board of education in villages and townships to teach such branches, until he or she shall obtain a certificate from the superintendent of schools in cities, and the clerk of the board of education in villages and townships, certifying that said minor can read at sight, and write legibly simple sentences in the English language, and every person, company or corporation having such minor in employment shall be required

*SEC. 1. (a). According to the statute (Sec. 4016) a school week consists of five days. And as this section says that children between eight and fourteen years shall be sent to school in city districts not less than twenty weeks in each year, and in other districts not less than sixteen weeks, the obvious and rational meaning is that children in the former districts must be in actual attendance at school not less than one hundred

to exact such school attendance from such minor, and be prepared, upon demand of the hereinbefore mentioned officer, to furnish evidence that such minor does comply with the requirements of this act, and any person, company or corporation failing or neglecting to exact such school attendance from such minors shall be liable as provided for in section 2 of this act; provided, such person, company or corporation shall not have made provision for the private instruction of such minors.

SEC. 4. That every parent, guardian, or other person having charge or control of any child under the age of sixteen who has been discharged from any business in order to be afforded an opportunity to receive instruction or schooling, shall send such child to some public or private school until such child shall have required such instruction as section 3 of this act requires, and in case of failure on the part of said parent, guardian or other person to comply with the provisions of this section and of section 1 of this act, unless such child shall have been excused from such attendance by the superintendent of public schools or the clerk of the board of education in villages and townships for reasons stated in section 1 of this act, such parent, guardian or other person shall be deemed guilty of a misdemeanor, and shall, on conviction, be liable to a fine of not less than five dollars or not more than twenty dollars for the first offense, and not less than twenty for

When children have been discharged from employment by reason of this act.

days, and in the other districts not less than eighty days in the year. Any other interpretation of this act might readily work to defeat the whole purpose of the law, for pupils might be on the roll twenty or sixteen weeks, and not be in attendance more than half the time, as "enrollment" is frequently defined. From the spirit that breathes through this whole compulsory act, it is evident that a proper construction of its language should always, in doubtful cases, be in favor of the education of that class of youth for whose benefit the law was specially made.

* (b). It will be seen that no mention is made in this act of the teaching of United States history and physiology and hygiene. The law is mandatory, of course, as to the branches mentioned in it, but as the pupils to be affected by the act, must necessarily be classified with pupils studying the additional branches just named, it would be an unreasonable interpretation of the law to hold that instruction in these branches is prohibited by it to any of the pupils thus classified together. Of the value of such instruction no intelligent person can entertain a doubt.

each subsequent offense, or to imprisonment for not less than one month nor more than three. The said fines, when paid, to be added to the public school funds of such school district in which the offense occurs.

Habitual
truants.

SEC. 5. That all children between the ages of seven and fourteen years who are habitual truants from school, or while in attendance at any public or private school are incorrigible, vicious or immoral in conduct; and all children between said ages, and all minors between the ages of fourteen and sixteen who cannot read and write the English language, who absent themselves habitually from school, and habitually wander about the streets and public places during school hours, having no business or lawful occupation, shall be deemed juvenile disorderly persons and subject to the provisions of this act.

Truant officers
to be employed
in certain
cities.

SEC. 6. That in cities of the first and second class the board of education of said cities shall be required to employ one truant officer to assist in the enforcement of this act; said truant officer to be vested with police powers, and shall be authorized to enter factories, workshops, stores, and all other places where children may be employed, and perform such other services as the superintendent of schools or the board of education may deem necessary to the preservation of the morals and good conduct of school children and for the enforcement of this act, and in villages and townships the board of education shall be required to appoint some constable or other person as truant officer, with same power as said officer has in said cities, and the compensation of such officer shall be fixed by the board of education.

Truant officers
to make daily
reports.

SEC. 7. That the truant officer shall make daily reports to the superintendent of public schools during the school term in cities, and to the clerk of the board of education as

* SEC. 3. (a). It will be best that the board of education shall determine before the opening of the schools, whether these half-day pupils shall come to school in the forenoon or the afternoon. If some should come in the forenoon and some in the afternoon, serious interference with the classification and progress of the other pupils of the school might arise, and the advantage be less to the half-day pupils themselves.

* (b). "Write legibly simple sentences in the English language," evidently means, not the copying of such sentences, but the writing of them at dictation.

* (c). See note under section 11.

often as the clerk shall require it to be done in villages and townships, and he shall also keep a record of his transactions, subject to the inspection of the members and officers of the board of education, and it shall be the duty of the clerk of the board of education to provide suitable blanks for said truant officer.

SEC. 8. That it shall be the duty of all truant officers to examine into all cases of truancy when any such come before their notice, or when requested to do so by the superintendent of public schools, or by the board of education, and to warn such truants, their parents or guardians, in writing, of the final consequences of truancy if persisted in, and also to notify the parent, guardian or other person having the charge and control of any juvenile disorderly person, that the said person is not attending any school, and to require said parent, guardian or other person to cause the said child to attend some recognized school within five days from said notice; and it shall be the duty of said parent, guardian or other person having the legal charge and control of said child, to cause

Duties of
truant officers.

* SEC. 5 (a). Many different meanings are likely to be attached to the phrase "habitual truants," and to draw an exact line of definition it not easy, indeed scarcely possible. If a pupil should be truant once each week but one-half day, he should undoubtedly be considered an habitual truant. And should he be a truant at longer intervals than a week, but for a greater length of time, as two or three days in every two weeks, it would be still proper to class him as an habitual truant. But should he be truant but once a month, unless his absence were a considerably prolonged one, it might be a question whether he ought properly to be placed in the class of habitual truants.

It will be wise for each board of education to adopt a rule for itself on this point. Such a rule would be in the nature of information to the public, and do much to remove uncertainty as to the meaning of the law. Any reasonable rule would almost certainly be sustained by the courts.

* (b). As to the disposition to be made of "juvenile disorderly persons," see section 8.

* SEC. 6. It will be seen from the language used, that the appointment of a truant officer is mandatory, not merely permissive, and if any board of education neglects to employ such an officer, such board may be proceeded against by mandamus to compel it to perform this duty.

* SEC. 8. The repealing clause of this act does not include section 4027, R. S. As the penalties prescribed in that section for non-compliance with the provisions of this chapter differ from those prescribed in this section, courts will, of course, take for their guidance the law last enacted.

the attendance of said child at some recognized school; if said parent, guardian or other person having the legal charge and control of said child, shall willfully neglect, fail or refuse to cause said child to attend some recognized school, it shall be the duty of said officer to make, or cause to be made a complaint against said parent, guardian or other person having the legal charge or control of such child, in any court of competent jurisdiction in the city, village or township in which the offense occurred, for such refusal, failure or neglect, and upon conviction thereof, said parent, guardian, or other person, as the case may be, shall be punished by a fine of not less than five dollars nor more than twenty dollars, or the court may, in its discretion, require persons so convicted to give bonds in the penal sum of one hundred dollars, with one or more sureties to be approved by said court, conditioned that said persons so convicted shall cause the child or children under his or her legal charge or control to attend some recognized school within five days thereafter, and to remain at said school during the term prescribed by law; provided, that if said parent, guardian or other person in charge of such child shall prove inability to cause said child to attend said recognized school, then said parent, guardian or other person shall be discharged, and said court, upon complaint of said truant officer or other person, that said child is a juvenile disorderly person, as described in section 5 of this act, proceed to hear such complaint, and if said court shall determine that said child is a juvenile disorderly person within the meaning of this act, such child shall be deemed guilty of a misdemeanor, and said court shall thereupon sentence said child to some juvenile reformatory, or county children's home, until such child shall arrive at the age of sixteen years, unless sooner discharged by the board of trustees of said reformatory or home. Provided, however, that said sentence may be suspended in the discretion of the court, for such time as the child shall regularly attend school and properly deport himself or herself. It is further provided, that if for any cause the parent, guardian or other person having charge of any juvenile disorderly person, as defined in this act, shall fail to cause such juvenile disorderly person to attend said recognized school, then complaint against such juvenile disorderly per-

son may be made, heard and tried, and determined in the same manner as provided for in case the parent pleads inability to cause the juvenile disorderly person to attend said recognized school; and it is further provided, that no child under the age of nine years shall be sent to any juvenile reformatory or children's home under the provisions of this act.

SEC. 9. That it shall be the duty of officers empowered or appointed under this act to assist in the enforcement thereof, to institute, or cause to be instituted, proceedings against any parent, guardian or other persons having legal control or charge of any child, or corporation violating any of the provisions of this act; provided, that this law shall not be operative in any school district where there are not sufficient accommodations to seat children compelled to attend school under the provisions of this act, and that no prosecution shall be instituted against any parent, guardian or other person or child in charge of such, unless they have received due notification from an officer empowered under this act that they are acting in violation of this act.

Proceedings
when this act
is violated.

SEC. 10. When any truant officer shall discover to his full satisfaction any child under the age of fourteen years, wholly or partially dependent upon his or her own labor for a living, or who shall be the support of others unable to provide for their own sustenance, or when, in the judgment of the superintendent of the schools, or the board of education, it may be necessary for such child to contribute to the support of the family of which he or she is a member, it shall be the duty of said truant officer to report such case to the proper authorities, whose duty it is to look after and care for the poor, and to endeavor to obtain such relief as may release such child from labor for such length of time each year as will be required for compliance with section 1 of this act; but such child shall not be declared a pauper or removed to any infirmary, reformatory or children's home, unless he or she shall willfully neglect to take advantage of the provisions made by said truant officer for his or her relief and instruction; and said truant officer failing to obtain such relief, the superintendent of schools, or the board of education, may make suitable arrangements for the private instruction of such child while so adversely conditioned.

When this act
may be sus-
pended for a
time.

Duty of teachers and principals under this act.

SEC. 11. That it shall be the duty of all principals and teachers of all schools, public and private, to report to the clerk of the board of education of the city, village or township in which schools are situated, the names, ages and residence of all pupils in attendance at their schools, together with such other facts as said clerk may require, in order to facilitate the carrying out of the provisions of this act, and the said clerk shall furnish blanks for said purpose, and said reports shall be made in the last week of September, December, February and April in each year.

When corporations violate this act.

SEC. 12. That when any of the provisions of this act are violated by a corporation, proceedings may be had against any of its officers or agents of said corporation, who in any way participate in, or are cognizant of such violation by the corporation of which they are the officers or the agents, and said officers or the agents shall be subject to the same penalties as individuals similarly offending.

Penalty.

SEC. 13. Any person or officer mentioned in this act, and designated as having certain duties to perform in the enforcement of any of its provisions, neglecting to perform any such duties, shall be liable to a fine of not less than twenty-five dollars nor more than fifty dollars for each and every offense.

Relating to other statutes.

SEC. 14. Any provision of statutes in force when this act takes effect which conflicts with any provisions of this act, shall to the extent it is inconsistent with the latter, and not otherwise, be held to be superseded by this act. The provisions of this act shall apply to children entitled under ex-

* SEC. 10. The spirit of this law is a liberal one, and the evident purpose of the act is that no child in Ohio, however poor and humble, shall fail to receive the rudiments of a school education. Where night-schools are established, they can be made available for the instruction of the class of children described in this section. The import of the last part of the section seems to be that the superintendent of schools or the board of education may, after all other means have been exhausted, pay the expense of the private tuition of these poor children out of the public school fund.

* SEC. 11. There can be no doubt that it is intended to include parochial schools under the designation "private schools."

* SEC. 13 (a). Not only will superintendents of schools, clerks of boards of education, truant officers, principals of schools, and teachers, be liable to a fine for a non-performance of the duties prescribed by this act, but also members of boards of education.

* (b). See note under section 8.

isting statutes to attend school at the institution for the education of the blind, and the deaf and dumb. Other provisions of statutes in force, relating to school affairs, shall not be affected by this act. Sections 4023, 4024 and 4028 of the Revised Statutes are hereby repealed.

SEC. 15. This act shall take effect January 1, 1890. [86 v. 333.

* SEC. 15. When the title-page to this edition of the school laws was written, the fact was overlooked that this act did not go into effect on its passage. All the other laws in this volume, however, were in force, as stated in this title-page, on the 15th of April, 1889, the day the Sixty-eighth General Assembly adjourned.

* GENERAL NOTE. This compulsory law is one of the most important educational measures of the last twenty-five years. Its success will depend greatly upon the interest taken in it by school superintendents and boards of education. If they enter upon its enforcement, with the same spirit that is to be found in the law itself, a class of children from which, to a large extent, has been recruited the great army of criminals in our state, will, instead, be trained into good citizenship, and thus become an element of strength instead of weakness.

CHAPTER 10.

ENUMERATION, TREASURER AND CLERK.

SECTION	SECTION
4030. Yearly enumeration of youth to be taken.	4043. Bond of treasurer, and duties of board in reference thereto.
4031. Qualification and pay of those taking the same.	4044. Annual settlement by treasurer with county auditor.
4032. Clerk, except in township districts, to employ person to take it.	4045. Penalty for failure to make such settlement.
4033. Clerk of board of directors to take it in sub-districts.	4046. Treasurer to report balances to board.
4034. Enumeration in joint sub-districts.	4047. When treasurer may receive or pay money.
4035. Clerk to transmit abstract to county auditor.	4048. Maximum amount of funds which treasurer may hold.
4036. When the clerk fails, auditor to act.	4049. Treasurer to deliver money, etc., to successor.
4037. When county line divides original surveyed township.	4050. Bond of clerk.
4038. When enumeration not taken, district not entitled to school funds.	4051. When orders of clerk for teacher's pay illegal.
4039. Auditor to furnish abstract to state commissioner.	4052. Duties of clerk as to statistics, etc.
4040. Duty of state commissioner when enumeration excessive, etc.	4053. Publication of receipts and disbursements by clerk.
4041. Penalty for making fraudulent returns.	4054. Clerk to deliver books, etc., to successor.
4042. Who to be treasurer of school funds.	4055. How treasurer and clerk to keep account.
	4056. Compensation of treasurer and clerk.

ENUMERATION.

SEC. 4030. There shall be taken in each district, annually, during the two weeks ending on the fourth Saturday in July, an enumeration of all unmarried youth, noting sex, between six and twenty-one years of age, resident within the district, and not temporarily there, designating also the number between sixteen and twenty-one years of age, the number residing in the Western Reserve, the Virginia military district, the United States military district, and in any original surveyed township or fractional township to which belongs section sixteen, or other land in lieu thereof, or any other lands for the use of public schools, or any interest in the proceeds of such lands. [71 v. 15, § 77; 85 v. 192.]

Yearly enumeration of school youth.

Who should be enumerated.

SEC. 4030 (a). The annual enumeration should include all unmarried youth between the ages of six and twenty-one years, who at the time of taking such enumeration, actually *dwell or have their home* in the district, whether such youth constitute a part of the family of their parents or guardians, or are, in 'good faith and for a continuance of time, hired to labor or service in a family actually residing in such district.

SEC. 4031. Each person required or employed under this chapter 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. When making return thereof to the proper officers, he shall accompany the same with a list of the names of all the youth so enumerated, noting the age of each, and with his affidavit duly certified that he has taken and returned the enumeration accurately and truly to the best of his knowledge and belief, and that such list contains the names of all the youth so enumerated and none others. The officer to whom such return is required to be made, may administer such oath or affirmation and take and certify such affidavit, and shall keep in his office for the period of five years such report and list of names, and each person so taking and returning the enumeration shall be allowed by the proper board of education reasonable compensation for his services, which in sub-districts shall not exceed two dollars for each person authorized, required or appointed to perform the service. [71 v. 15, § 77; 80 v. 192.]

How enumeration of youth taken.

Compensation for same.

SEC. 4032. The clerk of the board of education of each district, other than township districts, shall employ a sufficient number of competent persons to take and return to him the enumeration of his district, in the manner prescribed in this chapter. [70 v. 195, § 78.]

Clerk, except in township districts, to employ persons to take it.

SEC. 4033. The director, who is clerk in each sub-district, shall take, or cause to be taken, annually, according to the provisions of this chapter, an enumeration of youth resident within his sub-district, and return a certified copy thereof to the clerk of the township board of education; if any such director fail to perform such duty, and make said return on or before the fourth Saturday in July, the clerk of the township board shall employ a competent person to take and return the

How same shall be taken in township and sub-districts.

(b). If, however, a youth is staying temporarily in a district as a boarder or visitor, or is a member of a family temporarily in the district and whose actual residence is in another district, such youth cannot be legally enumerated. But the temporary residence of a family in a district, if such family have at the time no other residence, does not exclude the children actually living in and belonging to such family from the enumeration.

(c). A youth can be legally enumerated in but one district, and that is the district in which he actually resides.

* (d). See note (b), section 4013.

enumeration, give him an order on the treasurer of the board for his compensation, payable from the contingent fund, and proceed to recover the amount so paid, in a civil action, before any court having jurisdiction of the matter, in the name of the state, against such director; and the money so collected shall be paid to the treasurer of the board, and credited to the contingent fund; but in a township district which is not divided into sub-districts, the president of the board shall take and return the enumeration, or cause the same to be done. [70 v. 195, § 33; 85 v. 193.]

Enumeration
in joint sub-
districts.

SEC. 4034. The enumeration of a joint sub-district shall be taken by the clerk of the board of directors, who shall transmit a certified copy thereof to the clerk of the board of education of the district in which the school-house of the sub-district is situate, and designate therein the number of youth residing in the respective fractions of townships of which the sub-district is composed; and if such sub district is composed of parts of two or more counties, the clerk to whom the return is made shall transmit a certified copy thereof to the auditor of each county having territory within the sub-district. [70 v. 195, § 34; 71 v. 15, § 77; 72 v. 63, § 36.]

Clerks to
transmit ab-
stract of
enumeration
to county
auditor.

SEC. 4035. The clerk of each board shall, annually, on or before the first Saturday in August, make and transmit to the county auditor, an abstract of the enumeration by this chapter required to be returned to him, according to the form prescribed by the commissioner of common schools, with an oath or affirmation indorsed thereon that it is a correct abstract of the returns made to him under oath or affirmation; and the oath or affirmation of the clerk may be administered and certified by any member of the board of education, or by the county auditor. [70 v. 195, § 79; 85 v. 193.]

When the
clerk fails'
auditor, to act.

SEC. 4036. If the clerk of any district fail to transmit such abstract of enumeration on or before the first Saturday in August, the auditor shall at once demand the same from such clerk; and in case the enumeration has not been taken as required by this chapter, or the abstract required be not furnished without delay, the auditor shall employ competent persons to take such enumeration, who shall be subject to the legal requirements already specified, except that the return shall be made directly to the auditor, who may administer to

each person employed the oath or affirmation required; and the auditor shall allow the persons employed by him a reasonable compensation, to be paid out of the general county fund, and shall proceed to recover the amounts so paid in civil action before any court having competent jurisdiction, in the name of the state, against such clerk on his bond, and the amount so collected shall be paid into the general county fund. [70 v. 195, § 80; 85 v. 193.]

SEC. 4037. If parts of an original surveyed township or fractional township are situate in two counties, the auditor of the county in which the smallest part is situate shall, so soon as the abstracts of enumeration are received by him from the clerks of the boards of education, certify to the auditor of the county in which the largest part is situate the enumeration of youth residing in the part of the township situate in his county; if parts of such township or fractional township are situate in more than two counties, like certificates of enumeration shall be transmitted to the auditor of the county containing the greatest relative portion of such township, by the auditors of the other counties containing portions thereof; when it is uncertain which county contains the greatest relative portion of such township, such certificates shall be transmitted to the auditor of the oldest county, by the other auditor or auditors; and if the land granted by congress to such township or fractional township for the support of public schools has been sold, the auditor to whom such certificates are transmitted shall notify the auditor of state, without delay, that such enumeration has been certified to him. [70 v. 195, §§ 121, 120.]

When county line divides original surveyed township.

SEC. 4038. If an enumeration of the youth of a district be not taken and returned in any year, such district shall not be entitled to receive any portion of the school funds distributable in that year on the basis of enumeration; and if such loss to a district occur through the failure of the clerk of the board of education of the district to perform the duty required of him by either section *forty hundred and thirty-two*, or *forty hundred and thirty-five*, he shall be liable to the district for the loss, which may be recovered in an action in the name of the state; and the money so recovered shall be paid into the county treasury, and apportioned in the same manner as

When enumeration not taken, district not entitled to school funds.

the school funds so lost would have been apportioned. [70 v. 195, §§ 120, 124.]

Auditor to furnish abstract to state commissioner.

SEC. 4039. The auditor of each county shall make, and transmit to the state commissioner of common schools, on or before the third Saturday in August, in each year, on blanks to be furnished by the commissioner, an abstract of the enumeration returns made to him, duly certified. [70 v. 195, § 81; 85 v. 193.]

Duty of state commissioner when enumeration excessive, etc.

SEC. 4040. When the state commissioner of common schools, on examination of the enumeration returns of any district, is of opinion 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 think 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 instance, and the school fund distributable in proportion to enumeration shall be distributed upon the corrected returns. [70 v. 195, § 75.]

Penalty for making fraudulent returns.

SEC. 4041. An officer through whose hands the enumeration required by this chapter to be returned passes, who, by percentage or otherwise, adds to or takes 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 thousand dollars, or imprisoned in the county jail not less than ten nor more than thirty days, at the discretion of the court. [75 v. 195, § 75.]

TREASURER AND CLERK.

Treasurer of school funds.

SEC. 4042. In each city district the treasurer of the city funds shall be ex-officio treasurer of the school funds; but if the county treasurer is treasurer of the city funds, the board of education may appoint one of its members treasurer, who shall not receive any compensation for his services; in each township district the treasurer of the township funds shall be ex-officio treasurer of the school funds; and in each village and special district the board of education shall choose its own treasurer, whose term of office shall be for one year, beginning on the first day of September. [70 v. 241, § 44; 85 v. 193.]

SEC. 4043. Each school district treasurer, or county treasurer who is *ex-officio* treasurer of a school district, shall, before entering upon the duties of his office, execute a bond, with sufficient surety, in double the probable amount of school funds that may come into his hands, payable to the state of Ohio, to be approved by the board of education, conditioned for the faithful disbursement, according to law, of all such funds which come into his hands; such bond, when so executed and approved, shall be filed with the clerk of the board of education of the district, who shall cause a certified copy thereof to be filed with the county auditor without delay; and such board, at the time of the approval of such bond, shall require the treasurer of the school funds to produce all money, bonds or other securities in his hands as such treasurer, the same shall be then counted by the board, or a committee thereof, in the presence of the clerk of the board, who shall thereupon enter upon the records of the board a certificate, setting forth the exact amount of money or securities so found in the hands of such treasurer, which record shall be

Treasurer to give bond, and produce funds to be counted and examined.

SECTION 4043 (a). And this whether the treasurer is elected by the board or is serving *ex-officio*. He must give bond as the treasurer of the school funds, though he may have already filed a bond as township, city, or county treasurer.

In no case should the clerk neglect to send to the county auditor this certified copy of the treasurer's bond, as the auditor is forbidden to give a treasurer an order on the county treasurer for a sum which at any time will make the amount in such treasurer's hands over one-half of the penalty of his bonds. See section 1047, R. S.

Treasurer's bond.

(b). SEC. 5841. A surety of the treasurer of school funds, in any school district organized under the provisions of law, may at any time notify the board of education of the proper district, by giving at least five days' notice, in writing, that he is unwilling to continue as surety for such treasurer, and will, at a time therein named, make application to the board of education to be released from further liability upon his bond; and he shall also give at least three days' notice, in writing, to such treasurer, of the time and place at which the application will be made. [70 v. 195, § 48].

Release of surety.

(c). SEC. 5842. The board of education, upon such notice being given, shall hear the application, and if, in their opinion, there is good reason therefor, shall require the treasurer to give a new bond, conditioned according to law, and to the satisfaction of the board, within such time as they may direct; and if the treasurer fail to execute such bond, the office shall be deemed to be vacant, and shall be immediately filled as other vacancies therein; but such original sureties shall not be released or discharged until the filing of the new bond, or the expiration of the time allowed therefor;

New bond.

signed by the president and clerk of the board, and shall be prima facie evidence that the amount therein stated was actually in the treasury at that date. [70 v. 195, §§ 46, 82; 76 v. 16, § 1.]

Annual settlement by treasurer with county auditor.

SEC. 4044. The treasurer shall, annually, within the first three days of September, settle with the county auditor for the preceding school year, and for that purpose shall present a certified statement showing the amount of money received, from whom, and on what account, and the amount paid out, and for what purposes; he shall produce vouchers for all payments made; and if the auditor, on examination, find the statement and vouchers to be correct, he shall give the treasurer a certificate of that fact, which shall, prima facie, be a discharge of the treasurer for the money paid; and for making such settlement he shall be entitled to receive the sum of one dollar, and also five cents per mile for traveling to and from

and the cost of such application shall be paid by the person making the same. [70 v. 195, § 8].

Default by treasurer.

(d). In an action against a surety on a township treasurer's school bond, conditioned for the faithful disbursement of school moneys, a judgment for defendant will not be reversed, when the pleadings and evidence show a default by the treasurer only as to "township funds" in general items, without specifying that any part thereof was school money. *The State v. Corey*, 16 O. S. 17.

(e). Township trustees have no authority to release a treasurer from his liability for any portion of the school fund belonging to the township. *State v. Williams*, 13 O. 495.

Loan of public money.

(f). Bonds must be accepted within reasonable time. 31 O. S. 451.

(g). Section 6841 provides heavy penalties for any officer who loans or deposits money belonging to the public.

But section 21 provides that the illegality of the act of loaning such money shall be no hindrance to bringing suit for it.

Inspection of treasurer's books.

(h). Treasurer's books and accounts are always subject to inspection by the trustees, who shall—see section 1511—at least once each year, make a thorough examination of the same.

New bond in case of re-election.

(i). A treasurer who is his own successor must give a new bond for the term to which he is re-elected. His former bondsmen will not be liable for defaults committed within the term for which he is re-elected. Their liability ceased with the expiration of his former term of office. See 7 O., 2d pt., 221, or 4 *Western Law Monthly*. In case the treasurer of a city district fails to give bond, his office may be declared vacant by the city council. See section 1740, R. S. Should a treasurer present his bond after the time prescribed for tendering it, and should such bond be accepted, would undoubtedly be held good. See 25 O. S. 567.

City districts.

Time elapsed or filing.

the county seat, to be paid out of the county treasury, on the order of the county auditor. When the treasurer's term begins on the first day of September the annual settlement shall be made by the outgoing treasurer. [71 v. 9, § 47; 85 v. 194.]

SEC. 4045. If the treasurer of any school district willfully or negligently fail to make such annual settlement within the time prescribed in the preceding section, he shall be liable to pay a fine of fifty dollars, to be recovered in a civil action in the name of the state; which amount, when collected, shall be paid into the county treasury, and shall be applied to the use of common schools in his district; and the county auditor shall proceed forthwith, in case of such failure, to recover the penalty, by suit against such treasurer, before any justice of the peace of the county. [71 v. 9, § 47.]

Penalty for failure to make such settlement.

SEC. 4046. The treasurer shall report to the board of education, within ten days after his settlement with the county auditor, the amount of money in his hands for school purposes, and the amount belonging to each fund. [70 v. 195, § 47.]

Treasurer to report balances to board.

SEC. 4047. No treasurer of a school district, except in cases otherwise provided for in this title, shall pay out any school money except on an order signed by the president and countersigned by the clerk of the board of education; and no money shall be paid to the treasurer of a district, other than that received from the county treasurer, except upon the order of the clerk of the board, who shall report the amount of such miscellaneous receipts to the county auditor each year, im-

When treasurer may receive or pay money.

SEC. 4044 (a). If it is evident to the county auditor that the school moneys have been illegally paid out, as they would be if paid to any member of a board of education on any contract with such board, or as an employe thereof, it is his duty to refuse the treasurer credit for the same. If moneys have been paid from the wrong fund, as from the the school fund, when the law says it must be township fund, the auditor must not allow credit to such orders. He should insist on their correction by the board, or correct them himself by proper debit and credit.

Auditor's power and duty.

(b). No voucher should be received by the auditor which he has reason to believe a court of law would reject. No paper is a voucher for the payment of money to A, which has not A's receipt on it, or accompanying it. An order properly made out, but merely marked "paid" by the treasurer, is not a receipt. See section 4047.

mediately preceding such treasurer's settlement with the auditor. [71 v. 15, § 83.]

Maximum amount of funds which treasurer may hold.

SEC. 4048. The auditor shall in no case permit the treasurer of a school district to have in his hands, at any time, an amount of school funds over one-half the amount of the penalty in the bond of the treasurer; and before giving such treasurer any order for school funds, he shall require the treasurer to file with him a statement, to be furnished by the clerk of the board of education whenever necessary for the purpose, showing the amount of funds in the treasurer's hands according to the clerk's books. [70 v. 195, § 84.]

Treasurer to deliver money, etc., to successor.

SEC. 4049. At the expiration of his term of service each treasurer shall deliver to his successor in office all books, papers, money, and other property in his hands belonging to the district, and take duplicate receipts of his successor therefor, one of which he shall deposit with the clerk of the board of education within three days thereafter. [71 v. 9, § 47; 85 v. 194.]

Exception.

SEC. 4047 (a). The case "otherwise provided for" is the payment of teachers in the sub-districts on the order of the directors. Section 4018.

Treasurer's discretion.

(b). The treasurer should not pay an order for what he believes to be an illegal object, until he can consult with other members of the board, and have the question fully investigated. A man of discretion is supposed to be chosen to this, as to other offices, that the chances for discovering errors and frauds may be multiplied.

Embezzlement by municipal and school officers.

(c). SEC. 6846. A member of the council or board of aldermen of any municipal corporation, or an officer, agent, clerk, or servant of such corporation, or any board or department thereof, or an officer, agent, clerk, or servant of any board of education, who, knowingly, diverts, appropriates, or applies any funds, or a part of any fund, raised under any law, by taxation or otherwise, to any other use or purpose than that for which it was raised or appropriated, or who, knowingly, diverts, appropriates, or applies any money borrowed, or any bond of the corporation, or any part of the proceeds of such bond, to any other use or purpose than that for which such loan was made, or bond issued, shall be deemed guilty of embezzling the amount so diverted, appropriated, or applied, and punished accordingly. [66 v. 263, § 671; 73 v. 116, § 1].

Selling public property to defraud.

(d). SEC. 6847. Whoever, being intrusted with the care, custody, or control, of any property of the state, or of any county, township, or municipal corporation, sells or disposes of the same, for his own use, with intent to defraud, is guilty of embezzlement, and shall be punished accordingly. [69 v. 193, § 2].

SEC. 4048 (a). The county auditor is, by section 1047, R. S., required

[SEC. 6975a. It shall be unlawful for any person to offer or give, directly or indirectly, any reward or consideration, or make any present or reduction in price to any person employed in any of the public schools of this state, or to any officer having any authority or control over the same for favoring, recommending or advocating the introduction, adoption or use, in the school in which such person is employed, or over which such officer has any authority or control, of any text-book, map, chart, globe or other school supplies, or to induce him so to do; and it shall be unlawful for any such employe or officer, to accept, or to offer or agree to receive or accept any reward, consideration, present, gift or reduction in price for so doing; and it shall also be unlawful for any local director or member of a board of education to vote for, or participate in the making of any contract with any person as a teacher or instructor in any of the public schools of this state to whom he is related as father or brother, or to act in any matter in which he is pecuniarily interested, or to receive, or to offer to accept or receive any reward or gain for any official act. Any person violating any of the foregoing provisions shall, upon conviction, be fined not less than twenty-five dollars, and not more than five hundred dollars, or be imprisoned not more than six months, or both.] [85 v. 207.]

to open an account with each school district in the county. For condition on which warrant is given the treasurer of any school district, see same section.

Auditor's account with districts.

(b). By reference to section 1122, R. S., it will be seen that when desired, the school funds may be permitted to remain in the county treasury in which case they may be drawn out by the school treasurer in sums not less than one hundred dollars. See also section 1123, R. S.

Money left in county treasury.

SEC. 4049 (a). Sec. 6975 R. S. provides that "a member of a board of education, organized under any law of this state, who accepts or receives any compensation for his services as such member, except as clerk or treasurer of such board, shall be deemed guilty of embezzlement of the amount so received, and punished accordingly." [70 v. 214, § 67].

(b). SEC. 7299. Any failure or refusal to pay over, or to produce the public money, or any part thereof, by an officer or other person charged with the collection, receipt, transfer, disbursement, or safe keeping of the public money, or any part thereof, whether belonging to the state, or to any county, township, municipal corporation, or board of education in this

Bond of clerk.

SEC. 4050. The clerk of each board of education shall execute a bond, in an amount and with surety to be approved by the board, payable to the state of Ohio, conditioned that he shall perform faithfully all the official duties required of him; which bond shall be deposited with the president of the board, and a copy thereof, certified by the president of the board, shall be filed with the county auditor. [70 v. 195, § 45.]

When orders to clerk for teacher's pay illegal.

SEC. 4051. It shall be unlawful for the clerk of a board to draw an order on the treasurer for the payment of a teacher for services until the teacher files with him such reports as are required by the state commissioner of common schools and the board of education, a legal certificate of qualification, or a true copy thereof, covering the entire time of the service, and a statement of the branches taught; but orders may be

state, or any other public money whatever, or to account to, or to make settlement with, any proper and legal authority, of the official accounts of such officer or person, shall be held and taken as prima facie evidence of the embezzlement thereof, and upon the trial of such officer or person for the embezzlement of public money under section 6841, it shall be sufficient evidence, for the purpose of showing a balance against him, to produce a transcript from the books of the auditor of state, or the auditor of the county, or the records of the commissioners of the county; and the refusal of any such officer or person, whether in or out of office, to pay any draft, order, or warrant drawn upon him, by the proper officer, for any public money in his hands, no matter in what capacity the same was received or is held by him, or any refusal, by any person or public officer, to pay over to his successor any public money or securities promptly, on the legal requirement of any authorized officer of the state or county, shall be taken on the trial of an indictment against him for embezzlement as prima facie evidence of such embezzlement. [55 v. 44, § 15].

Issuing orders. * SEC. 6975a. This is classified in the R.S. as one of the sections of the Criminal Code, but as the subject-matter pertains entirely to schools, it has been thought best to insert here.

SECTION 4051 (a). If an order is drawn for the illegal payment of a teacher, the remedy of the board is a writ of injunction.

(b). Each of these three documents must be carefully filed by the clerk and handed over to his successor in office.

(c). Persons who are to teach subjects not on the list of studies enumerated in the statute, must have a certificate covering all such branches. Not only the teacher, but each member of the board of education is severally liable for the repayment of money paid under their vote and order, to a teacher who does not hold a certificate covering each and every branch taught. The same rule applies to all payments made to teachers

What teachers' certificate must cover.

When members of board liable for payment of teacher.

drawn for the payment of special teachers of drawing, painting, penmanship, music, gymnastics, or a foreign language, on presentation of a certificate to the clerk, signed by a majority of the examiners, and the filing with him of a true copy thereof, covering the time for which the special teacher has been employed, and the specialty taught. [70 v. 195, §§ 53, 94.]

SEC. 4052. The clerk of each board shall prepare the annual report of the receipts and expenditures of school money, and the statistical statement in reference to the schools, required of the board by section forty hundred and fifty-seven, and transmit the same to the county auditor on or before the first day of Sep'ember; provided, that in each school district having a superintendent of schools, except city districts of the first class, the annual report, except the receipts and expenditures of money, shall be made by the superintendent. [70 v. 195, § 82; 85 v. 194.]

Annual statistical report of board of education: by whom prepared.

SEC. 4053. The board of education of each district, except city districts of the first class, shall require the clerk of the board annually, ten days prior to the election for members of the board and directors of sub-districts, to prepare, and post at the place or places of holding such elections, or

Publication of receipts and disbursements by clerk.

before reports required by law, by the State Commissioner of Common Schools, and by the board of education, have been made.

(d). An assistant teacher who has not a legal certificate can not be paid through an order drawn in favor of another teacher who had a certificate, nor can any uncertificated teacher, who is employed as a *substitute*, receive pay through another teacher. Section 4074 provides that "no person shall be employed as a teacher" who has not a legal certificate. It is the duty of the township clerk to refuse to draw an order for the payment of money from the school fund when he has satisfactory evidence that any portion of such money is to be used for the payment of a teacher not holding a legal certificate. A legal certificate must cover the *entire time* of the teacher's service; must specify all the branches taught, and can neither directly nor indirectly be made to legalize another teacher's services.

Payment of uncertificated assistant or substitute.

(e). An order drawn by the clerk of the board of education, under the statute, in favor of a third person or bearer, on the township treasurer, is not negotiable, and a purchaser takes such order subject to the same defenses that could be made against it in the hands of the payee. The State ex rel. Steinbeck, et al. v. Treasurer of Liberty Township. 22 O. S., 144.

Orders not negotiable.

The written acceptance of such order by the predecessor of the township treasurer, to whom it was presented for payment, imposes no greater obligation on the latter to pay the same, than he would have been under had it been presented without such acceptance. *Ib.*

Order accepted by predecessor.

publish in some newspaper of general circulation in the district, an itemized statement of all money received and disbursed by the treasurer of the board within the school year last preceding. [70 v. 195, § 66.]

Clerk to deliver books, etc., to successor.

SEC. 4054. Each clerk shall, at the expiration of his term of office, deliver to his successor all books and papers in his hands relating to the affairs of his district, including certificates, and copies thereof, and reports of school statistics, filed by teachers. [70 v. 195 § 84.]

How treasurer and clerk to keep accounts.

SEC. 4055. The auditor of each county shall furnish to the clerk and treasurer of each school district in his county a suitable blank book, made according to the form prescribed by the commissioner of common schools, in which each shall keep an account of the school funds of his district; the clerk's account shall show the amounts certified by the county auditor to be due the district, all sums paid to the treasurer from other sources on his order, and all orders drawn by him on the treasurer, and upon what funds and for what purposes drawn; the treasurer's account shall show the amounts received from the county treasurer, all sums received from other sources on the order of the clerk, and the amounts paid out, and from what fund and for what purposes paid; and a separate account of each fund shall be kept, and each account shall be balanced at the close of the school year, and the balance in the treasurer's hands belonging to each fund shown. [70 v. 195, § 84.]

Compensation of treasurer and clerk.

SEC. 4056. The board of education may fix the compensation of clerk and treasurer; the allowance made to the treas-

Order illegally issued.

(f). If an order has been illegally issued, the board of education should recall it, and in case of refusal to return, they should enter a suit in equity to recover it or have it canceled.

Acceptance of orders.

(g). If a school treasurer indorses an acceptance of an order drawn on him, he is obliged thereby to retain proper funds to meet it. But this even is not permissible, unless the order itself is unimpeachable. 50 Mo., 425.

* SEC. 4056. (a). School Commissioner De Wolf and Attorney-General Nash held the opinion that the compensation provided for the township clerk under this section is not to be included in the \$150 limit of section 1531, R. S.

* (b). See section 4052, as to duty of clerk to prepare report, and of superintendent in certain districts.

urer shall not exceed one per centum of the money disbursed by him on orders of the board; but the treasurers of township districts shall be allowed as compensation one per centum on all school funds disbursed by them; and both clerks and treasurers should be paid out of the contingent fund, on the order of the board of education, but treasurers of city districts shall not be allowed compensation for disbursing the school funds; but before such order for pay of treasurer shall be made he shall present to the board the auditor's certificate of discharge provided for in section four thousand and forty-four, Revised Statutes, and before such order for pay of clerk shall be made he shall present to the board a statement, officially signed and certified by the auditor, that he has returned all the reports of statistics for that year required by this title. [70 v. 195, § 49; 80 v. 195; 85 v. 194.]

CHAPTER 11.

REPORTS.

SECTION		SECTION	
4057.	Annual report by board of education.	4061.	Penalties against auditor and clerk.
4058.	In what form to be made, etc.	4062.	When auditor to appoint person to make reports.
4059.	Reports by superintendents and teachers.	4063.	Further penalties against auditor.
4060.	Duties of county auditors as to school statistics, etc.	4064.	Compensation of auditor.

SEC. 4057. The board of education of each district shall make a report to the county auditor, on or before the first day of September in each year, containing a statement of the receipts and expenditures of the board, the number of schools sustained, the length of time such schools were sustained, the enrollment of pupils, the average monthly enrollment, and average daily attendance, the number of teachers employed, and their salaries, the number of school-houses and school rooms, and such other items as the commissioner of common schools may require. [70 v. 195, § 75; 85 v. 195.]

Annual report of board of education. Its connection.

SEC. 4058. The report shall be made on blanks which shall be furnished by the commissioner of common schools to the auditor of each county, and by the auditor to each school clerk in his county; and each board of education, or officer

In what form to be made, etc.

or employe thereof, or other school officer in any district or county, shall, whenever the commissioner so requires, report to him direct, upon such blanks as he shall furnish, any statements or items of information that he may deem important or necessary. [70 v. 195, § 75.]

Reports by superintendents and teachers.

SEC. 4059. Boards of education shall require all teachers and superintendents to keep the school records in such manner that they may be enabled to report annually to the county auditor, as required by the provisions of this title, and may withhold the pay of such teachers as fail to file with the clerk the reports required of them; they may require superintendents to report each year such matters as they deem important or necessary for information in regard to the management and conduct of the schools, and to make such suggestions and recommendations as they may deem advisable relative to methods of instruction, school management, or other matters of educational interest; and the board of each city district of the first class shall prepare and publish, annually, a report of the condition and administration of the schools under its charge, and include therein a complete exhibit of the financial affairs of the district. [70 v. 195, § 76.]

SEC. 4059 (a). Boards of education have power to supply themselves with all blank books, order books, and stationery necessary for the transaction of their official business, and also to supply teachers with registers and necessary stationery.

(b). Every teacher should keep a daily record of the attendance of each pupil enrolled in his school, and for this purpose should be supplied by township or other district board with a suitable school register.

What record should show.

(c). Every teacher should record in permanent form *the scholarship of each pupil*, including in the record, as left at the end of each term, the point in each text-book reached by the pupil. In the rural schools, at least, it is better that the same register which is used for recording attendance, be used to record the standing of the pupils also for each term, as a matter of great convenience to the incoming teacher. These registers should be returned each term to the clerk of the board of education, and it would be well if all boards would adopt the rule that no order should be issued to a teacher for his final payment until such deposits had been made. It would also be well if the teachers in rural districts were required to send to the clerk, for the information of the board, a statement as to the advanced classes of the school, the points they have reached in their studies, and whether these advanced pupils intend to prosecute their studies further, in order that boards may intelligently provide instruction for such pupils.

SEC. 4060. The auditor of each county shall, on or before the twentieth day of September, annually, prepare and transmit to the commissioner of common schools, an abstract of all the returns of school statistics made to him from the several districts in his county, according to the form prescribed by the commissioner, and a statement of the condition of the institute fund, and such other facts relating to schools and school funds as the commissioner may require; he shall, also, cause to be distributed all such circulars, blanks, and other papers, including school laws and documents, in the several school districts in the county, as the commissioner may lawfully require; and if the auditor neglect to prepare and return any of the abstracts or reports herein required, the county commissioners shall withhold from him all compensation for his services under this title. [70 v. 195, § 123; 85 v. 195.]

Duty of county auditor as to school statistics, etc.

SEC. 4061. The auditor shall, also, be liable on his bond for any such neglect, in a sum not less than three hundred nor more than one thousand dollars, on complaint of the commissioner of common schools; and if the clerk of the board of education of any district fail to make the annual returns of school statistics required by this title, to the county auditor, he shall be liable on his bond, in a sum not less than fifty nor more than three hundred dollars, on complaint of the county auditor or of the board of education, to be recovered in a civil action in the name of the state, and when collected to be paid into the county treasury, and applied to the use of common schools in such district. [70 v. 195, § 123]

Penalties against auditor and clerk.

SEC. 4062. Upon the neglect or failure of the clerk of the board of education of any district to make the reports required in this title, and by the time specified, the county auditor shall appoint some suitable person, resident of the district, to make such reports, who shall receive the same compensation therefor, and in the same manner, as is allowed by law for like services. [70 v. 195, § 123.]

When auditor to appoint person to make reports.

SEC. 4063. A county auditor who willfully or negligently fails, in any year, to transmit to the commissioner of common schools the abstract of enumeration required by section *forty hundred and thirty-nine*, or to perform any other duty required of him in this title, shall be liable on his bond to the extent of twice the sum lost to the school districts of his county in

Further penalties against auditor.

consequence of such failure, which sum shall be recovered in a civil action against him, on his bond, in the name of the state, before any court of competent jurisdiction; and the money so recovered shall be paid into the county treasury, for the benefit of such districts, and apportioned in the same manner as the school funds so lost would have been apportioned. [70 v. 195, §§ 81, 124.]

Compensation of auditor.

SEC. 4064. The commissioners of each county shall allow the county auditor, annually, a reasonable compensation for his services under this title, not to exceed five dollars for each city, village, special, and township school district in his county, to be paid out of the county treasury; but before such allowance shall be made for any year the auditor shall present to the commissioners a statement, officially certified and signed by the commissioner of common schools, that he has transmitted to the commissioner all reports and returns of statistics for that year required by this title. [70 v. 195, § 125.]

CHAPTER 12.

EXAMINERS.

SECTION	SECTION
4065. State board—appointment, term of office, and vacancy.	4076. Annual report of clerk, and his bond.
4066. Board may grant life certificates; record thereof, etc.	4077. Boards of city districts of first class.
4067. Effect thereof; may be revoked for cause.	4078. Standard of qualification for teachers.
4068. Fee for examination.	4079. Organization of board; bond of clerk.
4069. County boards—appointment, term, and vacancies.	4080. Meeting, and publication of notice.
4070. President and clerk, and certain duties of clerk.	4081. Examination fee; power of board.
4071. Meetings of board, and fee for examination.	4082. Compensation of examiners; incidental expenses.
4072. Disposition of fees.	4083. Duties of clerk; disposition of fees.
4073. Validity and revocation of certificates.	4084. Boards of city districts of second class and village districts.
4074. Certificate a pre-requisite to employment; special duties.	4085. Who ineligible as examiner.
4075. Compensation and incidental expenses of board.	

STATE BOARD OF EXAMINERS.

State board of examiners, term.

SEC. 4065. There shall be a state board of examiners, which shall consist of five competent persons, resident[s] of the state, to be appointed by the state commissioner of common schools, not more than three of whom shall belong to the

same political party. The terms of office of such examiners shall be five years; the terms of one of the examiners shall expire on the 31st day of August, each year; [and when one of which shall expire on the 31st of August every year]; and when a vacancy occurs in the board, whether from expiration of the term of office, refusal to serve, or other cause, the commissioner shall fill the same by appointment for the full or unexpired term, as the case demands. [70 v. 195, § 85; 85 v. 330].

SEC. 4066. The board thus constituted may issue three grades of life certificates to such as are found to possess the requisite scholarship, and who exhibit satisfactory evidence of good moral character and of professional experience and ability; the certificates shall be for different grades of schools according to branches taught, and shall be valid in the schools specified therein. The clerk of the board shall keep a record of the proceedings, showing the number, date and grade of each certificate, to whom granted, and for what branches of study, and shall report such statistics to the commissioner, annually, on or before the 31st day of August. [70 v. 195, § 87; 78 v. 31; 85 v. 330].

May issue life certificates of different grades.

Clerk's record.

SEC. 4067. All certificates issued by such board shall be countersigned by the commissioner of common schools; and such certificates shall supersede the necessity of any and all other examinations of the persons holding them, by any board of examiners, and shall be valid in any school district in the state, unless revoked by the state board for good cause. [70 v. 195, § 87].

Effect thereof; may be revoked for cause.

SEC. 4068. Each applicant for a certificate shall pay to the board of examiners a fee of five dollars; and the clerk of the board shall pay to the state treasurer, all fees received, and file with the state auditor a written statement of the amount. Each member of the board shall be entitled to receive five dollars for each day he is necessarily engaged in official service, and also six cents per mile each way for traveling from and to his place of residence, by the most direct route of public travel to and from the places of meetings of the board, to be paid out of the state treasury on the order of the state auditor; all books, blanks and stationery required by the board shall be furnished by the secretary of state. [70 v. 195, § 88, 85 v. 330].

Fee for examination.

Compensation and expenses of examiners.

Ch. 12.

Examiners.

County boards; number, terms, revocation.

SEC. 4069. There shall be a board of examiners for each county, which shall consist of three competent persons, to be appointed by the probate judge; such persons shall be residents of the county for which they are appointed, and shall not be connected with or interested in any normal school or school for the special education or training of persons for teachers; if an examiner becomes connected with or interested in any such school, his office shall become vacant thereby; the term of such office of such examiners shall be three years; the term of one of the examiners shall expire on the 31st day of August each year; but the probate judge may revoke the appointment of any examiner upon satisfactory proof that he is inefficient, negligent or guilty of immoral conduct; when a vacancy occurs in the board, whether from expiration of the term of office, refusal to serve, or other cause, the probate judge shall fill the same by appointment for the full or unexpired term, as the case demands; and within ten days after an appointment, the probate judge shall report to the commissioner of common schools the name and post-office of the appointee, and whether the appointment is for a full or unexpired term; and no person shall be appointed to the position or exercise the office of state, county, city or village examiner of teachers who is the agent of or is interested in any book-publishing or book-selling firm, company or business. [85 v. 330.]

No book agent or book seller can be examiner.

President and clerk of board of county school examiners; duties of clerk.

SEC. 4070. The board shall organize by choosing from its members a president and clerk; the clerk shall keep a record of the proceedings, showing the number and date of each certificate issued, and to whom, for what term, and for what branches of study, and such other statistics relating to the examination and proceedings as the commissioner of common schools may require, and shall report such statistics to the commissioner annually on or before the first day of September; and such boards may make all needful rules and regulations for the proper discharge of their duties. [70 v. 241, § 95; 85 v. 195.]

Who may be examiner.

SECTION 4069. As the statute requires that an examiner shall be a resident of the county in which he is appointed, so the Constitution, Art. XV, section 4, declares that "no person shall be elected or appointed to any office in this state, unless he possesses the qualifications of an *elector*."

SEC. 4070. The prosecuting attorney is the legal adviser of county boards of examiners. See section 1274, R. S.

SEC. 4071. Each board shall fix upon the place and times for holding meetings for the examination of applicants for certificates, notice of which shall be published in some newspaper of general circulation in the county; the meetings, of which there shall not be more than eighteen in any year, shall be held at such place in the county as will, in the opinion of the board, best accommodate the greatest number of applicants; a majority of the board may examine applicants and grant certificates; and as a condition of examination each applicant shall pay to the board a fee of fifty cents. [70 v. 195, §§ 90, 91.]

Meetings of board, and fee for examination.

SEC. 4071 (a). The law provides for several, not more than eighteen, duly advertised meetings of the board for the examination of teachers. The notice seems designed for the accommodation of the teachers and examiners both, and probably to prevent star chamber examinations. The limited number of meetings provided for is evidently designed to limit the expense to the state. It is nowhere expressly declared that the board shall not grant certificates to individuals except at such advertised meetings. As, however, the law has made of *three* competent persons a board of examiners, it knows no individual person or persons, as such, who have power to examine, or to determine the qualifications of teachers. It requires the official judgment of three men, or a majority of them, on *every* question submitted to examiners for decision.

Number of examinations.

Private examinations.

(b). A board duly organized, with its president and clerk, constitutes the authoritative body to which the state has entrusted these serious and important duties. Certainly, no meeting for the examination of a teacher would be able, in any emergency, to give a legal certificate, of which meeting all the members have not had due notice, unless this defect is cured by the actual presence of all three of the members, with common consent, to proceed with the examination.

Notice of meeting.

(c). No teacher can draw pay for teaching a single day without a certificate which covers *all the branches* he assays to teach, and the penalty is severe as to him, and as to the members of any board of education, and any clerk or treasurer who shall unlawfully pay out the money of the state—see section 6841. A dilemma may be presented under the law itself, which can only be met by considering and conforming to the strongest purpose of the law. This purpose would seem to be that the schools shall be kept up, and shall only be taught by persons holding certificates. Thus, perhaps, a board may be justified in holding a special meeting for the examination of a teacher. It should never be done without the most urgent reasons, such as a vacancy occasioned by death, or a like pressing emergency. It can hardly be claimed that such special, unadvertised meeting is such a meeting as is directly provided for by law, and for which pay can be drawn.

Certificate must cover all branches taught.

Special meeting extreme cases.

(d). It seems that examiners have, in some cases, advertised meetings for the examination of candidates for, say, three years' certificates only. It is difficult to see the legality or expediency of such proceeding. Have not all candidates a right to appear at any of the public advertised meetings

Examinations for special grade certificates.

Disposition of fees.

SEC. 4072. The clerk of the board shall pay to the county treasurer, quarterly, all fees received, and file with the county auditor a written statement of the amount, and of the number of applicants, male and female, examined during the quarter; and such money shall be set apart for the support of teachers' institutes, and applied as provided in chapter thirteen. [70 v. 195, § 91; 83 v. 40.]

Certificates valid, when and where.

SEC. 4073. The board may grant certificates for one, two and three years from the day of examination, which shall be valid in the county wherein they are issued, except in city and village districts that have boards of examiners, in which

provided for by law? If one fails in a trial for a three years' certificate, may he not be found qualified to receive a two years' certificate without the trouble and expense of another journey and another fee?

Board must decide as to each applicant.

(e). It has been decided by two or more common pleas courts of Ohio, "that the examination of the candidate, and determination to grant the certificate being official acts, can only be legally performed at a session of the board duly organized, and that the whole board, as such, is to decide regarding the qualifications of each applicant to teach each branch certified to." See also case of *McCortle v. Bates*, 29 O. S., 419, as quoted quite in full under section 3982. All its reasoning regarding boards of education applies equally to examining boards.

Assistance of experts.

(f). The board may, in certain cases, call in the aid of a specialist to examine a candidate for them in specific branches. But the official mind, as, in cases at the bar, the "judicial mind," must itself be satisfied—in this case by the testimony of the expert—that the candidate is qualified in each branch, and the board must certify to this.

Delegation of official trust.

(g). An official trust cannot be delegated. See III. Central Law Journal, page 472. The board has no authority, therefore, to appoint a substitute to perform the duties of any of its members. A certificate depending on the signature of such substitute for its validity, is worthless. As all citizens are bound to know the law, so candidates and school authorities are bound to know who are legal, or, at least, *de facto* public officers.

*(i). If a person ineligible to the office of examiner has been appointed in good faith, and without knowledge of this ineligibility, it is probable his acts as examiner would be held valid in a court of law, as the acts of an officer *de facto* though not *de jure*. But it is clear that after the attention of the interested parties has been called to this ineligibility, that all the future acts of such ineligible person as an examiner will be null and void, and that any certificate depending on the signature of such person for its validity, will be without legal value.

Signature, wrong initials.

(h). An officer commissioned under the initials J. H., signs his true initials A. J., to a certificate, A. J. being the person in fact intended and appointed, the act and signature are held sufficient by the Supreme Court of Ohio. See N. B. Gates, treasurer, vs. Beckwith, in II. Western Law Monthly, page 589.

they shall not be valid; and the examiners may grant certificates for five years to such applicants as in addition to the necessary qualifications, have been for three years next preceding their application engaged in teaching, twelve months of which experience shall have been in one place; and such certificate for five years shall be renewable upon the same conditions but without examination, at the direction of the examining board; and if at any time the recipient of a certificate be found intemperate, immoral, incompetent or negligent, the examiners, or any two of them, may revoke the certificate; but such revocation shall not prevent a teacher from receiving pay for services previously rendered; and when any recipient of a certificate is charged with intemperance or other immorality, the examining board shall have power to send for witnesses and examine them on oath or affirmation touching the matter under investigation. The fees and other expenses of such trial shall be certified to the county auditor by the clerk and president of the examining board, and paid out of the county treasury upon the order of the auditor. [70 v. 195, § 92; 79 v. 83; 81 v. 55; 85 v. 331.]

What certificates renewable, and how.

How certificates may be revoked, and for what.

SEC. 4074. No person shall be employed as a teacher in a common school who has not obtained from a board of examiners, having competent jurisdiction, a certificate of good moral character, and that he or she is qualified to teach orthography, reading, writing, arithmetic, geography, English grammar and the history of the United States, and possesses an adequate knowledge of the theory and practice of teaching, and if required to teach other branches that he or she has the requisite qualifications; but persons who desire or are expected to teach only special studies, such as music, drawing, painting, penmanship, gymnastics, German or French, or any one of them, or the primary department in any graded school, may be examined in regard to such study or studies above mentioned, or with special reference to their qualifica-

Qualifications of teachers.

SEC. 4072. This section, together with section 4076, implies that the clerk is also treasurer of the board of examiners. In the latter section, the state requires of him a bond for the payment to the auditor of all moneys that come into his hands as fees. This will probably relieve the other examiners of joint personal responsibility with him for such payment, as he, alone, is authorized to handle the funds, and the state assumes the full control of his acts under such bond. The other examiners should see, as a matter of interest to them, that the clerk conforms to this, and other requirements of the law, as to records, reports, and the like. The law is careful to prescribe the limit of the expenses to be drawn. But it also pre-

Clerk is treasurer of board.

Special.

Primary.

tions to teach in such primary department only, and having obtained a certificate of qualification therein, and of good moral character may be employed to teach such study or studies, or in such primary department; provided, that after January 1, 1889, no person shall be employed as a teacher in any common school who has not obtained from such board of examiners a certificate that he is qualified to teach physiology and hygiene. [71 v. 107, § 93; 79 v. 70; 85 v. 331.]

scribes that the money shall be drawn only for *necessary and actual*, not *constructive* expenses, and that such expenses for each quarter shall be paid out of the funds received during that quarter. This includes the necessary traveling expenses, or such hotel bills, as are actually and necessarily paid out, in the discharge of duties prescribed by law.

Antedating certificates.

SEC. 4073 (a). The board may grant certificates of the four grades only, and since the statute uses the language "from the day of examination," it seems to give no authority to antedate a certificate.

Amount and kind of examination.

(b). The law does not prescribe the amount or kind of examination which the board shall employ to satisfy themselves of the qualifications of each applicant. It rests on the discretion of the board to determine whether it is necessary to subject a teacher who has taught with marked intelligence and success, and for years, within the circuit of their knowledge, to the same rigid examination to which they subject beginners, and those of whose qualifications the examiners have no knowledge.

Discretion of examiners.

(c). There is also no reason why examiners should not exercise their discretion about the further examination of candidates who have failed in one or two branches, but who left at a recent session of the board a thoroughly satisfactory record of examination in a large part of the branches.

(d). The revocation of a certificate is not strictly a judicial proceeding. The law which clothes the boards of examiners with discretionary power, will protect them in the proper use of it. They cannot, of course, be mulcted in damages nor removed from office, for refusing to grant a certificate, nor for revoking a certificate, in the exercise of this discretion. If malice or other undue motive enter into the transaction, however, the candidate has his remedy in the courts, and the probate judge may remove any members for such cause, as a malfeasance in office—an immorality—one of the causes enumerated in the law.

Causes for revocation.

(e). Manifest incompetency to teach or to govern a school, cruelty, negligence, and immorality, are enumerated as the causes that may lead to a revocation of a certificate. Intemperance is given in the law as a ground for refusing a certificate, and this is very definite instruction to annul a certificate for this cause. Habitual profanity, dishonesty, larceny, and other violations of law would certainly justify the annulling of a certificate.

Notice of revocation.

(f). Notice of such annulment should be given to the boards of education concerned, at least. A person cannot draw pay after his certificate is annulled. While it is proper to remember that it is a very serious thing to exclude a man from the profession, it should be remembered that it is

SEC. 4075. Each member of the board shall be entitled to receive two dollars for each day he is necessarily engaged in official service, to be paid out of the county treasury on the order of the county auditor; all books, blanks, and stationery required by the board shall be furnished by the county auditor. The board may contract for the use of suitable rooms in which to conduct examinations, procure fuel and light, and employ janitors to take charge of the rooms and keep them in order, and the expenses so incurred, and also the necessary traveling expenses of the examiners, which shall not in any quarter exceed one third the amount of examination fees received, together with the cost of advertising required by section 4071, shall be paid out of the county treasury on orders of the county auditor, who shall issue such orders upon the certificate of the president of the board, countersigned by the clerk. [70 v. 241, § 95; 83 v. 40]

Compensation
and expenses
of board.

still more serious to neglect the intellectual and moral interests of pupils, and worse still to appropriate the money of the people to promote immorality and bruti-hness.

(g). Of course, a board of examiners may revoke for proper cause, a certificate granted by its predecessors.

* SEC. 4074. (a). The provision of the statutes "that no person shall be employed" as a teacher unless he has obtained the certificate required by law, does not render invalid a contract for employment made with the teacher before he obtains the requisite certificate, provided he obtains it before entering upon the duties of his employment. 22 O. S., 194.

* (b). In Illinois, a certificate was not obtained till the middle of the term. A new contract was entered into at that time to pay the teacher double wages for the rest of the term. This was considered an attempt to do indirectly what there was no power to do directly; and therefore the contract was held void. 71 Ill., 532.

* (c). A person began teaching under a contract. He taught three weeks; then obtained a certificate and made a written contract to run three months from the time he began teaching. Held: That he was entitled to wages after certificate was obtained, but to no pay for the previous three weeks. 20 Minn., 72.

(d). No money can be legally drawn for teaching a day without a certificate, and to receive public money illegally is a crime under sections 6841 and 6846.

(e). It is expressly illegal—see sections 4017 and 4018—to pay an increased salary for that part of a term covered by a certificate, in case the certificate does not cover the whole term.

Increasing
salary.

(f). The principle governing communications to examining officers relative to the moral character of an applicant, or his fitness to teach, may be gathered from a recent decision of the Supreme Court of Michigan. Camb-

Communications to
examining
board.

Ch. 12.

Examiners.

Annual report of clerk, and his bond.

SEC. 4076. The clerk of the board shall prepare, and forward to the commissioner of common schools, on or before the first day of September of each year, a statement of the number of examinations held by the board, the number of applicants examined, the total number of certificates granted, and the number for each term mentioned in section forty hundred and seventy-three, the amount of fees received and paid to the county treasurer, the amount received from the county treasury, by the members of the board for their services, and such other statistics and information in relation to the duties of the board as the commissioner may require; and he shall deposit with the county auditor a bond, with surety to be approved by the auditor, in the sum of three hundred dollars, that he will pay into the county treasury, quarterly, the examination fees received by the board, and make the statistical returns required by this chapter. [70 v. 241, § 95; 85 v. 195.]

Examiners in city districts; appointment, terms, revocation.

SEC. 4077. There shall be a board of examiners for each city district of the first class, to be appointed by the board of education of the district; such board may consist of either three or six persons, as the board of education may determine, and the persons appointed shall have had at least five years' practical experience in teaching, and shall otherwise be competent for the position, and residents of the district for which they are appointed; the term of office of such examiners shall be three years; the term of one-third of the examiners shall expire on the 31st of August each year; but the board of education may revoke any appointment, upon satisfactory proof that the appointee is inefficient, negligent, or guilty of

bell, J., held: "In the present case the communication was fully privileged. It was made by persons interested in the school to persons qualified to receive and act on the petition, for an honest purpose, and with an honest belief in the justice of their action. In such cases no action can be maintained even if the complaint is untrue, if not maliciously made." See also *Foster v. Scripps*, 39 Mich., 376.

(g). As to penalty for bribing or attempting to bribe an officer, see section 6900.

Quarterly report.

SEC. 4076 (a). As the school year begins on the first day of September of each year, the quarterly payments are to be made for the quarters ending with November, February, May and August.

(b). The prosecuting attorney is, by section 1276, R. S., required to inspect the bonds of all county officers and certify that the same are sufficient.

immoral conduct; when a vacancy occurs in the board, whether from expiration of term of office, refusal to serve, or other cause, the board of education shall fill the same by appointment for the full or unexpired term, as the case demands; and within ten days after an appointment, the clerk of the board of education shall report to the commissioner of common schools the name of the appointee, and whether the appointment is for a full or unexpired term. [70 v. 195, § 97; 71 v. 107, § 96; 85 v. 332.]

SEC. 4078. Such board of examiners shall determine the standard of qualification for teachers, and may examine any school in the district when such examination is deemed necessary to ascertain a teacher's qualifications, but in the examination of applicants and the granting of certificates the board shall be governed by the provisions of section forty hundred and seventy-four, and to secure a thorough examination of applicants in difficult branches or special studies, the board may secure the assistance, temporarily, of persons of sufficient knowledge in such branches or studies, who shall promise on oath or affirmation, to be administered by the clerk of the board of examiners, to perform the duties of examiner faithfully and impartially, and superintendents of schools shall give to the board all necessary information in reference to branches and special studies to be taught, and the branches of study and grades of school which teachers will be required to teach. [71 v. 107, § 96; 85 v. 332.]

Duties and powers of city boards.

SEC. 4079. The board shall organize by choosing from its members a president and a clerk; and the clerk shall give bond in the sum of five hundred dollars, with surety to be approved by the board of education, conditioned that he will perform faithfully the duties required of him by this chapter, which bond shall be deposited with the clerk of the board of education. [70 v. 195, § 98.]

Organization of board; bond of clerk.

SEC. 4077 (a). Nothing in the statute directly prohibits a member of the board of education from serving on a city or village board of examiners, but the provisions of section 3974 would prevent his receiving pay for such services.

Clerk.

(b). Failure to comply with the requirement to notify the commissioner of the appointment of a clerk has sometimes occasioned great inconvenience, as it is made the duty of that state officer, in certain cases, to look after the proper payment of fees into the treasury.

Meetings of
city boards.

SEC. 4080. The board shall hold not less than two meetings each year, notice of which shall be published in some newspaper of general circulation in the district, and the expense of such publication shall be paid as provided in section forty hundred and eighty-two, and all examinations of applicants shall be conducted at the meetings of the boards thus called, and the examination of each and every applicant shall be in the presence of at least two members of the board. [85 v. 332.]

Examination
fees; certi-
ficates valid,
when and
where.

SEC. 4081. Each person who applies to the board for examination shall pay to the clerk a fee of fifty cents. The board may grant certificates for one, two and three years, from the day of examination, which shall be signed by the president and attested by the clerk, and shall be valid within the district wherein they were issued; and the examiners may grant certificates for five years to such applicants as in addition to the necessary qualifications, have been for three years next preceding their application engaged in teaching, eighteen months of which experience shall have been in one place; and such certificate for five years shall be renewable upon the same conditions, but without examination, at the discretion of the examining board; and on the production of satisfactory evidence that a person to whom a certificate has been issued is inefficient, or guilty of immoral or improper conduct, the board may revoke the certificate and discharge such person from employment as teacher in the district; but such teacher shall be entitled to pay for services to the time of such discharge, and the word teacher shall be held to include superintendent of schools; and when any holder of a certificate is charged with intemperance or other immorality, the board shall have power to send for witnesses and examine them on oath touching the matter under investigation. [70 v. 195; 72 v. 114; 77 v. 7; 78 v. 87; 85 v. 333.]

How revoked.

SEC. 4081 (a). There is no law making certificates granted by city boards of examiners good in the country if endorsed by the county examiners.

* (b). A county board, however, may legally issue a certificate of its own on the city certificate, without an examination, if the board is satisfied that this city certificate presents sufficient evidence that its holder is qualified to teach in the schools of the county.

SEC. 4082. The board of education shall fix the compensation] of such examiners, and the persons called to their assistance, furnish the necessary books, blanks, and stationery for their use, and designate a school building within the district in which they shall conduct examinations, and cause such building to be lighted and heated if necessary; and such compensation, and the incidental expenses incurred on account of the board of examiners, shall be paid, by order of the board of education, from the contingent fund of the district. [71 v. 107, § 96.]

Compensation of examiners; incidental expenses.

SEC. 4083. The clerk shall keep a record of the proceedings of the board, and of such statistics as the commissioner of common schools may require, and shall report such statistics to the commissioner annually, on or before the first day of September; he shall pay the examination fees received by him to the treasurer of the district within ten days after each meeting, and at the same time file with the clerk of the board of education a written statement of the amount, and also a statement of the number of applicants, male and female, examined, and the number of certificates granted, and for what terms; and the fees paid to the treasurer of the district shall be applied to the support of teachers' institutes, as provided in chapter thirteen. [70 v. 195, § 98; 85 v. 196.]

City and village examiners; duties of clerk; disposition of fees.

SEC. 4084. The provisions of this chapter, relating to boards of examiners, for city districts of the first class, shall be applicable to such boards for city districts of the second class and village districts having an enumeration of not less than seven hundred youth of school age; except that such boards shall consist of three members, and except also that

Board of school examiners for city districts, second class and village districts.

* SEC. 4085. Various interpretations of the meaning of this section have been given. This has arisen from the different definitions given the word "school" in the several sections of the country. By "school" is meant in some of the cities and towns of the eastern states, each room of pupils in a school building; but generally there, as in the West, "school" means all the pupils of a division of a city, town, or village, made for school purposes, gathered into one building, or sometimes more than one. And the same definition applies to sub-districts. In any system of schools entitled to a city board of examiners, the superintendent, who is not connected with any *one* school specially, but with the system as a whole, can be a member of the board (and ought always to be so) and as many of the teachers as the board of education may choose to select, provided no two of them are from the same building.

the examination fees shall be disposed of, and statements filed with the county auditor, as provided in section four thousand and seventy-two, in all such districts not covered by the provisions of section four thousand and ninety-three. [70 v. 195; 72 v. 114; 78 v. 87; 83 v. 35; 85 v. 30.]

Who ineligible as examiner.

SEC. 4085. No board of county, city, or village examiners shall have more than one member connected with the same school.

CHAPTER 13.

TEACHERS' INSTITUTES.

SECTION	SECTION
4086. County institutes — how organized, etc.	4091. Teachers may dismiss school to attend institute.
4087. Payment of institute fund to committee.	4092. Institute for city district of first class.
4088. Report of institute committee.	4093. Institute for teachers of adjacent counties.
4089. Forfeiture of committee's bond.	4094. Length of sessions; reports of certain institutes.
4090. When school commissioner may hold institute.	

Organization.

SEC. 4086. A teachers' institute may be organized in any county, by the association of not less than thirty practical teachers of common schools residing therein, who shall declare their intention in writing to attend such institute, the purpose of which shall be the improvement of such teachers in their profession; such institute shall elect annually, by ballot, a president, secretary and also an executive committee to manage the affairs of the institute, which committee shall enter into a bond, payable to the state of Ohio, with sufficient surety, to be approved by the county auditor, in double the amount of the institute fund in the county treasury, for the benefit of the institute fund of the county, and conditioned that the committee shall account faithfully for the money which will come into its possession, and make the report to the commissioner of common schools, required by section four thousand and eight, and such election of officers

Election of officers.

Bond.

* SEC. 4086. The purpose of a teachers' institute being the improvement of the teachers entitled to its privileges in their profession, it clearly follows that the instruction given therein should be mainly upon methods of teaching and the management of schools.

shall be held during the session of such institute, and at a time fixed by the executive committee thereof, of which election at least three days' notice shall be given the members of such institute by posting conspicuously in a room, where such institute is held, a notice of the time and place of holding such election. [70 v. 195, § 112; 84 v. 230.]

Time and notice of election.

SEC. 4087. The declaration and bond mentioned in section *forty hundred and eighty-six* shall be filed with the county auditor, whereupon the auditor shall give to the institute committee an order on the county treasurer for the amount of the institute fund in the treasury; and any portion of said fund not disbursed by the committee, shall be returned to the county treasury on the certificate of the county auditor. [70 v. 195, § 112.]

Payment of institute fund to committee.

SEC. 4088. The institute committee shall, within five days after the adjournment of the institute, report to the commissioner of common schools, the number of teachers in attendance at the institute, the names of instructors and lecturers, the amount of money received and disbursed by the committee, and such other information relating to the institute as the commissioner may require; and on failure to make such report the committee shall forfeit and pay to the state the sum of fifty dollars. [70 v. 195, § 112; 85 v. 196.]

Teachers' institutes; report of committee.

SEC. 4089. Upon the forfeiture of the committee's bond, the prosecuting attorney of the county shall prosecute an action thereon, in the name of the state, and collect any money which the committee may have failed to disburse according to law, and any penalty to which the committee may be liable under this chapter, and pay the same into the

Forfeiture of committee's bond.

SEC. 4091 (a). The privilege of dismissing the schools for one week's attendance on the teachers' institute is granted to teachers in cities of less than ten thousand inhabitants, without action by the board of education. See section 3886. The teacher cannot, under the law, draw pay for the work, however. The last clause of the section implies that a majority of the teachers in a system of schools may effect their dismissal though the minority of the teachers oppose it.

(b). The law under this section does not provide that teachers shall require pay for their attendance at the institute; but the board may by resolution allow them their regular salaries during such attendance. No teacher, however, can be paid for more days than he was actually present.

county [treasury, to the credit of the institute fund. [70 v. 195, § 112.]

When school commissioner may hold institute.

SEC. 4090. When a teachers' institute has not been held ~~in~~ within two years in any county, the commissioner of common schools may hold or cause to be held therein such institute; and the management thereof and all proceedings in relation thereto, shall be the same as herein before provided, except that the written declaration required shall not be necessary. [70 v. 195, § 114.]

Teachers may dismiss school to attend institute.

SEC. 4091. All teachers of common schools within any county in which a county institute is held, except those employed in city districts of the first class, may dismiss their schools for the purpose of attending such institute, for the week in which it is held; and boards of education of city districts of the first class situate within such counties may, by resolution, extend the privilege specified above to the teachers employed by them; but no union or graded school shall be dismissed for such purpose unless a majority of the teachers employed therein assent thereto. [70 v. 195, § 117.]

Institutes for city districts of the first class.

SEC. 4092. The board of education of each city district of the first class may provide for holding an institute yearly, for the improvement of the teachers of the common schools therein; the expenses of such institute shall be paid from the institute fund provided for by section *forty hundred and eighty-three*; if the board of any district do not provide for such institute in any year, it shall cause the institute fund in the hands of the district treasurer to be paid to the treasurer of the county wherein the district is situate, who shall place the same to the credit of the county institute fund, and the teachers of the schools of such district shall be entitled, in such case, to the advantages of the county institute, subject

Disposition of fees.

SEC. 4092. By section 4083, the clerk of the city board of examiners is bound to pay all fees received from candidates to the treasurer of the district. By this section, in case the city teachers hold no institute, the board of education is to see that their treasurer pays over the whole amount of the fees to the county treasurer for the use of county institutes. In some cases this duty has been neglected, and much trouble and expense have been occasioned by the action necessary to secure this money for its legitimate purposes. It is the duty of the state commissioner to see that the reports to his office show this to have been done.

to the provisions of the preceding section; and the clerk of the board shall make the report of the institute required by section *forty hundred and ninety-four*. [70 v. 195, § 118.]

SEC. 4093. An association of teachers of several adjacent counties may organize an institute for the specific purpose of providing for the professional instruction of the teachers of the graded schools in such counties, and the boards of all city, village, and special districts within such counties may contribute from the institute and contingent funds under their control, to defray the expenses thereof, and may permit teachers employed by them to attend the institute one week; and such institute shall appoint a secretary, who shall make the report required by the next section. [70 v. 195, § 119.]

Institutes* for teachers of adjacent counties.

SEC. 4094. All institutes held under the provisions of this chapter, except the institute provided for by section *forty hundred and ninety-three*, shall continue at least four days; and a report of each institute held in pursuance of the provisions of sections *forty hundred and ninety-two* and *forty hundred and ninety-three*, shall be made to the commissioner of common schools within five days after the adjournment thereof, which shall state the number of teachers in attendance, the names of the instructors and lecturers, the total expenses of the institute, and the portion thereof paid from institute funds, and such other information relating to the institute as the commissioner may require. [70 v. 195, §§ 113, 115, 118; 85 v. 196.]

Length of session; report of certain institutes.

* SECS. 4086-4094 (a). Institutes are the people's training schools. No matter how great the facilities for instruction in normal schools a state may possess, the fact will remain that the mass of teachers must get what they are to learn of methods of teaching and the management of schools elsewhere. In our state, particularly, we must look to the institute to do this work.

* (b). Professional zeal forms a large element in the success of teachers; and in no way can this success be better shown than by a faithful attendance on the teachers' institute and an active interest in its work. Boards of examiners are, therefore, fully justified in taking this attendance and this interest into consideration in making up the standing of candidates in the theory and practice of teaching.

CHAPTER 14.

CINCINNATI AND TOLEDO UNIVERSITIES.

SECTION

4095. Common council of Cincinnati may accept educational trusts.
 4096. How trust funds to be applied.
 4097. Trusteeship to vest in city, etc.
 4098. Board of directors, how appointed, etc.
 4099. Powers of board.
 4100. Citizens not to be charged for admission of children.

SECTION

4101. Accounts and expenditures.
 4102. When board may confer degrees.
 4103. Site and grounds.
 4104. When and how tax may be levied.
 4105. Provisions of chapter applicable to city of Toledo.

Common council of Cincinnati may accept educational trusts.

SEC. 4095. The common council of the city of Cincinnati, in the name and behalf of the city, may accept and take any property or funds heretofore or hereafter given to the city for the purpose of founding, maintaining, or aiding a university, college, or other institution for the promotion of free education, and upon such terms, conditions, and trusts, not inconsistent with law, as the common council may deem expedient and proper for that end. [67 v. 86, § 1.]

How trust funds are to be applied.

SEC. 4096. For the further endowment, maintenance, and aid of any university, college, or institution for the promotion of free education heretofore or hereafter so founded in said city, the common council thereof may, in the name and in behalf of the city, accept and take, as trustee, and in trust for the purpose aforesaid, any estate, property, or funds which have been or may be lawfully transferred to the city for such use, by any person or body corporate having the same, or any annuity or endowment in the nature of income which may be covenanted or pledged to the city toward such use by any person or body corporate; and any person or body corporate having and holding any estate, property, or funds, in trust or applicable for the promotion of education, or the advancement of any of the arts or sciences, may convey, assign, transfer, and deliver over the same to said city, as trustee in his or its place, or covenant or pledge its income, or any part thereof, to the same; and such estate, property, funds, or income shall be held and applied by such city in trust for the further endowment or maintenance of such university, college, or institution in accordance, nevertheless, with the terms and true intent of any trust or condition upon which the same was originally given or held. [67 v. 86, § 2.]

SEC. 4097. Upon such transfer, and the acceptance thereof, the city and its successors, as trustee, shall become and be perpetually obligated and held to observe and execute such trust, in all respects, according to any further terms and conditions lawfully agreed upon at such transfer and acceptance; and any court having jurisdiction of the appointment of trustees of such trusts for educational purposes may, in any proceeding for that purpose duly instituted and had, appoint and constitute said city, with the consent of the common council thereof, trustee of the estate, property and funds so transferred to it, and may dispense with the bond or surety on the part of the city for the performance of such trust, unless the same is required by the original terms or conditions thereof, and shall, upon the due transfer and acceptance of such trust by the city, release and fully discharge the trustee or trustees so transferring the same. [67 v. 86, § 2.]

Trusteeship
to vest in
city, etc.

SEC. 4098. The custody and management of any and all estates, property, or funds so given, or transferred in trust to said city, and the entire administration of any and all such trusts so accepted by the common council thereof, and any university, college, or institution for the promotion of education heretofore or hereafter so founded in or by said city, except the common and high schools thereof, shall be committed to a board of nineteen directors, of whom the mayor of the city shall be one, and the others shall be appointed by the common council from persons of approved learning, discretion and fitness for the office, citizens of the city, six of whom shall be appointed from persons nominated to the common council by the board of education of the city, and twelve from persons nominated to the common council by the superior court of said city, if there be such court; the terms of office of each director shall be six years, but of those first appointed, three shall be appointed for one year, three for two years, three for three years, three for four years, three for five years, and three for six years, from the first day of January next following their appointment; such directors shall serve until the election or qualification of their successors, and any vacancy in the board caused by expiration of term, resignation, removal, or other cause, shall be filled by appointment as herein provided, for the unexpired term. [67 v. 86, § 3; 78 v. 178.]

Boards of di-
rectors of Cin-
cinnati and
Toledo univer-
sities, how
appointed.

Powers of board.

SEC. 4099. As to all matters not herein or otherwise provided by law, the directors shall have all the authority, powers, and control vested in or belonging to said city, as to the management and control of the estate, property, and funds given, transferred, covenanted, or pledged to the city for the trusts and purposes aforesaid, and the government, conduct, and control of the university, college, or institution so founded; they may appoint a clerk, and all agents proper and necessary for the care and administration of the trust property, and the collection of the income, rents, and profits thereof, may appoint the president, professors, tutors, instructors, agents, and servants necessary and proper for such university, college, or institution, and determine their compensation, may provide all the necessary buildings, books, apparatus, and means and appliances, and pass all such by-laws, rules, and regulations concerning the president, professors, tutors, instructors, agents, and servants, and the admission, government, and tuition of students, as they deem wise and proper; but they may, by suitable by-laws delegate and commit the admission, government, management, and control of the students, course of studies, discipline, and other internal affairs of such university, college, or institution, to the faculty which the directors may appoint from among the professors. [67 v. 86, § 3.]

Citizens not to be charged for admission of children.

SEC. 4100. The citizens of said city, whose children, wards or apprentices are admitted to such institution, shall not be charged for such admission, and no charge shall be made for the instruction of such pupils. [67 v. 86 § 3.]

Accounts and expenditures.

SEC. 4101. The accounts of such trust estate, property, and funds, and of the income and expenditure thereof, shall be kept by the city auditor entirely distinct from all other accounts or affairs of the city, and the moneys shall be kept by the city treasurer distinct from other moneys; and the directors shall at all times confine the expenditures within the income of the trust estate, property, and funds, and shall annually report to the common council a full statement of the accounts and administration of such trusts. [67 v. 86, § 3.]

When board may confer degrees.

SEC. 4102. The directors of such university, college, or institution may, upon the recommendation of the faculty thereof, confer such degrees and honors as are cus-

tomary in universities or colleges in the United States, and such others as, with reference to the course of studies and attainments of the graduates in special departments, they may deem proper. [67 v. 86, § 4.]

SEC. 4103. The common council of said city may set apart and appropriate, as a site for the buildings and grounds of the university, college, or institution so founded, any public grounds of the city not specially appropriated or dedicated by ordinance to any other use or purpose, any law to the contrary notwithstanding. [67 v. 86, § 5.]

Site and grounds.

SEC. 4104. The board of education of the city may, upon the application of said board of directors, assess and levy a tax on the taxable property of the city, not exceeding one-tenth of one mill on the dollar valuation thereof, to be applied by the board of directors to the support of such university, college, or institution; and the board of education shall also assess and levy, annually, not less than three-hundredths nor more than five-hundredths of one mill on the dollar of such valuation for the establishment and maintenance of an astronomical observatory, in connection with such university, college, or institution, the proceeds of which shall be paid to the board of directors, and applied by them for said purpose exclusively. [67 v. 86, § 5; 75 v. 133, § 1.]

When and how tax may be levied.

SEC. 4105. The provisions of this chapter shall be applicable to the city of Toledo, except that the board of directors shall consist of thirteen members, and the rate of taxation to be assessed and levied shall not exceed one-half of one mill on the dollar of the taxable property of said city. [70 v. 117 § 1.]

Provisions of this chapter applicable to city of Toledo.

PART I, POLITICAL—TITLE III, EXECUTIVE.

CHAPTER 13.

STATE COMMISSIONER OF COMMON SCHOOLS.

SECTION

354. Election, term, and how vacancy filled.
 355. Bond.
 356. His office and his attendance thereat.
 357. His duty to visit teachers' institutes, etc.
 358. His supervision over school funds and school officers.
 359. Shall prepare and transmit forms and instructions.
 360. Shall cause school laws, with forms, etc., to be printed and distributed.

SECTION

361. Annual report to the general assembly or governor.
 362. What the report shall contain.
 363. Shall require reports from private schools, etc.
 364. His duty on complaint of fraudulent use of money; appointment of examiner.
 365. Powers, duties, and compensation of examiners.
 366. Duty of judge and prosecuting attorney.

State Commissioner of Common Schools, election and term of.

SECTION 354. There shall be elected, triennially, at the general election for state officers, a state commissioner of common schools, who shall hold his office for the term of three years from the second Monday of July succeeding his election; and in case of a vacancy occurring by death, resignation, or otherwise, the governor shall fill the same by appointment. [70 v. 195, § 102; 81 v. 89.]

His official bond.

SEC. 355. Before entering upon the discharge of his official duties, the commissioner shall give bond in the sum of five thousand dollars to the state, with two or more sureties, to the acceptance of the secretary of state, conditioned that he will truly account for and apply all moneys or other property which may come into his hands in his official capacity, and that he will faithfully perform the duties enjoined upon him according to law; which bond, with his oath of office indorsed thereon, shall be filed with the treasurer of state. [70 v. 195, § 103.]

And oath.

Office, etc., at the seat of government.

SEC. 356. The books and papers of his department shall be kept at the seat of government, where a suitable office shall be furnished by the state, at which he shall give attendance not less than ten months in each year, except when absent on public business. [70 v. 195, § 104.]

SEC. 357. The commissioner shall visit, annually, each judicial district of the state, superintending and encouraging teachers' institutes, conferring with boards of education or other school officers, counseling teachers, visiting schools and delivering lectures on topics calculated to subserve the interests of popular education. [70 v. 195, § 105.]

His duties in visiting the several judicial districts.

SEC. 358. He shall also exercise such supervision over the educational funds of the state as is necessary to secure their safety and right application and distribution according to law. He has power to require of county auditors, boards of education, clerks and treasurers of boards of education, or other local school officers, and county treasurers, copies of all reports by them required to be made, and all such other information in relation to the funds and condition of schools and the management thereof as he deems important. [70 v. 195, § 106.]

His supervision over school funds.

May require reports from certain officers.

SEC. 359. He shall prescribe suitable forms and regulations for making all reports and conducting all necessary proceedings under the school laws, and cause the same, with such instructions as he deems necessary and proper for the organization and government of schools, to be transmitted to the local school officers, who shall be governed in accordance therewith. [70 v. 195, § 107.]

Shall prepare 2 forms, etc.

SEC. 360. He shall cause as many copies of the laws as are necessary, relating to schools and teachers' institutes, with an appendix of appropriate forms and instructions for carrying into execution all such laws, to be printed in a separate volume, and distributed to each county with the laws, journals, and other documents, for the use of the school officers therein, as often as any change in the laws is made of sufficient importance, in the opinion of the commissioner, to require a publication and distribution thereof. [70 v. 195, § 108.]

Duties as to distribution of school laws, etc.

SEC. 361. He shall make an annual report, on or before the fifteenth day of November, to the general assembly, when that body is in session, and when not in session the report shall be made to the governor, who shall cause the same to be published, and shall also communicate a copy thereof to the general assembly at the beginning of the next session. [70 v. 195, § 109; 85 v. 192.]

Annual report of commissioner of schools.

What it shall present.

SEC. 362. In his annual report he shall present a statement of the condition and amount of all funds and property appropriated to purposes of education; a statement of the number of common schools in the state, the number of scholars attending such schools, their sex, and the branches taught; a statement of the number of private and select schools in the state, so far as the same can be ascertained, and the number of scholars attending such schools, their sex, and the branches taught; a statement of the number of teachers' institutes, the number of teachers attending them, and the number of instructors and lecturers, and the amount paid to each; a statement of the estimates and accounts of the expenditures of the public school funds of every description, a statement of plans for the management and improvement of common schools, and such other information relative to the educational interests of the state as he deems of importance. [70 v. 195, § 110.]

Shall require reports from private schools, etc.

SEC. 363. He shall, annually, require of the president, manager, or principal of every seminary, academy, and private school, a report of such facts, arranged in such form as he prescribes, and shall furnish blanks for such reports; and it is made the duty of every such president, manager, or principal, to fill up and return such blanks within the time the commissioner directs. [73 v. 225, § 1.]

Duties of commissioner on complaint of fraudulent use of money, etc.

SEC. 364. When a complaint is made to the state school commissioner, in writing, verified by the affidavits of at least three freeholders and tax-payers, resident of any school district in the state, alleging that they have good reason to and do believe that any portion of the school fund of such district has been expended contrary to law, or has been fraudulently, unlawfully, or corruptly used, or misapplied, by any of the officers of such district, or that there have been fraudulent entries in the books, accounts, vouchers, or settlement sheets thereof, by any such officers, or that any of such officers have not made settlements of their accounts as required by law, he is authorized and required to appoint some trustworthy and competent accountant, for the purpose of investigating such complaint, who shall forthwith visit such school district and take possession of all the books, papers, vouchers and accounts of such district, and investigate

Appointment of accountant to investigate charges.

the truth of the allegations of such complaint, and the condition of the school fund of such district; and the several officers of such school district, on the application of such examiner, shall immediately place in his possession all their books, accounts, contracts, vouchers, and other papers having reference to the receipt and disbursement of the school funds; and the county auditor and county treasurer shall give such examiner free access to all the records, books, papers, vouchers, and accounts of their respective officers having reference to the object of such investigation. [72 v. 82, § 1.]

SEC. 365. Such examiner shall have authority to call before him forthwith, upon written notice, and examine witnesses, under oath, to be administered by him; and he shall immediately after completing such investigation, report in writing, in duplicate, setting forth the condition of the books, vouchers, and accounts of such district, the amount of school funds received for any and all purposes, and from whatever source, the amount expended, and for what, and the amount actually in the treasury, one copy of which report he shall file in the office of the clerk of the court of common pleas of the county in which such district is situate, and the other copy he shall transmit to the state commissioner of common schools at Columbus; and the examiner so appointed and performing the duties herein required, shall receive as compensation a per diem of three dollars for each day necessarily engaged in the performance of his duties, and shall also receive five cents for each mile by him necessarily traveled in that behalf; but no mileage shall be allowed for a greater distance than from Columbus to such district; and such compensation and mileage shall be paid out of the county treasury upon the warrant of the county auditor, and if the investigation establish the truth of any material allegation in such complaint, then such amount so paid shall be assessed by the county auditor upon the taxable property of the district, to be collected as other taxes are for the use of such county treasurer. [72 v. 82, § 2.]

Powers and duties of examiner.

His compensation.

Payment thereof.

SEC. 366. The judge of the court of common pleas of the proper county shall examine the report so filed in the clerk's office, as provided in the preceding section of this chapter, and if it appears therefrom that any part of the common or

Adverse report of examiner to be given in charge to the grand jury.

Ch. 13.

State Commissioner of Common Schools.

school fund has been fraudulently, unlawfully, or corruptly used or misapplied, or that there has been fraud in any of the entries, accounts, vouchers, contracts, or settlements, or that the settlements have not been made as required by law, or that there appears any defalcation or embezzlement on the part of any of the officers of such school district, he shall give the report specially in charge to the grand jury at the term of the court of common pleas next after the filing of the same; and the prosecuting attorney of such county shall forthwith institute and carry forward such proceedings, civil or criminal, or both, against the delinquent officer or officers of such district as is authorized by law. [72 v. 82, § 3.]

Duty of prosecuting attorney.

Miscellaneous.

MISCELLANEOUS.

AN ACT

To confer additional powers upon county commissioners relating to bequests, donations and gifts for the promotion of education.

SECTION 1. [Enacted March 21, 1887.] *Be it enacted by the General Assembly of the State of Ohio*, That the commissioners of the several counties of the state may receive bequests, donations and gifts of real and personal property and money to promote and advance the cause of education in their respective counties; and any and all property and money so at any time received by the commissioners of any county, or which may have been heretofore bequeathed to the commissioners of any county, and which has been bestowed upon them and remains yet undisposed of by such commissioners, may, by the said commissioners, at their discretion, be paid over to any incorporated institution of learning in their respective counties or a part may be used to defray the expenses of the teachers' institute, each year, as the said commissioners may, in their discretion, and with reference to the terms of the trust, deem best, and upon such terms and conditions as they may prescribe, having reference to the safety of the fund and its proper application. [84 v. 211.]

Power of county commissioners to receive bequests, etc., for educational purposes.

Application of such trust funds.

AN ACT

To authorize boards of education in cities of the second grade of the first class to levy a tax for certain purposes therein specified.

SECTION 1. [Enacted March 16, 1887.] *Be it enacted by the General Assembly of the State of Ohio*, That boards of education in cities of the second grade of the first class may annually levy on each dollar valuation of taxable property, $\frac{1}{2}$ of one mill additional to that now allowed; the proceeds of said levy to be applied toward providing manual and domestic training for the children of the schools of said city, and said board may expend such part of said proceeds as it may deem expedient in providing tuition for such children in any manual training school that has been or may be founded in said city; provided, that at each annual election the corporation controlling

Cleveland: Providing for the manual training of school children in public or private schools.

Miscellaneous.

said school shall choose as directors, at least six persons, who shall be named by such board of education, and shall also choose as a director the superintendent of the public schools. [84 v. 92.]

AN ACT

To authorize school boards to convey lands in certain cases.

Columbus:
Power of
school board to
donate certain
land for park
purposes.

SECTION 1. [Enacted March 18, 1887.] *Be it enacted by the General Assembly of the State of Ohio*, That school boards in cities of the first grade of the second class, owning land, which is no longer used for school purposes, adjoining any public park, may convey the same to the city or county owning such park, and in which such land is situated, to be held and used as a part of said park. [84 v. 108.]

AN ACT

To provide for competent and non-partisan public library boards in cities of the second class, second grade.

Dayton public
library board;
election of.

SECTION 1. [Enacted March 21, 1887.] *Be it enacted by the General Assembly of the State of Ohio*, That in any city of the second class, second grade, the city board of education may elect by ballot a special board of six competent persons, residents of said city or school district, to be called the library board, who shall have the control and management of the public library of said city.

Board equally
divided politi-
cally.

SECTION 2. That the six members of said library board shall be selected equally from the two political parties having the largest representation in the city board of education, and shall be elected as follows: Two for a term of one year, two for two years, and two for three years; at the end of the first year, two shall be annually elected, who shall hold office for a term of three years.

Terms of mem-
bers.

Powers of
board.

SECTION 3. That the said library board shall have power to purchase books, magazines, and other proper supplies for said library, and employ a librarian and assistant, who shall be elected annually; and the vouchers for such expenditure and salary account shall be certified to by said board of education for payment.

Annual report.

SECTION 4. That said library board shall be required to report fully their proceedings and expenditures at least once a year, to the board of education of said city, and annually

Miscellaneous.

report to said board of education an estimate of the expenses of said library for the succeeding year, and in no case shall such expense be allowed to exceed the appropriation therefor by said board of education.

SECTION 5. That the president of said city board of education shall be *ex-officio* a member of such library board, and have the right to preside at the meetings.

Ex-officio member and president of board.

SECTION 6. That whenever a library board shall be elected pursuant to the provisions of this act, the board of education of such city shall have the power to levy annually for library purposes a tax not exceeding two and one-half tenths of a mill per dollar of city valuation, to be certified according to law as other levies. [84 v. 171.]

Annual tax.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in village districts, in the county of Hamilton, the board of education shall consist of five members, except in districts organized under a law providing for only three members, who shall have the qualification of an elector therein, and in such districts the membership may be increased to five, and only one member shall be chosen at the next annual election for school officers, to serve for three years; and annually thereafter, two, except every third year, when only one judicious and competent person shall be elected, and if the board consists of three members, one such person shall be elected each year; provided, that in each special district in said county where the board of education now consists of six members, there shall be chosen at the next annual election for school officers, by ballot, on the second Monday of April, one member to serve for three years, and annually thereafter, two members to serve for three years, except every third year, when only one person shall be elected to serve for three years; five days' notice shall be given of such election. The members of such boards now in office, and those hereafter elected, shall serve until their successors are elected and qualified; provided further, that the first election under this act in village districts shall not take place until the first Monday of April, 1884. [80 v. 310.]

Boards of education for village and special school districts, Hamilton county.

[So much of the act of March 25, 1864, as provided for a board of education for the city of Columbus, of one member from each ward, and is still in force, is here given:]

Miscellaneous.

SECTION 1. The qualified voters in the several wards in the city of Columbus shall, on the second Monday of April, 1864, meet in their respective wards, at the places designated for holding elections therein, and elect one member of the board of education of said city of Columbus, for each of said wards, who shall serve, the members of the first, third, fifth, and every ward of said city represented by odd numbers, one year; and the members representing the second, fourth, sixth, and every ward represented by even numbers, two years; and annually thereafter, at the time and place specified, there shall be elected in like manner, one member of the board of education for each ward in said city, in which the term of the member is about to expire, who shall serve for two years, and until his successor is elected and qualified. Said election shall be held and conducted as is provided for county and state elections. [61 v. 154.]

FORMS AND INSTRUCTIONS.

[NOTE.—The following blanks are, in a great measure, the same as given in previous editions of the school law, with such revisions and alterations as conformity with the present law renders necessary.]

CHAPTER I.—FORMS FOR SCHOOL DIRECTORS.

I. NOTICE OF SUB-DISTRICT SCHOOL MEETING, FOR THE ELECTION OF DIRECTORS.

Notice is hereby given to the qualified voters of sub-district No. —, of — township, — county, Ohio, that the next annual school meeting for the election of a school director in said district will be held at the — school-house [or usual place] in said sub-district, on Monday, the — day of April, 18—, beginning at — o'clock p:m. [a:m.], and closing at — o'clock p:m. [a:m:].
— —, Clerk.

NOTE.—[The above notice to be posted in three or more conspicuous places, at least six days prior to the election. Sections 3916 and 3917.

When two directors are to be elected, one for three years, and one to fill the unexpired term of a director who has vacated his office, this fact should be stated in the notice, and also on the ballots and tally-sheet.]

II. POLL-BOOK

Of the election held in sub-district No. —, in the township of —, in the county of —, and State of Ohio, on Monday, the — day of April, in the year A. D. 18—.

A. B., Chairman, and C. D., Clerk, judges of said election, were severally sworn, as the law directs, previous to their entering on the duties of their respective offices.

Number and names of electors.		Number and names of electors.	
No. 1	.....	No. 5	.....
2	.....	6	.....
3	.....	7	.....
4	.....	8	.....

It is hereby certified that the number of electors who voted at this election is —.

— —, *Chairman,*
 — —, *Secretary,*
Judges.

Forms and Instructions.

III. TALLY-SHEET

Of the election held in sub-district No. —, in the township of —, in the county of —, and State of Ohio, on Monday, the — day of April, in the year A. D. 18—, to elect a director for said sub-district.

Names of candidates.	Tallies, showing number of votes given for each candidate.					Total.
.....
.....
.....
.....
.....
.....

We certify

- That ——— had — votes,
- That ——— had — votes,
- That ——— had — votes,
- That ——— had — votes,
- That ——— had — votes,

And that ——— had — votes for director of said sub-district, at the election above mentioned.

————, *Chairman,*
 ———, *Secretary,*
 Judges.

NOTE.—The poll-book and tally-sheet must be signed by the judges of the election before they separate. No signing after such separation is valid. They must be delivered within eight days to the clerk of the township. Chapter IV, section 3917.

IV. NOTICE OF SPECIAL SCHOOL MEETING FOR THE ELECTION OF SCHOOL DIRECTOR.

Whereas, a vacancy has occurred in the office of school director in sub-district number —, — township, — county, Ohio, in consequence of the [death, resignation, removal of —, failure of qualified voters to meet and elect a local director on the second Monday of April, 18—, as prescribed by law, failure of — to qualify as prescribed by law];

Therefore, we, the undersigned qualified voters of the sub-district aforesaid, do hereby give notice that a special meeting of the qualified voters of said sub-district for the election of a school director,* for the [term of — years, unexpired term of

*See note to form No. I.

Forms and Instructions.

said ————], will be held at the school-house [or usual place] of said sub-district on the ——— day of ———, 18—, from ——— o'clock p.m. [a:m.] to ——— o'clock p.m. [a:m.]

—————, ————,
 ————, ————,
 ————, ————.

See section 3919.

V. MINUTES OF SUB-DISTRICT SCHOOL MEETING.

SUB-DISTRICT No. ———,
 ———— TOWNSHIP, ———— COUNTY, OHIO;
 ————, 18—.

At a meeting of the qualified voters of said sub-district, held on the second Monday of April, 18—, [or, if a special meeting, give other date] ———— was appointed chairman, and ———— secretary.

Whereupon, said voters proceeded to elect by ballot, one director of said sub-district, for the term of three years [and one director for ——— year, to fill the unexpired term of ————]; and upon inspection of the several ballots given at said election, it was found and publicly declared, that ———— was duly elected [for the full term, and ———— for the unexpired term.]

—————, Chairman,
 ————, Secretary.

NOTE.—[The clauses in brackets may be omitted when only one school director is elected.] [See note to form No. II.]

VI. CERTIFICATE OF ELECTION OF SCHOOL DIRECTORS.

—————, 18—.

To the Clerk of ———— Township, ———— County, Ohio :

This is to certify that a meeting of the qualified voters of sub-district number ———— township, held on the second Monday of April, 18—, [or, if special meeting, give other date] ———— was elected school director, for the term of three years.

Witness my hand.

—————,
 Clerk of Sub-District No. ———

VII. OATH OF SCHOOL DIRECTOR.

On the ——— day of ———, 18—, personally appeared ————, and I then and there administered to him the following oath [or affirmation]:

You, ————, do solemnly swear [or affirm] that you will support the constitution of the United States, and the constitution of the State of Ohio, and that you will faithfully and impartially discharge the duties of director, in and for said sub-district, number ———, ——— township, ——— county, Ohio, according to law and the best of your ability.

—————,
 Director in said Sub-District.

Forms and Instructions.

VIII. APPOINTMENT OF SCHOOL DIRECTOR.

_____, _____, 18—.

Whereas, _____, one of the directors in sub-district number _____, _____ township, _____ county, Ohio, has resigned, [*died, or refused to serve, etc.*] and no election having been held to fill such vacancy as prescribed by law:

Therefore, I do appoint _____ director in said sub-district, who shall hold his office until the time of the next annual meeting, and until his successor is elected and qualified.

_____,
Clerk of said Township.

IX. MEETING OF SCHOOL DIRECTORS.

_____, _____, 18—.

The school directors of sub-district number _____, _____ township, _____ county, Ohio, this day met at _____, and legally qualified by taking the requisite oath of office.

Whereupon _____ was appointed clerk of said sub-district.

On motion, it was voted to employ _____ as teacher, at \$_____ per month, and that the next term of school commence, etc.

_____,
Sub-district Clerk.

X. CONTRACT BETWEEN DIRECTORS AND TEACHERS.

It is hereby agreed between the school directors of sub-district No. _____, in the township of _____, in the county of _____, State of Ohio, and _____, a legally qualified teacher in said county, that the said _____ is to teach in the public school of said sub-district for a term [*here insert the time*], for the sum of _____ dollars per month [per day], commencing on the _____ day of _____, 18—, and for such services, properly rendered, the said directors are to pay the said _____ [monthly], the amount that may be due, according to this contract.

Done at a legally convened meeting, and dated this _____ day of _____, 18—.

_____,
_____,
_____,
_____,
Directors of said sub-district No. —._____,
Teacher.

See section 4018.

XI. CERTIFICATE FOR TEACHER'S PAY.

To the Clerk of _____ Township, _____ County, Ohio:

This is to certify, that _____, under a contract duly made and entered into, taught a common school in sub-district number _____, of said township, from the

Forms and Instructions.

— day of —, 18—, to the — day of —, 18—, in all — weeks, at — per month; and that there is due him for said service the sum of —.

— —,
— —,
— —,

Directors.

XII. CONTRACT FOR FUEL, REPAIRS, ETC.

This memorandum of an agreement, made this — day of —, eighteen hundred and —, at a meeting legally convened, between —, and —, the directors of sub-district, number —, — township, — county, Ohio, witnesseth: That said — agrees to deliver at the school-house in said sub-district, on or before the — day of — next, — bushels of coal [or cords of wood] of a good quality, at — cents per bushel [or \$— per cord.]

And said directors are thereupon to certify in favor of said —, for the sum due for said fuel.

— —,
— —,
— —,

Directors.

— —,
Contractor.

NOTE.—[All contracts made under section 3987, chap. 8, of the school laws must be reported to the township board at their next meeting.] See also sec. 3974.

XIII. CERTIFICATE OF AMOUNT DUE FOR FUEL, ETC.

—, —, 18—.

To the Board of Education of — Township, — County, Ohio:

This certifies that — has delivered at the school-house in sub-district number —, — township, — bushels of coal, under a contract duly made and entered into, and that there is due him on said contract the sum of \$—.

Witness our hands.

— —,
— —,
— —,

Directors.

XIV. DISMISSAL OF TEACHER.

Whereas, it has been represented to us, and on due investigation we have found, according to our best judgment and belief, that —, who has been employed and is now engaged in teaching a school in sub-district number —, — township, — county, Ohio, is negligent (or here insert any other sufficient cause) as such teacher;

Therefore, — is hereby dismissed as teacher of said school.

Done at a legally convened meeting of said board this — day of —, 18—.

— —,
— —,
— —,

Directors of said sub-district.

Forms and Instructions.

Or: Whereas, we have been required by the board of examiners of _____ county, to dismiss _____, now engaged as a teacher in sub-district number _____, _____ township, and county aforesaid, the said board of examiners having revoked his certificate for cause:

Therefore, said _____ is hereby dismissed as teacher as aforesaid.

Done at a legally convened meeting of said board of directors this _____ day of _____, 18—.

Witness our hands.

_____,
_____,
_____,
Directors.

XV. VISIT TO SCHOOL.

This day the undersigned, local directors in sub-district number _____, _____ township, _____ county, Ohio, in company with _____ and _____, who were invited for the purpose, visited the school in said sub-district, taught by _____, and the following was the result of the examination and visit:

They found, etc. (*Here set forth the opinion as to the management of the school, etc.*)

_____,
_____,
_____,
Directors.

CHAPTER II.—FORMS FOR TOWNSHIP BOARDS OF EDUCATION.

XVI. NOTICE OF MEETING TO VOTE A TAX FOR BUILDING PURPOSES.

Notice is hereby given by the board of education of _____ township, _____ county, Ohio, that there will be a special meeting of the qualified voters of said township at _____, on the _____ day of _____, at _____ o'clock _____, to consider the question whether a tax of _____ hundred dollars shall be levied upon the taxable property of said township to purchase a school-house site and to build and furnish a school-house [*or for either of these purposes, as the case may be.*] in sub-district _____ of said township, the erection of the school-house being, in the opinion of the board, necessary, and the rate of tax which the law authorizes the board to levy being insufficient for the purpose; and the further questions whether the levy shall be made from year to year thereafter, and what amount shall be levied each year until the actual cost of such site and building is raised.

By order of said board of education,

_____, _____, 18—.

_____, Clerk.

NOTE.—The ballot used at such an election may be something like the following:

FOR TAX LEVY FOR SCHOOL SITE AND BUILDING.

For levying tax to purchase site and erect thereon a school building, at a cost not to exceed \$_____. No. [Yes.]

Forms and Instructions.

For levying this tax from year to year according to law, the levy in any one year not to exceed \$—, until the sum of \$— and accrued interest is raised and paid. No. [Yes.]

The above form may by slight alterations be adapted to cases in which other than township districts are interested.

XVII. NOTICE OF SPECIAL MEETING OF TOWNSHIP BOARD.

Notice is hereby given that there will be a meeting of the board of education of — township, — county, Ohio, on the — day of — at — o'clock —, at —, to consider the question —, and other business which may be considered necessary to transact.

—, —, Clerk.

—, —, 18—.

NOTE. The purpose for which a meeting is called should be stated in the notice

XVIII. CERTIFICATES OF ANNUAL ESTIMATES.

To the Auditor of — County:

It is hereby certified by the board of education of — township, — county, that the entire amount of money necessary to be assessed on the taxable property of said township, and expended therein, for school and school-house purposes, during the next school year, as directed by section 3958, of the revised statutes, is — dollars, as follows:

For continuing sub-district schools.....	\$——
For incidental or contingent expenses	———
For building purposes.....	———
For payment of teachers in township school.....	———
	————
Total	\$——

By order of Township Board,

—, —, Clerk.

—, —, 188—.

XIX. CERTIFICATE OF ANNUAL ESTIMATES FOR JOINT-SCHOOL.

To the Auditor of — County:

It is hereby certified by the board of education of — township, — county, Ohio, having charge of the school in joint sub-district number —, composed of parts of — and — townships, that the amount of money necessary to be assessed on the taxable property of said townships, to pay the expenses of said-joint school during the next school year, as directed by section 3961 of the revised statutes of Ohio, is — dollars, as follows:

———— TOWNSHIP.

For continuation of joint school.....	\$——
For payment of all other expenses.....	———
	————
Total.....	\$——

Forms and Instructions.

———— TOWNSHIP.

For continuation of joint school	\$ ———
For payment of all other expenses.....	————
	————
Total.....	\$ ———

The number of youth enumerated in September last, in the respective parts of the townships included in said joint sub-district, was as follows: ——— township, ———; ——— township, ———; total, ———.

By order of the Board of ——— Township.

————, Clerk.

———, ———, 18—.

NOTE.—[In case the townships having territory in a joint sub-district are situated in different counties, a copy of the above certificate of estimates should be sent to the auditor of each county]

XX. DIFFERENT MODES OF ALTERING SUB-DISTRICTS.

Resolved by the board of education of ——— township, That there be transferred and united with sub-district number —, so much of sub-district number —, as is bounded as follows: (*describe boundary*)

Resolved by the board of education of ——— township, That sub-district number — is hereby abolished, and there is hereby transferred to and united with sub-district number —, so much of the territory of said abolished sub-district as is bounded as follows: (*describe boundary*), and so much of said abolished sub-district as is not herein united with sub-district number —, is transferred to and united with sub-district number —. This resolution shall take effect on the — day of —, 18—.

Resolved by the board of education of ——— township, That so much of sub-district number —, as is bounded as follows: (*describe boundary*), be cut off from said sub-district, and that so much of sub-district number — as is bounded as follows: (*describe boundary*), be cut off from said sub-district, and that the territory thus cut off from sub-districts number — and —, respectively, is hereby consolidated and formed into a new sub-district and designated sub-district number — of — township.

Resolved by the board of education of ——— township, That sub districts number — and — are hereby abolished, and that the territory included in said sub-districts at the time of their abolishment is hereby consolidated and formed into a new sub-district, and designated sub-district number — of — township. This resolution shall take effect on the — day of —, 18—.

NOTE.—When a *new* sub-district is formed the township board should call a meeting of the qualified voters to elect local directors. [Chapter 4, section 3922.]

XXI. NOTICE OF ELECTION IN A NEW SUB-DISTRICT.

WHEREAS, The board of education of ——— township, ——— county, did, at their last regular meeting, the third Monday of ———, abolish sub-district number —, (*or sub-districts number — and —*) and form from the territory of said sub-district, and so much of sub-district number — as is bounded as follows: (*describe boundary*), a new sub-district, to be known as sub-district number —:

Therefore, notice is hereby given to the qualified voters of said sub-district, thus

Forms and Instructions.

organized and designated, that a meeting for the election of three school directors will be held at _____, on the _____ day of _____, from _____ o'clock _____ to _____ o'clock _____, said election to be conducted as prescribed in section 3922.

By order of the Township Board,

_____, _____, Clerk.

_____, _____, 18—.

NOTE.—See remark (d) under section 3913.

XXII. ORGANIZATION OF A JOINT SUB-DISTRICT SCHOOL.

RESOLUTION OF BOARD TRANSFERRING TERRITORY.

Resolved by the Board of Education of _____ Township, That so much of sub-district number _____ as is bounded as follows: (describe boundary), is hereby transferred, if the board of education of _____ township concur in such transfer, to the said township for school purposes, to form with so much of said township as is bounded as follows: (describe boundary), a joint sub-district, the school-house therein to be situated in said _____ township.

RESOLUTION OF THE BOARD RECEIVING THE TERRITORY TRANSFERRED.

Resolved, That the board of education of _____ township hereby concurs in the action of the board of education of _____ township transferring so much of said _____ township as is bounded as follows: (describe boundary), to this _____ township for school purposes, to form with so much of the territory of this _____ township as is bounded as follows: (describe boundary), a joint sub-district with school-house in this _____ township.

XXIII. PETITION TO BOARD OF EDUCATION FOR JOINT SUB-DISTRICT.

[To be placed on file by the clerk of the board.]

To the Board of Education of _____ township:

_____, _____ 18—,

GENTLEMEN: We, the undersigned electors, residing in the territory hereinafter described, do hereby most respectfully pray your honorable body to establish a joint sub-district [*special district, additional sub-district*] embracing the territory bounded as follows: (*describe the boundaries and set forth reasons causing this petition.*)

And thus the undersigned shall ever pray, etc.

_____, _____,
_____, _____,
_____, _____.

[Sections 3931, 3932, and 3946.]

XXIV. CLERK'S NOTICE TO MEMBERS OF BOARD.

_____, _____, 18—.

DEAR SIR: You are hereby notified that a petition signed by _____ _____, _____ township [or townships], has been presented and filed, praying for the erec-

Forms and Instructions.

tion of a joint sub-district [*special district, additional sub-district*] to comprise the territory bounded as follows: (*describe the boundaries.*)

The board will meet on _____, the _____ of _____, 18—, at _____ o'clock _____, for the purpose of considering the prayer of the petitioners. The presence of every member is desired.

_____, Clerk.

[Chapter 5, section 3933.]

NOTE.—[A notice, like the above, with a slight change required, must be sent "to the clerks of all other boards of education having jurisdiction over any of the territory sought to be affected; and such clerks, upon the receipt of such notice, shall in like manner give notice forthwith of the filing of such petition, and of the time and place of meeting to each member of their respective boards." [Chapter 5, section 3933.]

XXV. PETITION TO PROBATE JUDGE.

_____, 18—.

Hon. _____, Probate Judge of _____ county, State of Ohio:

Whereas, the boards of education of _____ township, _____ county, Ohio, and of _____ township, in said county and state, having refused, at a meeting held [*state time and place*] to grant our petition [or having failed to meet within the time prescribed by law to consider our petition] praying for the creation of a joint sub-district [*special district, etc.*] said petition having been filed with the clerk of said _____ township board of education, as prescribed by law, on the _____ day of _____, 18—;

Therefore we, the undersigned petitioners and electors, residents in the territory hereinafter described, do hereby most respectfully pray and petition you to appoint three judicious, disinterested men of _____ county, and not residents of the township [or townships or districts] to be affected by this petition, to consider the creation of a joint sub-district embracing the territory bounded as follows: [*describe the boundaries.*]

And thus we shall ever pray, etc.

_____,
_____,
_____.

[Sections 3934 and 3938.]

NOTE.—The above form may be readily adapted to cases as they may arise.

XXVI. REMONSTRANCE AGAINST JOINT SUB-DISTRICT.

Hon. _____, Probate Judge of _____ county, Ohio:

Whereas, the boards of education of _____ township, _____ county, Ohio, and of _____ township of said county and state, at a joint meeting held on _____ day of _____, 18—, did establish a joint sub-district composed of territory lying within the limits of said townships and bounded as follows: [*describe boundary.*]

Therefore we, the undersigned petitioners and electors, residents of the territory thus described, do hereby remonstrate against the action of such boards, and do most respectfully pray and petition you to appoint three disinterested judicious men of

Forms and Instructions.

_____ county, not residents of the township to be affected by this petition, to consider whether the action of said boards should not be set aside, for the following reasons, to-wit: [*give reasons.*]

_____,
_____,
_____.

NOTE.—In case the townships lie in different counties or a village or special district is affected, the above form may be changed to suit the circumstances.

XXVII. APPOINTMENT OF COMMISSIONERS BY PROBATE JUDGE.

_____, _____, 18—.

Mr. _____.

DEAR SIR: By virtue of authority conferred by law [section 3938 of the revised statutes of Ohio], and in response to a petition on file in this office, praying the creation of a joint sub-district [*special district, etc.*]

I hereby appoint you a commissioner to consider the prayer of the petitioners—a copy of which petition will be laid before you—and you are hereby notified and directed to meet the other two commissioners, appointed for a similar purpose on _____ the _____ day of _____, 18—, at _____ o'clock at the school-house in sub-district No. _____, _____ township, _____ county, [if not a school-house then designate the place], to consider the expediency of creating a joint sub-district [*special district, etc.*], and report to this office the result of your deliberations.

_____, _____, *Probate Judge.*

XXVIII. REPORT OF COMMISSIONERS.

_____, _____, 18—.

Hon. _____, *Probate Judge of _____ county, Ohio.*

DEAR SIR: We, the undersigned commissioners, acting under your appointment and instructions, dated the _____ day of _____, 18—, respectfully report that we met agreeable to notice, and after due deliberation and consideration of facts, have granted [*or refused, as the case may be,*] the prayer of the petitioners, and have [not] established a joint sub-district, a plat and boundaries of which are hereby submitted, and have designated a site for a school-house [if there is no school-house within the boundaries given].

_____,
_____,
_____,
Commissioners.

[See section 3941.]

NOTE.—[Forms XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, may easily be varied to apply to the "creation of an additional sub-district, or for changing the lines of sub-districts, or for the creation of special school districts, or for changing the lines of special or village districts, and adjoining sub-districts."] [See section 3946.]

Forms and Instructions.

XXIX. ASSIGNMENT OF SCHOLARS TO CENTRAL HIGH SCHOOL.

The board of education of _____ township, _____ county, Ohio, met this day and assigned the following scholars to the High School:

From sub-district No. _____:

A. B.

C. D.

Etc.

From sub-district No. _____:

E. F.

G. H.

Etc.

(The assignment from each sub-district being specified in like manner.)

By order of the Township Board,

_____, Clerk.

XXX. APPOINTMENT OF LIBRARIAN.

_____, 18—.

The board of education of _____ township, _____ county, has this day appointed _____ to act as librarian, and to take charge of the school apparatus of said township, for term of _____ year.

By order of the Board,

_____, Clerk.

XXXI. BOND OF LIBRARIAN.*

Know all men by these presents, that we, _____ and _____, are held and bound unto the State of Ohio in the sum of _____ hundred dollars, for the payment of which we jointly and severally bind ourselves. Signed and sealed by us this _____ day of _____, eighteen hundred and _____.

The condition of this obligation is such, that whereas, the board of education of _____ township, _____ county, on the _____ day of _____, eighteen hundred and _____, appointed and authorized said _____ to act as librarian and to take charge of the school apparatus of said township district.

Now, if said _____ shall faithfully, honestly, and impartially, and in accordance with such rules and regulations as may, from time to time, be prescribed by said board, discharge his duty under and by virtue of said appointment, for the term of _____ year, and until his successor shall be duly appointed, then this obligation shall be void.

_____, [SEAL.]

_____, [SEAL.]

Attested:

_____.

*This form is authorized but not required by law.

Forms and Instructions.

XXXII. ORDER ON TOWNSHIP TREASURER FOR TEACHER'S PAY.

_____ , 18—.

No. —.

To the Treasurer of _____ Township, _____ County, Ohio :

Pay _____ dollars for services as teacher in sub-district _____, of said township, from _____, 18—, to _____ 18—, in all _____ weeks, at _____ per _____.

Township Clerk.

\$—.

Received on the above order, _____, _____, 18—, of _____ Township Treasurer, the sum of _____ dollars.

Teacher.

NOTE.—The above order should be countersigned by the president of the board in case of a teacher of a township high school.

XXXIII. ORDER ON TREASURER OTHER THAN FOR TEACHER'S PAY.

_____ , 18—.

No. —.

To the Treasurer of _____ Township, _____ County, Ohio.

Pay _____, or order, _____ dollars, for (specify for what purpose the money is paid) from the contingent school fund (or from the school building fund.)

By order of the Township Board,

Clerk._____
President.

\$—.

Received on the above order, _____, _____, 18—, of _____ Township Treasurer, the sum of _____ dollars.

See section 4047.

XXXIV. LEASE TO SCHOOL DISTRICT.

Know all men by these presents :

That _____, of the county of _____, and State of _____, for the consideration herein mentioned, does hereby lease unto the board of education of the township of _____, county and state aforesaid, its successors and assigns, the following premises, to wit: [*Here insert description*], with all the privileges and appurtenances thereunto belonging; to have and to hold the same for and during the term of _____ years from the _____ day of _____, 18—. And the said board of education for itself and assigns, does covenant and agree to pay the said _____ for the said premises, the annual rent of _____ dollars [*Insert date of payment*].

Forms and Instructions.

In witness whereof, the said parties hereunto set their hands and seals, this — of —, 18—.

— —, [SEAL.]
Lessor.

— —, [SEAL.]
Chairman of the Board.

— —, [SEAL.]
Clerk.

Signed, sealed, and acknowledged in the presence of—

— —, — —,
— —, — —.

State of Ohio, — County, ss. :

Before me, a — in and for said county, personally appeared — —, grantor in the above instrument, and acknowledged the same to be — voluntary act and deed, for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto subscribed my name and affixed my — seal, this — day of —, A. D. 18—.

NOTE.—If the lease be for three years or more, it must be acknowledged, attested by two witnesses, and recorded. If for a less term, it need not be executed with these formalities. See section 4112. The consideration may be money or anything else, and the form varied accordingly. The above form is for a long lease.

XXXV. TOWNSHIP TREASURER'S BOND.

Know all men by these presents : That we, — —, — —, — —, — —, are held and firmly bound unto the State of Ohio, in the sum of — — — — dollars, for the payment whereof we jointly and severally bind ourselves.

Signed and sealed by us this — — — — day of — — — —, A. D. eighteen hundred and — — — —.

Whereas, the said — — — — has been duly elected and qualified as treasurer of — — — — township, — — — — county, and State of Ohio, for the term of — year— from the — — day of April, A. D. 18—, and until his successor is elected and qualified, and is therefore ex-officio treasurer of the board of education of the township district of said township.

Now, the condition of the above obligation is such, that if the said — — — — shall faithfully disburse, according to law, all school funds which come into his hands, then this obligation shall be void ; otherwise it shall be and remain in full force.

— — — —, [SEAL.]
— — — —, [SEAL.]
— — — —, [SEAL.]

The above bond approved by said board this — day of — —, A. D. 18—.

— — — —,
President of said board.

— — — —,
Clerk of said board.

Forms and Instructions.

The State of Ohio, ——— county, ——— township, ss. :

Before me, ———, clerk of said township, personally came ———, who, being duly sworn according to law, says that he will support the constitution of the United States, and the constitution of the State of Ohio; and that he will faithfully discharge his duties as treasurer of the board of education of the township district of ——— township, ——— county, Ohio, during his continuance in said office, and until his successor is chosen and qualified.

Sworn to before me and signed in my presence, on ——— day of ———, A. D. 18—.

—————,
Township Clerk.

XXXVI. CERTIFICATE OF TREASURER'S BOND.

To the Auditor of ——— county :

—————, 18—.

It is hereby certified that ——— has executed and filed with me a bond for the faithful disbursement, as treasurer of ——— township, ——— county, of all school funds that may come into his hands as such treasurer; which bond, dated April —, 18—, is in the penalty of ——— dollars, and has been approved by the board of education of said township.

—————,
Clerk of said township.

NOTE.—[The above can be altered so as to apply to the bond of the treasurer of a separate school district.]

XXXVII. TREASURER'S BOND.

We hereby acknowledge ourselves firmly held unto the State of Ohio in the sum of ——— dollars, for the payment whereof we jointly and severally bind ourselves, our heirs, executors and administrators.

Signed and sealed by us, this ——— day of ———, A. D. 18—.

The condition of the above obligation is this, that the said ——— has been duly chosen and qualified as treasurer of the board of education of the *—— District of ———, in ——— township, ——— county, and State of Ohio, for the term of one year from the ——— day of April, A. D. 18—, and until his successor is chosen and qualified; now if the said ——— shall faithfully disburse, according to law, all school funds which come into his hands, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

—————, [SEAL.]

—————, [SEAL.]

—————, [SEAL.]

The above bond approved by said board this ——— day of ———, A. D. 18—.

—————,
President of said board

—————,
Clerk of said board.

Forms and Instructions.

The State of Ohio, _____ county, _____ township, ss.:

Before me, †_____, personally came _____, and was duly sworn, according to law, to support the constitution of the United States, and the constitution of the State of Ohio; and perform faithfully his duties as treasurer of the board of education of the *_____ district of _____, in _____ township, _____ county, Ohio, during his continuance in said office, and until his successor is chosen and qualified.

Sworn to before me and signed in my presence, on this _____ day of _____, 18—, by the said _____.

_____ of said board.

XXXVIII. CLERK'S BOND.

Know all men by these presents: That we, _____, _____, are held and firmly bound unto the State of Ohio, in the sum of _____ dollars, for the payment whereof we jointly and severally bind ourselves.

Signed and sealed by us this _____ day of _____, A. D. eighteen hundred and _____.

Whereas, the said _____ has been duly chosen and qualified as clerk of the board of education of *_____ district of _____, in _____ township, _____ county, and State of Ohio, for the term of one year from the _____ day of April, A. D. 18—, and until his successor is chosen and qualified.

Now, the condition of the above obligation is such, that if the said _____ shall faithfully perform all the official duties required of him as clerk of said board, then this obligation will be void; otherwise it shall be and remain in full force.

_____, [SEAL.]
_____, [SEAL.]
_____, [SEAL.]

The sureties on the above bond, and its amount, approved by said board this _____ day of _____, A. D. 18—.

_____,
President of said board.

_____,
Clerk of said board.

The State of Ohio, _____ county, _____ township, ss.:

Before me, †_____, personally came _____, who, being duly sworn according to law, says that he will support the constitution of the United States and the constitution of the State of Ohio; and that he will faithfully discharge his duties as clerk of the board of education of the *_____ district of _____, in _____ township, _____ county, Ohio, during his term of office, and until his successor is chosen and qualified.

_____,
_____ of said board.

†The oath may be administered by the clerk of the board, or any of its members. See section 3979. Here write (using correct name) "A. B. clerk (or a member) of the board below named."]

*[Here write "village" or "special," as may be.

Forms and Instructions.

XXXIX. TOWNSHIP CLERK'S BOND.

Know all men by these presents: That we, _____, _____, are held and firmly bound unto the State of Ohio, in the sum of _____ dollars, for the payment whereof we jointly and severally bind ourselves.

Signed and sealed by us this _____ day of _____, A. D. eighteen hundred and _____.

The condition of the above obligation is such that, whereas, the said _____ has been duly elected and qualified as clerk of _____ township, _____ county, and State of Ohio, for the term of one _____ from the _____ day of April, A. D. 18—, and until his successor is chosen and qualified, and is, therefore, ex-officio clerk of the board of education of the township district of said township.

Now, if the said _____ shall perform faithfully all the official duties required of him as clerk of said board, then this obligation will be void; otherwise it will remain in full force.

_____, [SEAL.]
 _____, [SEAL.]
 _____, [SEAL.]

The sureties on the above bond, and its amount, approved by said board this _____ day of _____, A. D. 18—.

_____,
President of said board.

_____,
Clerk of said board.

The State of Ohio, _____ county, _____ township, ss.:

Before me, _____, clerk of said township, personally came _____, who, being duly sworn according to law, says that he will support the constitution of the United States and the constitution of the State of Ohio; and that he will faithfully discharge his duties as clerk of the board of education of the township district of _____ township, _____ county, Ohio, during his term of office, and until his successor is chosen and qualified.

Sworn to before me and signed in my presence, on this _____ day of _____, A. D. 18—.

_____,
Township clerk.

XL. REPORT AND CERTIFICATE OF SCHOOL FUNDS IN TREASURY.

We hereby certify that, by a count, as required by law, of all the money, bonds, and securities in the hands of _____, treasurer of _____ township [or _____ district], _____ county, Ohio, made this _____ day of _____, 18—, in the presence of the clerk of the board, we find _____ dollars [and bonds, etc., in value amounting to _____ dollars] school funds to be in the treasury on the

[†The oath may be administered by the outgoing clerk of the board, or by any of its members. Here write (using correct name) "A. B., clerk (or, a member) of the board below named."]

Forms and Instructions.

date above named, and we have directed the clerk to enter upon the records of the board a copy of this report.

(Signed,) _____,

_____,
_____,
_____.

Board (or committee.)

Attest,

_____, *President.*
_____, *Clerk.*

[See section 4043, Revised Statutes.]

XLI. FINAL RECEIPT OF TOWNSHIP TREASURER.

Received, _____, 18—, of _____, late treasurer of _____ township, _____ county, the following moneys and school property, to wit.: _____ dollars, being part and parcel of the _____ fund, also, etc.

_____,
Treasurer.

XLII. FINAL RECEIPT OF TOWNSHIP CLERK.

Received, _____, 18—, of _____, late clerk of _____ township, the school-money account-book, the record book of the township board, the copy of the school laws, the certificate and reports of teachers required by law to be filed in his office, and the other official books and papers relating to schools, in his hands.

_____,
Clerk of said board.

[See section 4054.]

NOTE.—[The incoming clerk should be specially careful to receive all the books and documents specified in the above receipt. This form can readily be altered to answer for any other district.]

Forms and Instructions.

XLIII. TEACHER'S DAILY REGISTER.

Daily Register of Sub-District No. _____ Township, _____ County, Ohio, for the Term commencing _____, 18____, 18____, { _____ Term of School Year }

No.	Name of pupils.	March.							April.							Total days absent.	Total days present.														
		14	15	16	17	18	19	20	21	22	23	24	25	26	27			28	29	30	31	1	2	3	4	5	6	7	8	9	
1	Charles Ames	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	4	17	3
2	Willis Ames	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	4	17	3
3	John Brown	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	4	17	3
4	Floyd Smith	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	5	16 1/2	1
5	Frank Spencer	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	5	16 1/2	1
6	Mary Ames	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	5	20	0
7	Jane Abbott	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	5	15 1/2	2 1/2
8	Carrie Dodge	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	5	13 1/2	6 1/2
9	Anna Smith	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	4	14	6
10	Stallie Turner	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	5	14	1
11	Sarah Bell	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	4	10 1/2	1 1/2
Average age...		113																													
Total { Days present		46																													
Days absent		4																													

NOTE.—The above presents a very simple and convenient mode of keeping a daily record of the attendance of pupils. An oblique line made from right to left (/) indicates that a pupil was present in the forenoon; an oblique line made from left to right (\) that he was present in the afternoon; and two oblique lines crossing each other (X) that he was present both forenoon and afternoon. "W" indicates that a pupil is withdrawn. A pupil is not counted absent before he enters school, nor after he has withdrawn. A record of the punctuality of each pupil may also be kept by placing a small figure denoting the number of minutes of tardiness just above the mark of attendance; or tardiness in the forenoon may be denoted by a dot thus, (. X) and tardiness in the afternoon by a dot thus, (X .). Age of pupils should be taken upon entering and should be that of the nearest birthday. The above form is filled and footed to illustrate the method.

Forms and Instructions.

DIRECTIONS TO TEACHERS.

1. *Names of pupils.*—Arrange the names of pupils in alphabetical order, with at least one blank line between the names of the two sexes.
2. *Days present.*—Write in this column the number of days each pupil was in attendance during the term.
3. *Days absent.*—Report only the number of days the pupil was absent while a member of the school. Do not count the days before he entered, nor after he was withdrawn.
4. *Pupils enrolled previous term.*—If the report is made for the second or final term of the school year, place a check-mark (x) in this column opposite the names of all pupils enrolled the previous term. If the report is made for the first term of the school year, *this column is not to be filled*, since the "previous term" in that case would not be in the current year.
5. *Branches of study.*—To denote that a pupil pursued a given branch of study, place a figure one (1) in the proper column, opposite the pupil's name. If he pursued the same study the previous term of the current year, place a figure (2) in the proper column. Under the head of "alphabet" mark those pupils that received their *first lesson in reading*, whatever the mode of teaching. By "oral lessons" is meant all *regular oral instruction*, whatever the subjects thus taught; book lessons are not included.
6. *Rule for finding the average daily attendance.*—Add together the number of days the different pupils were in attendance, and divide the sum by the number of days the school was in session. The average daily absence is found in a similar manner.
7. *Rule for finding the average age of pupils.*—Divide the sum of the ages of all the pupils by the number of pupils.
8. Under the columns headed reading, spelling, etc., use letters and figures to indicate the progress of the pupil and his standing as a scholar, thus: Under the word "Class," in the reading and spelling columns, let *e* denote that the pupil is in the mere elements, 1 in the First Reader, 2 in the Second Reader, etc. Under Writing, ditto. Under Geography and all other branches, *e* means in the elements. Figures underscored indicate the page reached in his Primary Geography, Arithmetic, etc. Figures not underscored indicate the page reached in the Intermediate Geography, Practical Arithmetic, etc. Under the words "recitation" and "examination," put figures to denote scholarship, on a scale of 10. For example: John Smith, reading, | 5 | 8 | 9 | , arithmetic, | 95 | 9 | 10 | , indicates that John Smith is in the Fifth Reader, that his term recitation show his scholarship to be 8 on a scale of 10, and that his examination shows still better scholarship; also that he reached the 95th page of his arithmetic, and that his scholarship is 9 on daily recitations, and 10 in examination.

Forms and Instructions.

XLVIII. BRANCHES OF STUDY, NUMBER OF PUPILS IN EACH, AND NAME OF TEXT-BOOK.

Branch of study.	No. of pupils.	Names of text-books.	Branch of study.	No. of pupils.	Names of text-books.
Alphabet.....	1	.....	Oral lessons.....	4	.....
Reading.....	11	.....	Composition.....	6	.....
Spelling.....	11	.....	Drawing.....	7	.....
Writing.....	9	.....	Vocal music.....	10	.....
Mental arithmetic.....	6	.....	U. S. History.....		.....
Written arithmetic.....	6	.....	Algebra.....		.....
Geography.....	6	.....	.....		.....
English grammar.....	4	.....	.....		.....

The above report is correct.

Teacher of Sub-District No. ———.

Forms and Instructions.

TEACHER'S REPORT TO THE TOWNSHIP CLERK—*Concluded.*

DIRECTIONS TO TEACHERS.

1. *Names of Pupils.*—Arrange the names of pupils in alphabetical order, with at least one blank line between the names of the two sexes.
2. *Days Present.*—Write in this column the number of days each pupil was in attendance during the term.
3. *Days Absent.*—Report only the number of days the pupil was absent while a member of the school. Do not count the days before he entered nor after he was withdrawn.
4. *Ages.*—Give the age of each pupil to the nearest birthday; *i. e.*, if the pupil's birthday last preceding his enrollment be more than six months past, give the age at what it will be on the pupil's birthday next succeeding; but if less, give his age at his last birthday.
5. *Re-enrollments of First Class.*—The name of each pupil that has been re-enrolled in consequence of having attended a previous term of the school year, in the same school, or in any sub-district school in the same township, should be marked in the proper column with an asterisk (*).
6. *Re-enrollments of Second Class.*—The name of each pupil that has been re-enrolled in consequence of having attended previously in the school year a school in some other school district in the State, should be marked in the proper column with two asterisks (* *).
7. *Branches of Study and School Year.*—A figure one (1) should be placed in the proper column, opposite the name of each pupil that pursued that study regularly. In case a pupil has studied a given branch some previous term of the same school year—the school year begins September 1st, and ends on the 31st day of the following August—instead of a figure (1) use a cross (X). Teachers and Township Clerks should use great care in giving this item.
8. *Alphabet.*—Under this head are included primary lessons in reading.
9. *Oral Lessons.*—Include *all* pupils that received *regular oral instruction*, whatever the subjects thus taught; book lessons are not included.
10. To find the average monthly enrollment of boys, find the number of boys enrolled each month; add these numbers together, and divide their sum by the number of months in the term. Give the quotient to the nearest integer. The average monthly enrollment of girls may be obtained in the same manner. A pupil who is absent the whole of any school month is not to be counted in the enrollment of that month.
11. To find the average daily attendance of the boys, divide the sum of all the days attended by the boys, by the number of days taught. Give the quotient to the nearest integer. The average attendance of the girls can be found in the same way.

Forms and Instructions.

12. To find the average per cent. of attendance, multiply the average daily attendance by 100, and divide by the average monthly enrollment. Give the quotient to the nearest integer.

13. *Remarks.*—Opposite each name enter a “remark,” stating from what school the pupil was received, if registered in another school in the same township or district, at any time *during the school year*; or what school he entered, if transferred or withdrawn *during the year*. The object of these remarks is to show in what school the pupil was *last registered*.

14. *School-houses and Apparatus.*—An estimate of their value can easily be obtained of the directors of the sub-district. Report to the township clerk, on a separate piece of paper, the condition of the school-house, school furniture, and school apparatus (outline maps, etc.)

Forms and Instructions.

XLIX. TOWNSHIP TREASURER'S GENERAL ACCOUNT WITH TOWNSHIP.
 Treasurer of _____ Township, _____ County, Ohio, in account with said township for school funds.

Receipts.		Tuition fund.	School house and contn- gent.	Expenditures.		Tuition fund.	School-house and contn- gent.
1888, Sept. 1	Balance in Treasury.....	\$560 60	\$115 40	1888 Nov. 9	Repairing school-house in sub-district No. 2, voucher No. 1.....	.....	\$18 50
Oct. 20	Sale of school-house in sub-district No. 3.....	.....	90 00	12	Fuel for sub-dst. No. 4, voucher No. 2.....	.....	9 60
	Tuition of 3 pupils in sub-district No. 1.....	12 00	.....	12	" " 2, " 3.....	.....	12 50
				20	" " 1, " 4.....	.....	13 00
				1889 Jan. 15	Four sets of maps for sub-dist's, vouch. No. 5	.....	60 00
				March 1	Balance in treasury on settlement with auditor, voucher No. 6.....	\$562 60	91 80
						\$562 60	\$205 40
1889, March 1	Balance in Treasury on settlement.....	\$562 60	\$ 05 40	March 5	Teacher in sub-dist. No. 3, 3 mos., voucher No. 8	\$99 00	.....
March 2	School funds received from Co. Treasurer—		91 80	8	" " 1, 4 " " 7	120 00	.....
	State tax.....	350 00	.....	15	" " 2, 4 " " 9	128 00	.....
	Interest on school lands.....	90 75	.....	April 20	Painting school-house in sub-district No. 1, voucher No. 11.....	122 50	.....
April 15	Tuition of 2 pupils in sub-district No. 1.....	8 00	490 70	May 1	Four school registers for sub-districts	.....	\$50 00
Aug. 20	School funds from County Treasurer—		.....		voucher No. 12.....	.....	6 00
	State tax.....	248 80	.....		J. Co n for building school house in sub-	.....	.....
	Interest on school lands.....	45 60	.....	Aug. 24	di t. No. 3 (partly in m t), voucher No. 13	98 00	400 00
	Township tax.....	50 35	250 50	24	Teacher in sub-dist. No. 1, 3 mos., voucher No. 14	100 00	.....
	Fines and licenses.....	10 00	.....	27	" " 2, 3 1/2 " " 15	120 00	.....
				30	" " 4, 4 " " 16	.....	.....
				30	John Coon, balance due on school-house in sub-dist. No. 3, voucher No. 18.....	132 00	.....
				31	Balance in treasury.....	537 00	200 00
						.....	207 00
						.....	\$863 00

NOTE.—This is also the form to be used by township clerks in keeping an account of all school money received and disbursed in their respective townships. The heading may be changed when used by township clerks; and in making entries under the head of expenditures the number of each order drawn by them should be given. See also section 4055, Revised Statutes.

Forms and Instructions.

L. TOWNSHIP TREASURER'S ACCOUNT WITH THE SEVERAL SUB-DISTRICTS.

Treasurer of _____ township, _____ county, Ohio, in account with Sub-district No. 1.

Date.	Apportionment.	Tuition fund.	School-house and contingent.	Date.	Expenditures.	Tuition fund.	School-house and contingent.
1888.							
Sept. 1	Balance in treasury	\$10 20	\$30 10	1881.			
Oct. 20	Tuition of three non-resident pupils.....	12 00	.....	Nov. 20	Ninety bushels of coal .....	.....	\$13 00
1889.				1882.			
March 2	State tax and school lands	94 75	.....	Jan. 16	One set of outline maps.....	.....	15 00
March 2	Township tax	9 00	37 50	March 8	Teacher for four months' service.....	\$120 00	.....
April 15	Tuition of two non-resident pupils.....	8 00	.....	April 21	Painting school-house .....	.....	50 60
Aug. 20	State tax and school lands	58 96	.....	May 1	One school register .....	.....	1 50
Aug. 20	Township tax.....	10 07	26 50	Aug. 24	Teacher for three months' service	98 00	.....
		\$822 98	\$94 10	Aug. 31	Balance in treasury.....	104 98	14 60
						\$322 93	\$94 10

NOTE.—This is also the form to be used by township clerks in keeping an account with the several sub-districts. The heading may be changed, and the number of each order drawn by him, entered.
 It would be advisable, probably, to omit this column. To do so would simplify the keeping of the treasurer's and clerk's accounts, and such an apportionment to each sub-district is not called for by law (section 3969). After the apportionment is made for continuing the school in session for six months, the remainder of the contingent fund may be permitted to stand undivided as a general contingent fund for the township, out of which the cost of fuel, repairs, etc., may be paid. For extent of power of local boards to repair, furnish fuel, etc., see section 3987.

Forms and Instructions.

DIRECTIONS TO CLERKS AND TEACHERS.

1. The account of the "School-house and contingent fund" should be kept in the properly designated columns; and the account of the "Tuition fund" in the columns marked "Tuition Fund."

2. For each order drawn or paid, make two entries—one in the general township account of school funds, and the other in the account of the proper sub-district.

3. All school money *received* from adjacent townships for the support of a joint sub-district school should be entered in the general account under the head of *Receipts*, and in the proper joint sub-district account under the head of *Apportionment*. All moneys *paid* to adjacent townships for the support of a joint sub-district should be entered in the general account under the head of *Expenditures*.

4. All money paid by non-resident pupils for tuition in any school of the township, must be paid to the Treasurer and entered in the general account under the head of *Receipts*, and also in the account of the proper sub district under the head of *Apportionment*.

5. The Treasurer's general account should be balanced at the time of the annual settlement with the Auditor in September, the close of the school year. The Treasurer's sub-district account and both the general and sub-district accounts of the clerk should be balanced at the close of the school year, and also at the time the money, bonds, or other securities, in the Treasurer's hands are counted, as provided in section 4043.

At the expiration of their terms of official service, the Township Clerk and Treasurer are required by law to deliver to their successors in office this book and all other official books and papers relating to schools, in their hands.

LI. REPORT OF THE TREASURER OF _____ TOWNSHIP, _____ COUNTY, OHIO.

To the County Auditor, for the year ending August 31, 18—:

(To be made to the auditor on or before the 4th day of September.)

RECEIPTS.

Amount of school moneys received during the year from the following sources, viz:

Balance on hand September 1, 18—.....	\$ _____
State Tax.....	_____
Irreducible school funds....	_____
Interest on rents on school-land, section 16	_____
Local tax for school and school-house purposes.....	_____
Amount received on sale of bonds.....	_____
Fines, licenses, tuition of non-resident pupils, and other miscellaneous sources.....	_____
Total receipts.....	_____

Forms and Instructions.

EXPENDITURES.

Whole amount paid teachers in common schools:	{ Primary..... \$_____ }	} Total..... \$_____
	{ High..... \$_____ }	
Amount paid for supervision, exclusive of teaching services.....	_____	
For sites and buildings.....	_____	
Amount paid for interest on, or redemption of bonds.....	_____	
For fuel and other contingent expenses..	_____	
Total expenditures	_____	\$ \$
Balance on hand September 1, 18—.....	_____	\$ \$
Amount of outstanding orders unpaid September 1, 18—.....	_____	\$ \$

I certify the foregoing to be in all respects, correct,

....., *Treasurer.*

....., *Ohio,*, 18—.

The above report should cover only the moneys ACTUALLY received and disbursed by the treasurer within the school year ending August 31. In case the school funds arising from the second semi-annual distribution of taxes are not received on or before August 31, such funds must be reported by the Treasurer among the receipts of the following year. In case there were outstanding orders unpaid on the first of September, the amount of such orders should be added to the report, in order that it may show the entire expenses of the schools within the year, and thus correspond to the returns of the Board of Education. All claims upon the school fund for expenses incurred within the year should be settled and paid, if possible, previous to August 31.

By "Irreducible School Funds" is meant all funds from the State, as interest on the Virginia Military, United States Military, or Western Reserve School Funds, and the rent of, or interest on the proceeds of the sale of "Section Sixteen."

All money paid by non-resident pupils for tuition in any school in the township, must be paid into the township treasury, to be disbursed on the clerk's order, and reported under the head of receipts.

The County Auditor transfers all funds belonging to joint sub-districts directly to the township in which the school is located.

CHAPTER V.—FORMS FOR SCHOOL EXAMINERS, AUDITORS, ETC.

LII. APPOINTMENT OF SCHOOL EXAMINERS.

OFFICE OF JUDGE OF PROBATE,

_____, *County, O.,* _____, 18—.

Being satisfied that _____ is a competent and suitable person to act as a member of the board of school examiners for this county, I do hereby appoint him to said office for the term of three years from date, and until his successor shall be appointed.

Forms and Instructions.

LIII. REVOCATION OF SCHOOL EXAMINER'S APPOINTMENT.

OFFICE OF JUDGE OF PROBATE,

— County, O., —, 18—.

Whereas, on the — day of —, 18—, — was appointed to the office of school examiner of — county, for the term of three years; and, whereas, evidence has been filed with me, and I have become satisfied that said — is an unfit person to be retained as a member of the board of school examiners of said county, in consequence of (*here state the cause of action.*)

Therefore, the said appointment of said —, as school examiner of said county, is hereby revoked.

—, Judge of Probate.

LIV. TEACHER'S CERTIFICATE.

[For county.]

No. —

Class —.

The undersigned, school examiners of — county, Ohio, having examined —, do hereby certify, that — possesses adequate knowledge of the theory and practice of teaching, and is qualified to teach orthography, reading, writing, arithmetic, geography, English grammar, United States history, physiology and hygiene, and on the the nature of alcoholic drinks and narcotics and their effects on the human system; and that — has furnished satisfactory evidence of good moral character.

This certificate to be valid for the term of — months from date.

Given at —, and dated this — day of —, A. D., 18—.

RESULT OF EXAMINATION.

Orthography
 Reading
 Writing.....
 Arithmetic
 Geography
 English grammar.....
 Theory and practice.....
 United States history
 Physiology and hygiene
 Nature of alcoholic drinks and their effects on the human system.

 _____,
 _____,
 _____,

School Examiners.

LV. REVOCATION OF TEACHER'S CERTIFICATE.

To the local directors of sub-district No. —, — township, — county, Ohio :

Whereas, the board of examiners of said county, on the — day of —, 18—, granted a certificate to —, authorizing him to teach orthography, etc., for the term of — years, and he is now engaged as a teacher in said sub-district.

And, whereas, it has been represented, and said board has become satisfied, that — is an unfit person to be retained as such teacher, in consequence of (*here state the offense.*)

Forms and Instructions.

Therefore, said certificate is hereby revoked [*or was*] revoked at a meeting of said board — day of —, 18—.

By order of the Board.

—, Clerk.

—, 18—.

NOTE.—[A teacher's certificate may also be revoked when he is not engaged as a teacher. When this is the case, the first line of the above form should be omitted, and the last paragraph changed to read as follows: "Therefore, his said certificate is hereby revoked."]

Forms and Instructions.

TEACHERS' INSTITUTES.

Constitution of ——— County Teachers' Association-

PREAMBLE.

As a means of improvement in the profession of teaching, and of promoting the interests of the schools in our county, we the undersigned, associate ourselves together under the following

CONSTITUTION.

ARTICLE I. This association shall be called the ——— County Teachers' Association.

ART. II. The officers of this association shall be a president, a secretary, and an executive committee of three members, who shall also perform the duties of a financial committee.

ART. III. It shall be the duty of the president to preside at all meetings of the association. In case of vacancy, or in his absence, a president *pro tem.* may be elected, or the chairman of the executive committee may perform his duties.

ART. IV. It shall be the duty of the secretary to perform the usual duties devolving upon such officer.

ART. V. The executive committee shall carry into effect all orders and resolutions of the association, and shall devise and put into operation such other measures, not inconsistent with the object of this association, as it shall deem best. It shall arrange business for all regular meetings of the association, and shall appoint, under the direction of the association, at least one such meeting each year. It shall make all necessary arrangements for holding and conducting at least one teachers' institute in the county each year. In case the amount of money under the control of the association, including the institute fund in the hands of the county treasurer, be insufficient to defray the necessary expenses of an institute, said committee shall fix and give due notice of an institute tuition fee to be paid by those attending such institute. All moneys belonging to this association are to be paid out only on orders drawn by the executive committee.

ART. VI. The executive committee shall hold its meetings as soon after election as possible. Two members shall constitute a quorum for business, and afterwards may meet on their own adjournment or appointment.

ART. VII. Any teacher, or active friend of education, may become a member of this association, by subscribing to this constitution and contributing annually to the funds of the association.

ART. VIII. The officers of this association shall be chosen by ballot, or in such other manner as the association may direct, at the annual meeting, and shall hold their offices for one year, or until their successors are elected.

ART. IX. This constitution may be altered or amended by a majority of the members present at any regular meeting, provided notice of such intended alteration or amendment shall have been given at the preceding meeting.

Forms and Instructions.

Forms to be used under the provisions of the Education Law to compel children under fourteen years of age to attend school a certain length of time each year. [O. L. 86 v. 333.]

NOTIFICATION TO PARENT OR GUARDIAN OF NON-ATTENDANCE.

(Under Sec. 8.)

..... O., 189...

To

You are hereby notified that _____, a minor, between the ages of _____ and _____ years, who is under your charge and control, is not attending any school.

You are required by law to cause such child to attend some recognized school within five days from the date of this notice, under penalty of the law, which provides as follows:

* * * "If said parent, guardian, or other person having the legal charge and control of said child, shall willfully neglect, fail, or refuse to cause said child to attend some recognized school, it shall be the duty of said officers to make, or cause to be made, a complaint against said parent, guardian or other person having the legal charge or control of such child, in any court of competent jurisdiction in the city, village or township in which the offense occurred, for such refusal, failure, or neglect, and upon conviction thereof said parent, guardian or other person, as the case may be, shall be punished by a fine of not less than five dollars nor more than twenty dollars, or the court may, in its discretion, require persons so convicted to give bonds in the penal sum of one hundred dollars, with one or more sureties to be approved by said court, conditioned that said persons so convicted shall cause the child or children under his or her legal charge or control to attend some recognized school within five days thereafter, and to remain at said school during the term prescribed by law." * * *

.....
Truant Officer.

..... *Township, County, Ohio.

*["Village district," or the name of the city may be written here instead of township.]

COMPLAINT AGAINST PARENT OR GUARDIAN.

(Under Sec. 8.)

..... O., 189...

To

..... of

I, _____, duly appointed according to law by the Board of Education _____ *Township, _____ County, Ohio, as Truant Officer of said *Township, hereby make complaint that _____ is _____

Forms and Instructions.

of, and has legal charge and control of _____ a minor, between the ages of _____ and _____ years :

That the said _____ is, under the construction of the law, a juvenile disorderly person :

That in accordance with the Statutes in such cases made and provided, I did on the _____ day of _____ 189—, notify the said _____ that the said _____ was not attending any school, and requiring that the said _____ should cause the said _____ to attend some recognized school within five days from the date of said notice :

That the said _____ has failed to comply with the requirements of said notice, as provided by law in such cases.

In witness whereof, I have hereunto set my hand this _____ day of _____ 189—.

.....
Truant Officer of * Township,
..... County, Ohio

*[“Village district” or the name of the city may be written here instead of township.]

COMPLAINT AGAINST JUVENILE DISORDERLY PERSON.

(Under Sec. 8.)

..... O., 189...

To

..... of

I, _____, duly appointed according to law, by the Board of Education of _____ *Township, _____ County, Ohio, as Truant Officer of said *township, hereby make the following complaint :

That in accordance with the Statute in such cases made and provided, I did, on the _____ day of _____, 189—, notify _____, the _____ of, and having legal charge and control of _____, a minor, between the ages of _____ and _____ years, that the said _____ was not attending any school, and requiring that the said _____ should cause the said _____ to attend some recognized school within five days from the date of the said notice :

That the said _____ having failed to comply with the requirements of said notice, I made complaint as provided by law in such cases.

Now, whereas, the said _____ having proved _____ inability to cause the said _____ to attend said recognized school, I hereby make complaint that said _____ is a juvenile disorderly person within the meaning of the Statute, and subject to the penalties of the law in such cases made and provided.

In witness whereof, I have hereunto set my hand this _____ day of _____ 189—.

.....
Truant Officer of * Township,
..... County, Ohio

*[“Village district” or name of city may be written here instead of township.]

Forms and Instructions.

WARRANT FOR THE ARREST OF A JUVENILE DISORDERLY PERSON.

THE STATE OF OHIO, }
 _____ COUNTY. } ss.

To _____, truant officer, [or any constable or policeman] greeting:

Whereas, there has been filed with me an affidavit, complaining that, under the provisions of an act passed by the General Assembly, April 15, 1889, to compel children under fourteen years of age to attend school a certain length of time each year, _____ is a juvenile disorderly person: these are, therefore, to command you to take the said _____ and safely keep _____ so that you have _____ body forth with before me, or any court of competent jurisdiction in said county, to answer the said complaint, and be further dealt with according to law.

Given under my hand, this _____ day of _____, 18—.

.....

[Here write name of office.]

COMMITMENT.

STATE OF OHIO, _____ COUNTY, }
 _____ TOWNSHIP [village district, } ss.
 or city.]

By _____, [name of office], to any truant officer, [constable or policeman] for the said township [city or village]:

These are to command you in the name of the people of the State of Ohio to take and convey to [here insert the name of the juvenile reformatory or county children's home] the body of _____ who being charged before me on the oath of _____, truant officer, with being a juvenile disorderly person, under this act, I caused the said _____ to be brought before me on said charge, and I proceeded to inquire into the matter in his presence, and having duly considered the said matter, _____ was convicted on competent testimony of being a juvenile disorderly person.

And I having been satisfied by sufficient proof that the said _____ is a child between the ages of eight and fourteen years, and is of the age of _____ years, having sufficient bodily health and mental capacity to render _____ attendance and instruction at some public or private school expedient and practicable, _____ was adjudged by me to be a proper subject to be committed to the _____.

Now, therefore, you _____, [here insert name of office]' are hereby commanded to receive the said _____, who is hereby committed by me to your care in said county children's home, [or juvenile reformatory] there to be restrained and detained and sent to school until such child shall arrive at the age of sixteen years, unless sooner discharged by the board of trustees of said home, [or reformatory.]

Forms and Instructions.

Given under my hand and seal this _____ day of _____ in the year of our Lord one thousand eight hundred and _____.

.....: [SEAL.]
.....

Here insert name of office.

[O. L. 86 v. 336, § 8.]

CERTIFICATE OF SCHOOL ATTENDANCE.

(Under Sec. 2.)

..... O., 189...

To all whom it may concern:

This is to certify that _____ has attended my school for a period of not less than _____ weeks within this year, _____ weeks of which have been consecutive.

.....
Teacher of..... School,

.....
..... County, Ohio.

Section 2 provides, "That no child under the age of fourteen years shall be employed by any person, company or corporation during the school term, and while the public schools are in session, unless the parent, guardian or other persons having care of such child shall be able to give substantial proof that he or she has fully complied with the requirements of Section 1 of this act, or that such child has completed the usual primary or grammar grades in some public or private school, and such person, company or corporation shall demand such proof before giving employment to any minor, and shall make a record of said proof given, and shall be required, upon the request of the officer (hereinafter provided for) to allow said officer to examine the said record and also the record as provided for in Section 6986aa of the Revised Statutes, and any person, company or corporation employing any child contrary to the provisions of this act shall be liable to a penalty of fifty dollars for each offense, to be recovered in an action for debt in any court, or before any justice of the peace having jurisdiction, and such action shall be brought in the name of the clerk of the board of education.

CERTIFICATE OF EDUCATION.

(Under Sec. 3.)

..... O., 189...

To all whom it may concern:

This is to certify that _____, who is a minor over the age of fourteen and under sixteen years, can read at sight and write legibly simple sentences in the English language; as required by law, under the Ohio Laws, Vol. 86, p. 333, Sec. 3.

.....
Clerk of Board of Education of

..... County, Ohio.

Forms and Instructions.

Section 3 provides, "That all minors over the age of fourteen and under sixteen years, who can not read and write the English language, shall be required to attend school at least one-half of each day, or to attend some evening school organized and maintained by the board of education, or to take regular private instruction from some person qualified, in the opinion of the superintendent of schools in cities, and the clerk of the board of education in villages and townships, to teach such branches, until he or she shall obtain a certificate from the superintendent of schools in cities, and the clerk of the board of education in villages and townships, certifying that said minor can read at sight and write legibly simple sentences in the English language, and every person, company or corporation having such minor in employment, shall be required to exact such school attendance from such minor, and be prepared, upon demand of the hereinbefore mentioned officer, to furnish evidence that such minor does comply with the requirements of this act, and any person, company or corporation failing or neglecting to exact such school attendance from such minors shall be liable as provided for in Section 2 of this act; provided, such person, company or corporation shall not have made provisions for the private instructions of such minors."

NOTICE TO EMPLOYERS OF YOUTH.

To _____ [here insert name of person, company or corporation].

Your attention is respectfully called to sections 2, 3, 6 and 12 of an act passed by the General Assembly, April 15, 1889, to compel children under fourteen years of age to attend school a certain length of time each year.

In compliance with the provisions of this act, you are requested to return to me on this blank the names, ages, and residence of all minors under fourteen years of age employed by you, also all minors between fourteen and sixteen years of age, and to state whether you have a certificate from the superintendent of schools, or clerk of the board of education, that authorizes you to employ such minors.

*Clerk of _____ Board of Education.

Name of minor.	Age.	Residence.	Certificate—Yes or no.
.....
.....
.....
.....
.....
.....
.....
.....

*In cities this notice may be signed by the superintendent of schools.

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ERRATA.

Page 6, section 3885, second line, for "district" read "districts."

Page 9, section 3893, eighth line, for "clerks" read "clerk."

Page 35, section 3940, first line, for "clerk" read "clerks."

Page 73, section 3991, seventh line, for "schoo-houses" read "school-houses."

Page 101, section 10, last line, for "hile" read "while."

Page 113, section 6975 *a*, R. S. As it pertains entirely to school affairs, it was thought proper to incorporate this section in this edition of the school laws, but it was accidentally misplaced, and is found in the wrong chapter.

Page 132, section 4086, line at the bottom of the page. The reference to section four thousand and eight, though thus printed in the volume of the laws for 1887, is manifestly wrong. Since the abolition of the authority of boards to establish separate schools for colored children, there is no section 4008; but the matter referred to in section 4086 will be found in section 4088.



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